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## A Tax Reformer for All Seasons: Charles O'Neill Galvin

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# A TAX REFORMER FOR ALL SEASONS: CHARLES O'NEILL GALVIN

*Henry J. Lischer, Jr.\**

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“No one could be more dedicated  
to the investigation of substantive tax reform  
than Dean Galvin.”<sup>1</sup>

“He was so damn far ahead of his time!”<sup>2</sup>

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\* Professor of Law, SMU Dedman School of Law.

1. STUDIES IN SUBSTANTIVE TAX REFORM xii (Arthur B. Willis ed., 1969) [hereinafter STUDIES].

2. Telephone interview with David Glickman, Partner, Baker & McKenzie, former Deputy Assistant Secretary of the Treasury for Tax Policy, in Dallas, Tex. (Oct. 31, 2005).

## I. INTRODUCTION

THIS article is written as a tribute to a man for whom I have the greatest respect, Charles O'Neill Galvin. He has been a colleague, a co-teacher, a friend, and an inspiration through most of my professional life. This article describes Charley as an ever-present and powerful participant and leader in the tax policy debates and tax reform efforts that span five decades. Acknowledging his many contributions and accomplishments is particularly appropriate as tax reform is center stage at the time of this writing because the President's Advisory Panel on Federal Tax Reform just issued its report.<sup>3</sup>

Charley's efforts were many and his contributions considerable. He was on the leading edge of some of the tax policy debates, and not everyone appreciated his calling into question for review some of the provisions of the federal tax system.<sup>4</sup> Fortunately, Charley persevered through the sometimes adverse commentary, and his efforts led to his appointment to leadership positions with respect to path-breaking technical studies regarding policy-based reform of the U.S. tax system: *Studies in Substantive Tax Reform*<sup>5</sup> in 1969 and *Reforming the Federal Tax Structure*<sup>6</sup> in 1973. The legacy of those two publications clearly is evident in the 1977 major governmental tax reform study *Blueprints for Basic Tax Reform*,<sup>7</sup> and the legacy continued into the 1984 Treasury Department Report to the President, *Tax Reform for Fairness, Simplicity, and Economic Growth*.<sup>8</sup> Anyone who has followed or studied tax policy matters over the last four decades will recognize that the foregoing list of studies is impressive indeed. Moreover, the Tax Reform Act of 1986, a much-heralded legislative effort, manifests the base broadening and rate reductions that Charley long advocated.

## II. A BRIEF BIOGRAPHY

Charles O. Galvin was born in Wilmington, North Carolina, on September 29, 1919, but to the ever-lasting good fortune of Southern Methodist University ("SMU"), his family moved to Dallas in 1921, initially living in Oak Cliff, in the southern part of Dallas. In 1929, the Galvin family moved to the north Dallas suburb of University Park, so named because it was the home of SMU (founded in 1911). The Galvins lived on

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3. See PRESIDENT'S ADVISORY PANEL ON FED. TAX REFORM, SIMPLE, FAIR, AND PRO-GROWTH, PROPOSALS TO FIX AMERICA'S TAX SYSTEM (Nov. 2005), available at <http://www.taxreformpanel.gov/> [hereinafter REPORT].

4. See discussion *infra* Part III.C.

5. Studies *supra* note 1; see discussion *infra* Part III.B.3.

6. COMM. TO REVISE THE TAX STRUCTURE, REFORMING THE FEDERAL TAX STRUCTURE (1973) [hereinafter REFORMING]; see discussion *infra* Part III.B.4.

7. DEP'T OF TREASURY, BLUEPRINTS FOR BASIC TAX REFORM (1977) [hereinafter BLUEPRINTS]; see discussion *infra* Part III.B.5.

8. DEP'T OF TREASURY, TAX REFORM FOR FAIRNESS, SIMPLICITY, AND ECONOMIC GROWTH (1984); see discussion *infra* Part III.B.6 [hereinafter TAX REFORM].

McFarlin Boulevard several blocks from the campus of SMU. The year 1929 was an auspicious year for SMU, in my opinion, as I claim it as the year that marked the beginning of SMU's relationship with Charley (as a down-the-street neighborhood child), a relationship that has benefited SMU in many, many ways over a period of more than seven decades. Perhaps his proximity to SMU as a youth had some effect on Charley because he spent virtually all of his professional life associated with universities.

Charley graduated from Highland Park High School in 1936, and he chose to attend SMU for his undergraduate education. He received his Bachelor of Science in Commerce (with highest honors) from SMU in 1940. Portending, perhaps, that he would have a future in tax policy debates, particularly debates based upon computer-generated data, at SMU he studied accounting and statistics. Immediately after obtaining his Bachelor's degree, he set off to Chicago and Northwestern University, where he pursued a Master of Business Administration ("M.B.A.") degree, intending to commence law school immediately after completing the M.B.A. Charley obtained his C.P.A. certificate in 1941 with one of the five highest scores on the Texas exam. He received his Northwestern M.B.A. (with distinction) in 1941 and returned to Dallas to start law school at SMU in the fall of 1941. United States participation in World War II upset the progression of his legal studies, however, because Charley joined the United States Navy in 1942. He served four years of active duty, including two years of service in the Southwest Pacific, after which he returned stateside to the Bayonne, New Jersey, U.S. Naval Base where he met Margaret Edna Gillespie (Peggy), an active duty Lieutenant, Junior Grade, in the United States Naval Reserve. Charley and Peggy were married at St. Patrick's Cathedral in New York City on June 29, 1946, and their lives have been as one ever since. They have five children and nine grandchildren. Peggy has been a real partner and supporter of Charley's many professional activities.<sup>9</sup>

In 1946, Charley was honorably discharged from the Navy as a Lieutenant Commander, and he returned to his legal studies. He began his legal education at SMU, and received his Juris Doctor degree at Northwestern University in 1947. Northwestern (which previously had known Charley as an M.B.A. student in 1940-41) welcomed him as an instructor in the undergraduate accounting department while he was a law student. At the same time, Peggy was obtaining her Master's degree in English from Northwestern. Charley took "the" tax course at Northwestern taught by Willard Pedrick, a name that will be recognized by many as prominent in both taxation and legal education. Charley was interested

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9. A comprehensive biography of Charley would require an extensive discussion of Peggy's many contributions. I have the greatest of respect for Peggy's many contributions, but this article is not that comprehensive biography, and I acknowledge that I do not give Peggy her full due.

in taxation, and he wrote a law review comment under Pedrick.<sup>10</sup> After completing law school at Northwestern, he practiced law in Dallas with the firm of Leachman, Matthews, and Gardere from 1947-52. The match with the Leachman firm was propitious because Wright Matthews had served as Assistant Commissioner of the IRS, and Charley devoted his practice substantially to taxation.

Charley began teaching at SMU, first as an adjunct member of the faculty. Charley taught a variety of law school courses at night, and for part of that time, he also taught a 7:00 a.m. course at the SMU Business School. In 1952, Charley commenced his long and distinguished career as a full-time member of the professoriate by joining the SMU law faculty. As was true of many entry-level law professors, Charley taught a widely diverse curriculum of courses including equity, community property, real property security, wills and trusts, and federal taxation.

After joining the full-time law faculty at SMU, Charley continued his own education by pursuing the Doctor of Judicial Science ("S.J.D.") degree from Harvard University. During the 1956-57 academic year, Charley was in residence at the Harvard Law School as an Ezra Ripley Thayer Fellow.<sup>11</sup> During that academic year we find Charley in two roles: one role as a student in several courses with notable faculty members, and another role as a teacher. During the fall term, Charley took a course on international law and taxation that was team taught by a group that included Professors Stanley Surrey (a preeminent policy-oriented tax professor who eventually became the Deputy Assistant Secretary of the Treasury for Tax Policy) and Kingman Brewster (who eventually became the President of Yale University and thereafter served as Master of University College, Oxford University). During the spring semester, Charley was a student in a jurisprudence course taught by Lon Fuller. While at Harvard, Charley taught two classes: first, a section of the survey tax class for second year students, and second, a seminar in oil and gas taxation (its first offering at Harvard). In addition, David Westfall, for the first time, was offering a course in oil and gas law, and Westfall asked Charley to sit in the course as often as he could. After the year in residence at Harvard, Charley returned to SMU. Charley wrote three law review articles in satisfaction of the writing requirement for the S.J.D. degree,<sup>12</sup> and obtained his degree in 1961.

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10. See Charles O. Galvin, Comment, *Taxable Income to a Corporation from Dividends in Kind*, 42 ILL. L. REV. 534 (1948). In this article, Charley pointed out a technical deficiency in the Internal Revenue Code as to distributions of property in kind. Even this very-early-in-the-career student Comment contributed to Charley's prominence in taxation, as Dean Erwin Griswold cited it in his law school casebook on federal taxation. See ERWIN GRISWOLD, *CASES AND MATERIALS ON FEDERAL TAXATION* 464 (3d ed. 1950). Congress eventually fixed the technical issue in I.R.C. § 311, by providing that a distribution of appreciated property (property the fair market value of which exceeds its adjusted basis) by a corporation generally causes the recognition of gain of the excess of the fair market value of the property over its adjusted basis.

11. Interview with Charles O. Galvin in Dallas, Tex. (Nov. 3, 2005).

12. See Charles O. Galvin, *The "Ought" and "Is" of Oil-and-Gas Taxation*, 73 HARV. L. REV. 1441 (1960); see discussion *infra*, Part III.A.2; Charles O. Galvin, *Meyers v.*

He served as professor of law at SMU from 1952-83 and as dean from 1963-78. After resigning as dean, Charley visited away from SMU several semesters and eventually accepted the prestigious Centennial Professorship of Law at Vanderbilt University, holding that chair from 1983-90, and thereafter was named Centennial Professor Emeritus. He also served as Executive in Residence at Vanderbilt from 1990-94, during which time he served the University Chancellor on a variety of university administrative matters. After his distinguished service to Vanderbilt University, Charley and his family returned to Dallas, and Charley became an adjunct member of the University of Texas law faculty and of the SMU law faculty. He and I co-taught the taxation and fiscal policy course (which is required of SMU Master of Laws ("LL. M.") taxation students). Co-teaching with Charley was a great treat to me because he would bring to the class his wealth of experience, his broad perspectives on economic and tax policy, and his grasp of an extensive expanse of tax history and tax reform efforts in which he participated (discussed more fully below).

Peggy and Charley were very active in the community, and they traveled extensively. The Galvins are renowned for their good will, generosity, hospitality, and grace. No dean, particularly one who served for fifteen years including the tumultuous 1960s, was able to make all of his constituencies happy all of the time, but Charley was willing to make the difficult decisions.

During his academic career, Charley also taught at the law schools of Michigan, Harvard, Duke, Pepperdine, and Kansas, and at the Business Schools of Northwestern University and SMU. He also was an adjunct professor at the University of Texas Law School, and Counsel to Haynes and Boone, LLP, of Dallas. He is a Distinguished Professor of Law, Emeritus, of SMU. He was awarded Doctor of Laws degrees from Capital University and SMU. He has been honored as a Distinguished Alumnus by SMU and an Alumnus of Merit by Northwestern University. In 2004, Charley was one of five lawyers honored by the Texas Bar Foundation for fifty years of practice.

The foregoing is only a brief summary of Charley's life in the academy,<sup>13</sup> and it omits many of his other significant professional and public service activities,<sup>14</sup> but my focus is on Charley's role as a participant in, and leader of, various tax reform debates and organized tax reform ef-

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*Brown—Jurisprudence in Action*, 7 UCLA L. REV. 589 (1960); Charles O. Galvin, *Developing an Oil and Gas Jurisprudence in Michigan*, 7 WAYNE L. REV. 403 (1961).

13. For a discussion of Charley's role in developing taxation as part of the law school curriculum, see Meade Emory, *Charley Galvin—A Model for Today's Tax Teacher and Scholar*, 32 Sw. L.J. 1063 (1979).

14. He also served on the President's Commission on Marihuana and Drug Abuse (presidential appointment), the Executive Committee of the Association of American Law Schools, the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association, and the Investment Oversight Group, Law School Admission Services. In 1966, he received the Intellectual Leadership Award from the National Council of Catholic Men. He also has been active in many Dallas and national charitable and religious organizations.

forts during his career. The remainder of this article is restricted to that very rich, but only partial, perspective of his life.<sup>15</sup>

### III. TAX REFORM DEBATES AND TAX REFORM EFFORTS

#### A. DESTINED FOR PROMINENCE

It is very clear to me as I review Charley's career that he was destined for prominence in tax policy and tax reform due to several standout accomplishments that occurred early in his career: his 1942-43 Texas Law Review article<sup>16</sup> and his participation, just seven years into his full-time teaching career, as a contributor to the 1959-60 Tax Revision Compendium of the House Ways and Means Committee of the U.S. Congress<sup>17</sup> (and the subsequent publication of a substantial portion of the Compendium paper in the Harvard Law Review<sup>18</sup>). Those publications gave a great jump start to his professional life of prominence in tax reform, and each of these publications is discussed more fully below.

#### 1. 1942-43 Texas Law Review Article

In Charley's Texas law review article *Federal Income Tax—Percentage Depletion of Oil and Gas Wells* ("Percentage Depletion Article"),<sup>19</sup> he explained the intricate history of percentage depletion of mineral interests for federal income tax purposes. A mineral interest is property that will diminish in value over time as the mineral is removed.<sup>20</sup> To properly calculate the taxpayer's income from the extracted minerals, the taxpayer's cost in the mineral interest should be offset in some fashion against the gross revenues during the period of time that the minerals are extracted.<sup>21</sup> Cost or unit depletion seeks to allocate the cost of the mineral interest to the estimated mineral reserves on a per unit basis so that, as a unit of the mineral is extracted and generates revenue, a per unit portion of the cost of the mineral interest is claimed as an expense against those related revenues.<sup>22</sup> This reflects the customary tax accounting concept of "matching," which asserts that revenues of an accounting period should be matched against and offset by expenses that relate to those revenues.

Eventually, Congress permitted percentage depletion, a depletion method that permits as a deduction a statutorily-prescribed percentage of

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15. For a discussion of Charley's role as dean of the SMU School of Law, see Roy R. Ray, *Galvin's Contributions to the Law School*, 32 Sw. L.J. 1051 (1979).

16. Charles O. Galvin, *Federal Income Tax—Percentage Depletion of Oil and Gas Wells*, 21 TEX. L. REV. 410 (1942-43).

17. Charles O. Galvin, *The Deduction for Percentage Depletion and Exploration and Development Costs*, in 2 H.R. COMM. ON WAYS & MEANS, 86TH CONG., TAX REVISION COMPENDIUM 933 (Comm. Print 1959) [hereinafter COMPENDIUM].

18. Galvin, *The "Ought" and "Is" of Oil-and-Gas Taxation*, *supra* note 12.

19. Galvin, *supra* note 16. This article was a rework of his Master's thesis for Northwestern University. Charles O. Galvin, *A Response*, 32 Sw. L.J. 1067 (1979). The article was published while Charley was in the Navy before he had completed his legal education.

20. Galvin, *supra* note 16, at 410.

21. *Id.*

22. *Id.*

the income from the property regardless of the taxpayer's cost or basis in the property.<sup>23</sup> Accordingly, under percentage depletion, a taxpayer might be (and often was) permitted to claim over time as depletion deductions an amount in excess of the taxpayer's cost in the mineral interest.<sup>24</sup> Inasmuch as depletion in excess of cost deviates from traditional tax treatment, which limits deductions to cost, especially favorable tax treatment was provided through the percentage depletion provision.<sup>25</sup>

Charley recounted the history of federal tax depletion as an explicit subsidy to the oil and gas industry implemented through the Internal Revenue Code.<sup>26</sup> He carefully dissected a variety of arguments put forth by the oil and gas industry to continue percentage depletion, and he recommended that percentage depletion be limited to the taxpayer's cost in the property.<sup>27</sup> It is manifestly evident to me that Charley's analysis is correct (and his position eventually was adopted in large part in the Internal Revenue Code<sup>28</sup>), but one should note that this was a Texan writing about the oil and gas industry, an immensely powerful force in Texas.<sup>29</sup> He might be viewed as a rebel-in-the-making as regards federal tax accounting for the oil and gas industry,<sup>30</sup> but I view it instead as a first example of Charley's life-long fidelity to the consistent application of theoretically correct principles of taxation, whatever the industry.

The *Percentage Depletion Article* largely was crafted prior to U.S. engagement in World War II, but by the time of publication in 1942-43, the U.S. was involved in the War, and additional oil production was critical to the war effort.<sup>31</sup> Perhaps it is not a surprise that the *Percentage Depletion*

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23. *Id.* at 412.

24. *Id.*

25. *Id.* at 413.

26. *Id.* at 412-13.

27. *Id.* at 414-22. The debate as to appropriate tax policy with respect to the oil and gas industry has continued over the decades since Charley's *Percentage Depletion Article*. See, e.g., SEYMOUR FIEKOWSKY, ISSUES IN THE TAXATION OF PETROLEUM AND NATURAL GAS INCOME, 1 OTA PAPERS, DEP'T OF THE TREASURY (1978). Tax policy issues regarding the oil and gas industry remain in flux today. Several 2005 hurricanes struck the Gulf Coast and sharply reduced domestic oil and gas production and resulted in substantial increases in (1) the price of energy and (2) the profits of energy companies. Recently, there has been talk of a windfall profits tax on oil companies. See Sirena J. Scales, *Wyden to Introduce Amendment to Repeal Oil Industry Tax Breaks*, TAX NOTES TODAY, NOV. 10, 2005, LEXIS, 2005 TNT 217-3; Joseph J. Thorndike, *Historical Perspective: The Windfall Profit Tax—Career of a Concept*, TAX ANALYSTS (2005), available at <http://www.taxhistory.org> (follow "Readings" hyperlink).

28. In 1975, the percentage depletion rules were substantially revised and now generally provide that percentage depletion is available only to taxpayers who are not large retailers or refiners. See § I.R.C. 613A (enacted in Tax Reduction Act of 1975, Pub. L. No. 94-12, § 501(a), 89 Stat. 26, 47).

29. See Galvin, *supra* note 16, at 413 n.15 (describing oil and gas industry's vigorous fight against its "enemies in the Treasury Department.").

30. As more fully discussed below, Charley became the target of groups opposed to changes in the federal tax treatment of various industries. See discussion *infra* Part III.C.

31. "This is a mechanized war. Petroleum is the lifeblood of the greatest war effort in world history." John Paul Jackson, *Federal Income Tax, Percentage Depletion of Oil & Gas Wells—Another View*, 21 TEX. L. REV. 798, 805 (1942-43).



*Article* prompted a response from another Texan,<sup>32</sup> and that other Texan happened to be a young associate practicing law in Dallas by the name of John Paul Jackson, who not long before had finished his service as a Special Assistant to the U.S. Attorney General in the Tax Division.

In his article, Jackson made a strong case for special treatment of the oil and gas industry during World War II.<sup>33</sup> More specifically, Jackson rejected the Galvin assertions that (1) a subsidy such as percentage depletion has no place in our tax structure and (2) all classes of taxpayers should be taxed alike.<sup>34</sup> Jackson stated that the Galvin assertions had “no basis in history or sound fiscal policy.”<sup>35</sup> Jackson did not refute, however, the more fundamental thesis asserted by Galvin that economic subsidy generally should not be implemented through the Internal Revenue Code.<sup>36</sup> Jackson clearly was correct (at that time) as to the tax history of the United States (which reflected substantial Congressional willingness to implement subsidies through the Internal Revenue Code), but as to sound fiscal policy, reasonable minds can differ with Jackson, and a great deal of the academic tax policy analysis since that time sides with the Galvin position rather than the Jackson position.<sup>37</sup>

Charley’s *Percentage Depletion Article* introduces us to several themes that recur throughout Charley’s tax reform life: (1) a preference for a comprehensive tax base,<sup>38</sup> (2) a desire to avoid “tax preferences” or “fox-holes” (now often referred to as “tax expenditures”<sup>39</sup>), (3) a preference for relying on market mechanisms to promote efficient allocation of eco-

32. *See id.*

33. *See generally id.*

34. *Id.* at 799.

35. *Id.*

36. *Id.*

37. Throughout his career, Charley spoke against extensive use of tax preferences or “foxholes.” *See, e.g.,* Charles O. Galvin, *Tax Policy—Past, Present and Future*, 49 SMU L. REV. 83 (1995); *see also* Charles O. Galvin, *The “Ought” and “Is” of Oil and Gas Taxation*, *supra* note 12. Stanley Surrey’s preaching on “tax expenditures” lead eventually to the Budget Impoundment Act of 1974, which asserted that subsidies in the tax laws should be identified, quantified, and regularly reviewed. Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 HARV. L. REV. 705 (1970). *See generally* BLUEPRINTS, *supra* note 7 (discussed in III.B.5, *infra*); REFORMING, *supra* note 6 (discussed in Part II.B.4, *infra*); REPORT, *supra* note 3 (striving all to reduce tax preference subsidies to provide base broadening, which would permit rate reduction); TAX REFORM, *supra* note 8 (discussed in Part III.B.6, *infra*); STUDIES, *supra* note 1 (discussed in Part III.B.3, *infra*); Martin J. McMahon, Jr., *Individual Tax Reform for Fairness and Simplicity: Let Economic Growth Take Care of Itself*, 50 WASH. & LEE L. REV. 459 (1993).

38. Charley is not the progenitor of the comprehensive tax base; he simply was a tireless advocate. Credit for the comprehensive tax base generally is attributed to Robert Haig and Henry C. Simons. *See* HENRY C. SIMONS, *PERSONAL INCOME TAXATION* 61-62, 206 (1938); THE FEDERAL INCOME TAX 7 (Robert M. Haig ed., 1921). *See also* Edward J. McCaffery, *A New Understanding of Tax*, 103 MICH. L. REV. 807, 821 n.29 (2005).

39. *See generally* J. COMM. ON TAXATION, *ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2005-2009*, JCS-1-05 (2005). *See also* S. COMM. ON THE BUDGET, 104TH CONG., *TAX EXPENDITURES: COMPENDIUM OF BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS*. (Comm. Print 1998). For a more critical view, *see* J. ECON. COMM., *TAX EXPENDITURES: A REVIEW AND ANALYSIS* (1999).

conomic resources,<sup>40</sup> and (4) an ability to analyze in a dispassionate manner tax policy subjects that generate high passion in some people (one might speculate as to what tax subject could generate more passion in Texas than oil and gas taxation).<sup>41</sup>

## 2. 1959-60 Tax Revision Compendium and the 1960 Harvard Law Review Article

As a relatively young professor in 1959, Charley (1) contributed to the 1959-60 Tax Reform Compendium,<sup>42</sup> published by the tax-writing Committee of the House of Representatives, the all-powerful Committee on Ways and Means,<sup>43</sup> and (2) published an article on oil and gas taxation in the Harvard Law Review.<sup>44</sup> Both his Compendium paper and the Harvard Law Review article resulted from his pursuit of the S.J.D. at Harvard. In the Compendium, Charley's article was the lead paper on percentage depletion and intangible drilling costs.<sup>45</sup> The Harvard Law Review article is an expansion of the Tax Revision Compendium paper.<sup>46</sup>

These two publications constitute a substantial work that (1) contained an extensive historical development of the tax treatment of the oil and gas industry and (2) manifested Charley's familiarity with the oil and gas industry and the highly-technical legal relationships through which the industry conducts its activities. Charley clearly stated his views as to what the federal income tax statute should provide in a perfect world, but he also manifested pragmatism by acknowledging that federal tax policy ultimately is driven by broad public policy considerations rather than more narrow normative considerations related solely to the federal tax system.<sup>47</sup> He appropriately observed that national policy as to the energy industry engages issues of economic policy, national security, and foreign policy.<sup>48</sup> He stated, as he was wont to do throughout his career, that the policy makers need better data on which to base their decisions about

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40. See also Charles O. Galvin, *Luncheon Address: Tax Reform & Simplification*, 30 MAJOR TAX PLANNING 853, 864 (1978) [hereinafter *Luncheon Address*] (referring specifically to oil and gas: "First, there is a disposition to interfere with ever increasing frequency in the operation of free market mechanisms. This bodes ill for simplification."). See also Charles O. Galvin, *Tax Reform for the 80's, Port—Buchwald Distinguished Lecture in Taxation* (Apr. 29, 1980) [hereinafter *Porth Lecture*]. See also Galvin, *The "Ought" and "Is" of Oil-and-Gas Taxation*, *supra* note 12, at 1456.

41. See *supra* note 27.

42. COMPENDIUM, *supra* note 17.

43. For background, see COMM. ON WAYS & MEANS; A BICENTENNIAL HISTORY 1789-1989, H. DOC. NO. 100-244, at 319-56, available at <http://www.gpoaccess.gov/serialset/cdocuments/100-244/browse.html>.

44. Galvin, *The "Ought" and "Is" of Oil-and-Gas Taxation*, *supra* note 12.

45. See COMPENDIUM, *supra* note 17.

46. Galvin, *The "Ought" and "Is" of Oil-and-Gas Taxation*, *supra* note 12, at 1443 n.3.

47. *Id.* at 1458, 1473-74, 1509; COMPENDIUM, *supra* note 17, at 939-40, 941, 947-48.

48. See generally Galvin, *The "Ought" and "Is" of Oil-and-Gas Taxation*, *supra* note 12; COMPENDIUM, *supra* note 17.

federal tax policy in that broader context.<sup>49</sup>

He also demonstrated pragmatism by devoting the second part of the Harvard Law Review article to the existing legal relationships in the oil and gas industry that were consummated under the favorable provisions of the federal tax law, and he cautioned that transition rules might be appropriate in the event of any significant change in the federal tax provisions regarding the oil and gas industry.<sup>50</sup>

### 3. 1967 Harvard Law Review Colloquy

Another impressive accomplishment in Charley's career occurred in 1967-68 and involved no less luminaries than Boris Bittker of Yale, R.A. Musgrave of Harvard, and Joseph Pechman of the Brookings Institution.<sup>51</sup> This is a highly inclusive and, even after almost forty years, timely (in large part) exchange as to the appropriate tax base and the treatment of various items under the Internal Revenue Code. Boris Bittker began the exchange by asserting that he was not persuaded by the proponents of the comprehensive tax base (specifically, the theoretical structure upon which the proponents based their arguments and the rhetoric they employed), and he was particularly concerned about which items properly are considered "preferences" and which items properly are considered as within the normative tax base.<sup>52</sup> Musgrave, Pechman, and Galvin responded to Bittker and asserted various arguments either (1) in favor of the comprehensive tax base or (2) in opposition to some of Bittker's specific assertions. This is thoughtful discourse at the highest level by the leading tax thinkers of the day, and although there is some sharp language in some of the articles, none came from Charley. I commend the articles as part of the tax policy canon.

### 4. Subjects on Which Galvin Has Written

Charley started his career writing and speaking about taxation of the oil and gas industry.<sup>53</sup> Over the duration of his career, he wrote about

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49. COMPENDIUM, *supra* note 17, at 941, 948; REFORMING, *supra* note 6, at 5; STUDIES, *supra* note 1, at 7; Galvin, *The "Ought" and "Is" of Oil-and-Gas Taxation*, *supra* note 12, at 1458, 1474.

50. Galvin, *The "Ought" and "Is" of Oil-and-Gas Taxation*, *supra* note 12, at 1474-1509.

51. See Boris I. Bittker, *A Comprehensive Tax Base as a Goal of Income Tax Reform*, 80 HARV. L. REV. 925 (1967); Charles O. Galvin, *More on Boris Bittker and the Comprehensive Tax Base: The Practicalities of Tax Reform and the ABA's CSTR*, 81 HARV. L. REV. 1016 (1984); R. A. Musgrave, *In Defense of an Income Concept*, 81 HARV. L. REV. 44 (1967); Joseph A. Pechman, *Comprehensive Income Taxation: A Comment*, 81 HARV. L. REV. 63 (1967).

52. For background discussion of the difficulty in dealing with proper components of an income tax, see the seminal work of EDWIN R.A. SELIGMAN, *THE INCOME TAX: A STUDY OF THE HISTORY, THEORY AND PRACTICE OF INCOME TAXATION AT HOME AND ABROAD* 16 (2d ed. 1914). See also Charles O. Galvin, Letter to the Editor, *Would Haig-Simons Plus a Flat Tax Be the Best U.S. Tax System?*, 60 TAX NOTES 540 (1993).

53. In addition to the articles discussed *supra*, see CHARLES O. GALVIN & WALLACE LOVEJOY, *ECONOMIC AND TAX ANALYSIS, OIL & GAS INDUSTRY* (1962); Charles O. Galvin, *G.C.M. 22,730: Twenty-Five Years Later*, 18 INST. ON OIL & GAS L. & TAX'N 511

many other tax and related subjects, including the following: the history of the U.S. tax system,<sup>54</sup> taxation of capital gains (advocating abandonment of the distinction between capital gains and ordinary income),<sup>55</sup> depreciation (proposing deductions at the discretion of the taxpayer if I.R.C. § 1231 were to be repealed as to any such property),<sup>56</sup> transfer taxation (initially supporting unification of the gift and estate taxes, which was implemented in 1976,<sup>57</sup> supporting repeal of the transfer tax system along with repeal of I.R.C. §§ 102 and 1014, and contemplating either realization of gains at death for income tax purposes or carryover basis at death),<sup>58</sup> integration of the corporate income tax with the individual income tax to reduce or eliminate the double taxation of distributed corporate earnings,<sup>59</sup> the tax reform process,<sup>60</sup> the comprehensive tax base (which is the principal focus of the Harvard Law Review colloquy articles discussed above at III.A.3 *supra*, *Studies in Substantive Tax Reform* discussed at III.B.3 *infra*, and *Reforming the Federal Tax Structure* discussed at III.B.4 *infra*),<sup>61</sup> consumption-based taxation,<sup>62</sup> wills and

(1967); Charles O. Galvin, Panel Discussion, *Investor Problems*, 20 A.B.A. SEC. TAX BULL. 33 (1967); Charles O. Galvin, *Another Look at Sharing Arrangements—Some Drafting Suggestions*, 26 OHIO ST. L.J. 519 (1965), also in 16 INST. ON OIL & GAS L. & TAX'N 453 (1963); Charles O. Galvin, *Selected Current Problems in Production Payment Transactions*, 12 TUL. TAX INST. 315 (1963); Charles O. Galvin, *ABC Transaction: A Subject of Re-examination*, 9 INST. ON MINERAL L. 58 (1962); Charles O. Galvin, *Developing an Oil and Gas Jurisprudence in Michigan*, 7 WAYNE L. REV. 403 (1961); Charles O. Galvin, *Recent Developments in Oil and Gas Taxation*, 47 A.B.A. J. 1018 (1961); Charles O. Galvin, *Some Comments on the Oil and Gas Entrepreneur and Mineral Concessions in Latin America*, 52 AM. SOC'Y INT'L L. PROC. 217 (1958).

54. See *Luncheon Address*, *supra* note 40, at 853.

55. See Charles O. Galvin, *Tax Reform—What? Again?*, 17 Sw. L.J. 203, 216-19 (1963).

56. See *id.*

57. See Tax Reform Act of 1976, Pub. L. No. 94-455, § 2001, 90 Stat. 1520, 1846-54. See generally J. COMM. ON TAXATION, GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1976, JCS-33-76, at 525-30 (1976).

58. See Charles O. Galvin, Letter to the Editor *More Reasons to Bury the Estate Tax*, 59 TAX NOTES 435 (1993); Charles O. Galvin, *Burying the Estate Tax: Keeping Ghouls Out of the Cemetery: A Reply to Professor Smith*, 56 TAX NOTES 951 (1992); Charles O. Galvin, *To Bury the Estate Tax, Not to Praise It*, 52 TAX NOTES 1413 (1991); Charles O. Galvin et al., *Proposed Estate and Gift Tax Reforms: A Panel*, 5 ANN. INST. ON EST. PLANNING 10-1 (1971); Charles O. Galvin et al., *Conflict of Laws in Estate Planning* (panel discussion), 2 ANN. INST. ON EST. PLANNING 10-1 (1968); Charles O. Galvin, *Current Developments on Private Annuities*, 2 ANN. INST. ON EST. PLAN. 2-1 (1968); Galvin, *supra* note 55, at 220-21.

59. See Galvin, *supra* note 55, at 223-26.

60. See *id.*

61. See Charles O. Galvin, Letter to the Editor, *Would Haig-Simons Plus a Flat Tax Be the Best U.S. Tax System?*, 60 TAX NOTES 540 (1993). With the passage of some years, Charley had this to say in 1980: "Reflecting on these alternatives and a generation of tax reform watching, this author maintains that the comprehensive base, if not the best of all worlds, must surely be, in our present state of fiscal doldrums, the least worst of all worlds." Charles O. Galvin, *The Value-Added Tax—A Proposal for the 80's*, 7 PEPP. L. REV. 505, 530 (1980). See also WINSTON S. CHURCHILL: HIS COMPLETE SPEECHES, 1897-1963 7566 (Robert Rhodes James ed., 1974), quoted in RESPECTFULLY QUOTED: A DICTIONARY OF QUOTATIONS NO. 417 (1989) ("Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time.").

62. See Charles O. Galvin, *A Consumed Income World—The Low Income and Prospects for Simplification—Replies to Professors Fleming and Yin*, 2 FLA. TAX REV. 552

trusts,<sup>63</sup> the alternative minimum tax,<sup>64</sup> critical tax theory,<sup>65</sup> income tax realization of gains at death,<sup>66</sup> indexation of the Internal Revenue Code,<sup>67</sup> deductibility of non-business interest,<sup>68</sup> value-added taxation,<sup>69</sup> professional corporations,<sup>70</sup> corporate taxation (including reorganizations),<sup>71</sup> partnership taxation,<sup>72</sup> tax-exempt organizations,<sup>73</sup> private annuities,<sup>74</sup> international taxation,<sup>75</sup> and legal education.<sup>76</sup> He served as taxation editor of the *Oil and Gas Reporter* for more than fifty years

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(1995); Charles O. Galvin, *Tax Legislation in the Reagan Era—Movement to or from a Consumption Base?* 48 *LAW & CONTEMP. PROBS.* 31 (1985); *Luncheon Address, supra* note 40, at 853. Eventually, Charley grew less inclined to believe that the income tax could be reformed, so he began to discuss and contemplate consumption-based taxation, specifically the value-added tax. Earlier in his career, however, he had expressed concern over the regressive nature of consumption taxes. See Galvin, *supra* note 55, at 211.

63. See CHARLES O. GALVIN ET AL., *TEXAS WILL MANUAL SERVICE* (1960); Charles O. Galvin, *Wills and Trusts*, 37 *SW. L.J.* 25 (1983); Charles O. Galvin, *Wills and Trusts*, 36 *SW. L.J.* 21 (1982); Charles O. Galvin, *Wills and Trusts*, 35 *SW. L.J.* 21 (1981); Charles O. Galvin, *Wills and Trusts*, 34 *SW. L.J.* 21 (1980); Charles O. Galvin, *Wills and Trusts*, 33 *SW. L.J.* 21 (1979-80); Charles O. Galvin, *Wills and Trusts*, 32 *SW. L.J.* 15 (1978); Charles O. Galvin, *Wills and Trusts*, 31 *SW. L.J.* 15 (1977); Charles O. Galvin, *Wills and Trusts*, 30 *SW. L.J.* 13 (1976); Charles O. Galvin, *Wills and Trusts*, *SW. L.J.* 19 (1975); Charles O. Galvin, *Wills and Trusts*, 28 *SW. L.J.* 17 (1974); Charles O. Galvin, *Wills and Trusts*, 27 *SW. L.J.* 12 (1973); Charles O. Galvin, *Wills and Trusts*, 26 *SW. L.J.* 16 (1972); Charles O. Galvin, *Wills and Trusts*, 25 *SW. L.J.* 13 (1971); Charles O. Galvin, *Wills and Trusts*, 24 *SW. L.J.* 21 (1970); Charles O. Galvin, *Wills and Trusts*, 23 *SW. L.J.* 18 (1969); Charles O. Galvin, *Wills and Trusts*, 21 *SW. L.J.* 16 (1967).

64. See Harry K. Mansfield, Charles O. Galvin, & James R. Craig, *Minimum Tax and Tax Burden Adjustments*, 23 *TAX LAW.* 591 (1969).

65. See Charles O. Galvin, *Taking Critical Tax Theory Seriously—A Comment*, 76 *N.C. L. REV.* 1749 (1998).

66. See Charles O. Galvin, *Taxing Gains at Death: A Further Comment*, 46 *VAND. L. REV.* 1525 (1993).

67. See Charles O. Galvin, *Indexing the Internal Revenue Code*, 48 *TAX L. REV.* 661 (1993).

68. See Charles O. Galvin, *Deduction of Nonbusiness Interest: An Exercise in Planned Confusion*, 41 *TAX LAW.* 803 (1988).

69. See Charles O. Galvin, *The Value-Added Tax—A Proposal for the 80's*, *supra* note 61.

70. See Charles O. Galvin, *Are Professional Corporations Still Alive?*, 18 *TUL. TAX INST.* 649 (1969).

71. See Charles O. Galvin, *Corporate Reorganizations—Some Current Developments*, 42 *TEX. L. REV.* 421 (1964); Charles O. Galvin, *Taxable Income to a Corporation from Dividends in Kind*, 42 *ILL. L. REV.* 534 (1947).

72. See Charles O. Galvin, *Recent Decisions Re-emphasize Careful Planning of Partnership Arrangements*, 18 *J. TAX'N* 42 (1963).

73. See A. B. Young & Charles O. Galvin, *Proposed Regulations Do Not Clarify Tax Status of "Exempt Organizations"*, 5 *J. TAX'N* 298 (1956).

74. See Charles O. Galvin, *Income Tax Consequences of Agreements Involving Non-commercial Annuities*, 29 *TEX. L. REV.* 469 (1951).

75. See Charles O. Galvin, *Book Review*, 18 *INT'L J. LEGAL INFO.* 161 (1990) (reviewing JOSEPH ISENBERGH, *INTERNATIONAL TAXATION: U.S. TAXATION OF FOREIGN TAXPAYERS AND FOREIGN INCOME* (1990)); Charles O. Galvin, *Book Review*, 17 *INT'L J. LEGAL INFO.* 303 (1989) (reviewing COMPARATIVE TAX SYSTEMS: EUROPE, CANADA, AND JAPAN (Joseph A. Pechman ed., 1987)); Charles O. Galvin, *Book Review*, 7 *PEPP. L. REV.* 795 (1980) (reviewing WILLIAM C. GIFFORD & WILLIAM P. STRENG, *INTERNATIONAL TAX PLANNING* (2d ed. 1979)).

76. See Charles O. Galvin, *Applied Legal Training: An Experiment in Legal Education*, 41 *A.B.A. J.* 1133 (1955); Charles O. Galvin, *Some Thoughts about Thomas More and Legal Education*, 26 *J. LEGAL EDUC.* 516 (1974).

(1953-2004), and he twice received the John Rogers Award from the Southwestern Legal Foundation (now the Center for American and International Law).<sup>77</sup>

In addition to the foregoing, Charley engaged in considerable analysis of the matter of progressive versus flat tax rates, and this debate very much was tied into his support for a truly comprehensive income tax base.<sup>78</sup> Charley struggled with the issue of progressivity of rates, and his view of progressivity was influenced by the stark reality that, during most of his career, there were nominally high progressive rates, but often relatively little of such tax was collected due to the “foxholes” through which taxpayers could ameliorate the nominally high rates.<sup>79</sup> Fundamentally, Charley was in favor of a broad base and flat rates. He believed that some of the arguments for progression simply had no traction in the current setting:

[T]he arguments that were advanced to bulwark sharp progression in the age of Roosevelt are not as meaningful in our day. There are far too many economic mechanisms and institutional arrangements to protect the society from predatory monopolism. Unions are stronger, consumers are better protected against inferior merchandising, businessmen, large and small, can fend off unfair competition and unfair trade practices. Social security, unemployment insurance, private pensions, the increase in insurance and annuity investment—all tend to level the peaks and valleys of the economic cycles and thereby to relieve the sharp pinches of economic recession. In a resilient, dynamic, free market economy operating with a highly literate society having an active conscience about its destiny, we should not fear that low tax rates would cause wealth concentration any more than we should fear that increased automation and efficiency in production would cause excessively high profits. Communication, education, competition, and sophisticated investor, producer, and consumer choices are as effective controls as an economy can have.<sup>80</sup>

In my opinion, subsequent events have not confirmed Charley’s predictions; he may have been too much of an optimist as to the course of subsequent political and economic development. Since the time of that writing, wealth and income have become dramatically more concentrated in the hands of the economic elite,<sup>81</sup> and labor unions are withering, not prospering, as countervailing market forces.<sup>82</sup> Executive compensation seems, to many, to be wildly out of line.<sup>83</sup> Vigorous enforcement of busi-

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77. The Award was presented in 1998 for his work in the oil and gas taxation fields and in 1999 to the Board of Editors, of which he was a member.

78. See generally Galvin, *supra* note 55; CHARLES O. GALVIN & BORIS I. BITTKER, *THE INCOME TAX: HOW PROGRESSIVE SHOULD IT BE?* (1969).

79. See Galvin, *supra* note 55, at 216.

80. *Id.* at 214. See also *STUDIES*, *supra* note 1, at 13-14.

81. See, e.g., Martin J. McMahon, Jr., *The Matthew Effect and Federal Taxation*, 45 *B.C. L. REV.* 993 (2004).

82. See News Release, Bureau of Labor Statistics, Union Members in 2004 (Jan. 27, 2004), available at <http://bls.gov/news.release/union2.onr0.htm>.

83. See, e.g., *Executive Pay: Too Many Turkeys*, *ECONOMIST*, Nov. 24, 2005, at 93.

ness competition laws seems to be a thing of the past,<sup>84</sup> retirement income security (whether employer-provided or the Social Security system) is either less generous or of uncertain likelihood or payment,<sup>85</sup> and substantial doubt exists as to how successful we are in creating a highly literate society.<sup>86</sup> Recent corporate scandals have demonstrated that some corporations have been used for the benefit of management rather than the owners.

Although Charley preferred proportional tax rates, he acknowledged that conditions dictate at least some progression in rates. His heart supported proportionality, but his pragmatic mind caused him to support modest progression.<sup>87</sup>

## B. INVOLVEMENT IN INSTITUTIONAL TAX REFORM EFFORTS

In my mind, Charley's greatest accomplishments in the tax arena are reflected in his career-long participation in, and leadership of, formal tax reform efforts that resulted from his involvement with the Section of Taxation of the American Bar Association ("ABA Tax Section"). Charley joined the ABA Tax Section in 1950, and he eventually became chair of a subsidiary committee of the Section. Ultimately, Charley would lead the ABA Tax Section's committee devoted to substantive tax reform, but before recounting Charley's starring role in that drama, the stage first must be set by recounting some tax history.<sup>88</sup>

### 1. Tax History Prior to 1962

The substantial expansion of the federal government (and federal tax revenues) due to World War II was a cause of considerable public policy debate in the 1950s.<sup>89</sup> During the War, federal income tax rates had increased to very high levels, but the tax rates had not declined after termination of the War.<sup>90</sup> In 1951, Congressman Reed and Senator Dirksen

84. See, e.g., John H. Shenefield, *Coherence or Confusion: The Future of the Global Antitrust Conversation*, 49 ANTITRUST BULL., 385, 387 (2004).

85. See, e.g., Louis Uchitelle, *Were the Good Old Days that Good?*, N.Y. TIMES, July 7, 2005, at 31.

86. For example, the "percentage of adults with *proficient* prose and document literacy decreased two percentage points between 1992 and 2003." National Center for Education Statistics, *A First Look at the Literacy of America's Adults in the 21st Century*, NAT'L ASSESSMENT OF ADULT LITERACY (Dec. 2005), available at <http://nces.ed.gov/NAAL/PDF/2006470.pdf>.

87. With all the arguments that can be mustered for proportionality, the truth is, of course, that it has no chance. Intransigence and political pragmatism make the topic one for idle speculation, and generally, realistically considerations dictate the necessity for some graduation in rates. Perhaps a range of 15-18 per cent at the bottom to 30-35 per cent at the top would be politically palatable . . . .

Galvin, *supra* note 55, at 214.

88. Much of the following history is extracted from Charles O. Galvin, *Progress in Substantive Tax Reform; Work of the American Bar Association; Treasury Studies; What Tax Practitioners Can Do*, 18 ARK. L. REV. 285 (1965).

89. STUDIES, *supra* note 1, at 3.

90. *Id.* at 3-4.

introduced the "Reed-Dirksen" proposed Constitutional amendment that would have imposed a twenty-five percent maximum federal income tax rate (with an exception to the effect that the maximum limitation could be suspended by a vote of three-quarters of the membership of both Houses of Congress in time of war or national emergency).<sup>91</sup>

These tax limitation efforts were sufficient to cause the American Bar Association to undertake, commencing in 1952, consideration of federal tax reform.<sup>92</sup> The House of Delegates of the ABA adopted a resolution in support of a constitutional amendment to limit the taxing power of Congress, and the resolution authorized the President of the ABA to appoint a Special Committee to work on the project.<sup>93</sup> The Special Committee was in existence for ten years, during which time federal tax reform was an important public policy issue,<sup>94</sup> but interest in the "twenty-five percent amendment" waned, and it did not become effective.<sup>95</sup>

During the 1950s, the Joint Committee on the Economic Report and the Committee on Ways and Means of the House of Representatives held hearings regarding the federal tax system.<sup>96</sup> These committees invited tax professionals and taxpayers to participate as "public" witnesses not representing any particular interest or organization.<sup>97</sup> Charley noted that a particularly remarkable characteristic of these efforts of the 1950s was a unanimity of opinion with respect to fundamentals of reform including (1) reduction of rates, (2) simplification of structure, (3) elimination of the distinction between ordinary income and capital gains, and (4) relief of double taxation of corporate income.<sup>98</sup> Unanimity of opinion does not

91. Robert B. Dresser, *The Reed-Dirksen Amendment: Developments in the 83d Congress*, 39 A.B.A. J. 206 (1953).

92. Galvin, *supra* note 88, at 288.

93. See Special Comm. on the Proposed Amendment to the Constitution of the U.S. Limiting the Power of Congress to Tax Incomes, Inheritances, and Gifts, *Reports*, 77 ANN. REP. OF THE A.B.A., 300, 578 (1952).

94. Twenty-nine state legislatures at various times did adopt resolutions calling for a constitutional convention to consider a limitation on the Congressional taxing power. Galvin, *supra* note 88, at 289.

95. Among the problems with such a limitation were (1) the difficulty in defining the base to which a twenty-five percent maximum rate would be applied, (2) the graduation in rate structure that would have a twenty-five percent maximum, and (3) the lack of projections relating such a proposed system to national personal income, gross national product, and to the federal budget consequences. See William L. Cary, *The Income Tax Amendment: A Strait Jacket for Sound Fiscal Policy*, 39 A.B.A. J. 885 (1953); Robert B. Dresser, *The Case for the Income Tax Amendment: A Reply to Dean Griswold*, 39 A.B.A. J. 25 (1953); Dresser, *supra* note 91; Robert B. Dresser, *The Reed-Dirksen Amendment: A Reply to Professor Cary*, 40 A.B.A. J. 35 (1954); Erwin Griswold, *Can We Limit Taxes to 25 Percent?*, 190 ATLANTIC MONTHLY 76 (1952).

96. See, e.g., J. COMM. ON THE ECON. REPORT, 84TH CONG., FEDERAL TAX POLICY FOR ECONOMIC GROWTH AND STABILITY (Comm. Print 1956); *Hearings on General Revenue Revision Before the Committee on Ways and Means*, 85th Cong. (1958); 1-3 H. COMM. ON WAYS AND MEANS., 86TH CONG. TAX REVISION COMPENDIUM (Comm. Print 1959); H. COMM. ON WAYS AND MEANS, 86TH CONG., PANEL DISCUSSIONS ON INCOME TAX REVISION (Comm. Print 1960).

97. Galvin, *supra* note 88, at 289-90.

98. *Id.* at 292-94.



exist today as to all four of those fundamentals of reform, but each of the four is just as viable a tax policy issue in 2006 as it was fifty years ago.

## 2. ABA Section of Taxation Involvement

In 1962, the ABA Special Committee was terminated, and the matter of substantive tax reform was transferred by the ABA Board of Governors to the ABA Section of Taxation, which was charged with reporting annually to the ABA House of Delegates on the matter of substantive tax reform.<sup>99</sup> ABA Section of Taxation management appointed a “blue-ribbon” Committee on Substantive Tax Reform, with a membership of practitioners and academics.<sup>100</sup> This was a singular moment for the organized tax bar; it was the first time that a private professional group had undertaken a consideration of fundamental policy-based changes in the tax laws.<sup>101</sup> Prior to this time, the ABA Section of Taxation had devoted itself to more narrow technical amendments to the Internal Revenue Code and to improvements in tax administration.<sup>102</sup>

By virtue of Charley’s prior service within the ABA Section of Taxation and his rising prominence with respect to matters of federal tax policy, then-chair of the ABA Section of Taxation Andrew Young asked Charley to chair the Tax Section’s Special Committee.<sup>103</sup> This appointment led to many important contributions by Charley (and SMU) to the substantive tax reform efforts.<sup>104</sup> The Tax Section Special Committee came to be known as the “Galvin Committee” (hereinafter called “Galvin Committee”) and one might think that such an appellation solely was a tribute to Charley based on his contributions to tax policy debates and his leadership efforts as to the Committee, but it also caused some of the ire regarding the work of the Committee to be directed at Charley.<sup>105</sup>

The Galvin Committee launched its efforts in February of 1962.<sup>106</sup> The membership included a powerful collection of tax talent: Robert Anthoine, Richard H. Appert (a one-time Chair of the ABA Tax Section); Mac Asbill, Jr. (a one-time Chair of the ABA Tax Section); Walter J. Blum (a noted academic and leading tax policy commentator); Norris Darrell (President of the American Law Institute from 1961-1976); Francis W. Hill; H. Cecil Kilpatrick; Charles C. Maclean, Jr. (a one-time Chair of the ABA Tax Section); Harry K. Mansfield (a one-time Chair of the ABA Tax Section); Lee I. Park (a one-time Chair of the ABA Tax Section); Austin H. Peck; Charles D. Post; and David W. Richmond (a one-

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99. See Special Comm. on the Proposed Amendment to the Constitution of the U.S. Relative to Taxes on Finances, Inheritances, and Gifts, *Report*, 87 ANN. REP. OF THE A.B.A. 214, 348 (1962).

100. Galvin, *supra* note 88, at 289.

101. *Id.*

102. STUDIES, *supra* note 1, at 5; see also Mac Asbill, Jr., *Charles Galvin—A Courageous Advocate of Tax Reform*, 32 Sw. L.J. 1057 (1978).

103. The first chair was Edwin S. Cohen. See STUDIES, *supra* note 1, at xii.

104. Porth Lecture, *supra* note 40, at 6-7.

105. See *infra*, Part III.C.

106. Porth Lecture, *supra* note 40, at 6-7; Galvin, *supra* note 88, at 290.

time Chair of the ABA Tax Section).<sup>107</sup> The Galvin Committee resolved to take no positions on tax policy matters; instead, it sought to identify and describe areas of inquiry that would have to be explored if meaningful changes were to be effectuated.<sup>108</sup> Included within the areas of inquiry were sensitive issues such as taxation of capital gains, the I.R.C. § 103 exclusion of interest on state and local bonds, and percentage depletion of mineral income.<sup>109</sup>

By April of 1963, the Galvin Committee issued a substantial report, accompanied by a resolution that ultimately was adopted by the Board of Governors of the ABA on May 21, 1963.<sup>110</sup> The resolution recited that “the federal income tax structure is unnecessarily complex and should undergo substantial revision in order to

1. broaden the tax base,
2. reduce the income tax rates,
3. simplify the technical provisions,
4. simplify administration, and
5. ease the burden of compliance . . . .”<sup>111</sup>

The Resolution approved by the ABA Board of Governors authorized continued inquiry and research by the Section of Taxation leading to establishment of (1) a fair and equitable tax system, (2) a broadened tax base, and (3) incentives for work and investment.<sup>112</sup> By early 1964, the Committee had identified various items for more particular study, and the Committee requested the Treasury Department to supply certain statistical data with respect to the items, which the Treasury Department helpfully provided.<sup>113</sup>

Although the Galvin Committee had undertaken important work and had issued Reports in 1963<sup>114</sup> and 1964<sup>115</sup> that advanced the tax reform debate, it was evident that a group of volunteer lawyers could not collect or analyze all the necessary and relevant statistical data. A full-time staff (including economists and computer technologists) and more substantial funding would be required, and the American Bar Foundation was approached for that funding.

107. *STUDIES*, *supra* note 1, at xii.

108. Porth Lecture, *supra* note 40, at 7.

109. *Id.*

110. See Council of the Section of Taxation, *Resolutions on Substantive Tax Reform*, 88 AM. REP. OF THE A.B.A. 468-70 (1963). The report and the accompanying resolution are reproduced in *Resolutions on Substantive Tax Reform*, 16 BULL. SEC. TAX'N 4 (1963).

111. *Id.*

112. *Id.*

113. See *STUDIES*, *supra* note 1, at 6.

114. 16 A.B.A. Section of Taxation, BULL. OF THE SEC. TAX'N (1963).

115. 17 A.B.A. Section of Taxation, BULL. OF THE SEC. TAX'N (1964).

### 3. *Participation of the American Bar Foundation and the 1969 Publication of Studies in Substantive Tax Reform*

In 1965, the ABA appointed a Special Committee on Substantive Tax Reform to negotiate with the American Bar Foundation ("ABF") to obtain funding for a "pilot" project experiment ("ABF/SMU project").<sup>116</sup> Eventually, the ABF joined in the project and provided the necessary funding. SMU was the joint sponsor and physical host for much of the staff work.<sup>117</sup> As host, SMU eventually provided a significant number of faculty and graduate students as key staff members whose work would transcend the pilot project and who would continue to work on tax reform in prominent roles after completion of the ABF/SMU pilot project.<sup>118</sup>

Arthur B. Willis, a prominent tax practitioner from Los Angeles, was appointed Project Director, and Charley was appointed Advisor. The ABF/SMU project involved contact with the following luminaries in tax policy matters: Professor William Andrews of the Harvard Law School, Professor Boris Bittker of the Yale Law School, Professor Walter Blum of the University of Chicago Law School, Professor Earl Rolph of the Department of Economics of the University of California at Berkeley, Professor Joseph T. Sneed of the Stanford Law School (later to serve as Deputy United States Attorney General and Judge of the U.S. Court of Appeals for the Ninth Circuit), Gerard Brannon of the United States Treasury Department, Joseph A. Pechman of the Brookings Institution, George Sadowsky of the Brookings Institution, Herbert Stein of the Committee on Economic Development (later to serve as Chairman of the Council of Economic Advisors under President Nixon), and Randolph W. Thrower (who was to become Commissioner of the IRS) as a representative of the Section of Taxation.<sup>119</sup>

The ABF/SMU project set out to combine the legal analysis of tax lawyers with the economic analysis of Ph. D. economists who were to use computer technology as a research tool to develop tax models with which to test different assumptions.<sup>120</sup> The project was to develop models and produce data; the project was not to recommend any position with respect to any particular reform item.<sup>121</sup> Charley reports that the ABF/SMU project commenced with no preconceptions of what an ideal system should be, but it did hope to support (1) a reduction in rates, (2) a reduction in progressivity, (3) simplification, (4) reduction or elimination of the

116. STUDIES, *supra* note 1, at xii.

117. *See id.* at 22.

118. *See id.* at xiii.

119. *Id.* Also "interested" in the project were the Honorable Wilbur Mills, chairman of the Ways and Means Committee of the House of Representatives; the Honorable Stanley S. Surrey, Assistant Secretary, Treasury Department; the Honorable Laurence Woodworth, Chief of Staff, Joint Committee on Internal Revenue Taxation; and the Honorable Sheldon S. Cohen, former Commissioner of Internal Revenue. *Id.* at xiii.

120. *See Luncheon Address*, *supra* note 40; *see* STUDIES, *supra* note 1, at xi.

121. STUDIES, *supra* note 1, at xi.

double taxation of corporate income, and (5) inter-relating the income tax with the estate and gift taxes.<sup>122</sup>

The project involved the ground-breaking use of computers as a research tool with respect to income tax reform analysis.<sup>123</sup> The computer tax models would yield quantitative data (revenue estimates) with respect to proposed changes in the law.<sup>124</sup> The Treasury Department provided the ABF/SMU project statistical data sets,<sup>125</sup> and the principal investigators who managed the data were Professors Attiat F. Ott and David J. Ott, members of the economics faculty at SMU.<sup>126</sup> In addition to the Otts,<sup>127</sup> others who worked on Studies, some of whom were to be heard from later on in tax policy debates and publications, included:

1. Robert A. Bernstein, a law professor at SMU.
2. Robert W. Tinney, a graduate student in economics at SMU.
3. Gary A. Robbins, a graduate student in economics at SMU<sup>128</sup> who went on to the Treasury Department to work on *Blueprints for Basic Tax Reform*, discussed at III.B.5 *infra*.<sup>129</sup> He had a long career in the Office of Tax Analysis at the Treasury Department.<sup>130</sup> During the early 1970s, he was one of the developers of the Treasury Tax Model,<sup>131</sup> which still is the basis for revenue estimates done by the Treasury Department and the Joint Committee on Taxation. As of November 2005, he is a Visiting Fellow at the Heritage Foundation.<sup>132</sup>

4. J. Scott Turner, a graduate student in economics at SMU who went to the Treasury Department to work on *Blueprints* and the *1978 Compendium on Tax Research*.<sup>133</sup> He left the Treasury Department to accept a faculty appointment at Oklahoma State University, Stillwater, from which he recently retired.<sup>134</sup>

*Studies* contains an analysis of the effects on the tax base and on fed-

122. See Galvin, *supra* note 88, at 291.

123. See STUDIES, *supra* note 1, at xi.

124. *Id.*

125. *Id.* at 6.

126. *Id.* at xiii.

127. The Otts also published *The Tax Subsidy Through Exemption of State and Local Bond Interest*, in 3 J. ECON. COMM., 92ND CONG., THE ECONOMICS OF FEDERAL SUBSIDY PROGRAMS 305 (Comm. Print 1972).

128. *Id.*

129. See also *The Effect of Tax Incentives for Business Investment: A Survey of Economic Evidence*, in 3 J. ECON. COMM., 92ND CONG., THE ECONOMICS OF FEDERAL SUBSIDY PROGRAMS 245 (Comm. Print 1972).

130. See Gary Robbins, Visiting Fellow, The Heritage Foundation, <http://www.heritage.org/About/Staff/GaryRobbins.cfm> (last visited Apr. 4, 2006) [hereinafter About Robbins].

131. *Id.*

132. *Id.*

133. See Richard S. Barr & J. Scott Turner, *A New, Linear Programming Approach to Microdata File Merging*, in OFFICE OF TAX ANALYSIS, DEP'T OF THE TREASURY, 1978 COMPENDIUM OF TAX RESEARCH 131 (1978).

134. Press Release, Oklahoma State University Spears School of Business, SSB Headline News for May, 2005 (Apr. 20, 2005) available at [http://spears.okstate.edu/secondary/creator.php?c=.info\\_pages/news/pr/spring2005/maynews.php](http://spears.okstate.edu/secondary/creator.php?c=.info_pages/news/pr/spring2005/maynews.php).

eral tax revenues of only twelve proposed changes to the tax law.<sup>135</sup> In other words, *Studies* was not a comprehensive tax reform proposal (indeed, it contained no specific recommendation as to changes in the Internal Revenue Code); to the contrary, the pilot project set out to determine if computer power could be used to develop methodologies that would provide useful data to policy makers.

It is worth noting that the *Studies* projections (1) did attempt to quantify the direct federal revenue consequences of each proposed change, but (2) did not attempt to quantify changes to the tax base and federal revenues attributable to the macroeconomic consequences of the proposed change.<sup>136</sup> Thus, the projections, to use an admittedly inaccurate short-hand, were “static” rather than “dynamic.”<sup>137</sup> “Static” versus “dynamic” revenue estimates, a debate that rages today,<sup>138</sup> was left by *Studies* for analysis by another group.

The preface to *Studies* states that “an expanded study” using the quantification methodologies developed in *Studies* would be useful to evaluate various tax reform proposals in terms of the effect on the tax base and federal tax revenues (in total and by adjusted gross income classes).<sup>139</sup> The Fund for Public Policy Research came forward to support that expanded study.

#### 4. *Participation of the Fund for Public Policy Research and the Publication in 1973 of Reforming the Federal Tax Structure*

The findings of the “pilot” project reflected in *Studies* were carried forward by the Commission to Revise the Federal Tax Structure (“Commission to Revise”), which was supported by the Fund for Public Policy Research.<sup>140</sup> The Fund for Public Policy Research was interested in studying and quantifying the so-called “dynamic” macro-economic consequences of a change in the tax law in terms of federal tax revenues and gross national product.<sup>141</sup>

135. See *STUDIES*, *supra* note 1.

136. See *generally id.*

137. See *generally* J. COMM. ON TAXATION, 105TH CONG., JOINT COMMITTEE ON TAXATION MODELING PROJECT AND 1997 TAX SYMPOSIUM PAPERS (Comm. Print 1997).

138. The President’s Advisory Panel on Tax Reform issued its report using conventional revenue estimates, rather than “dynamic” estimates because of the uncertainty and controversy surrounding “dynamic” scoring. See *REPORT*, *supra* note 3, at 45. For background information, see 3 J. ECON. COMM., 92ND CONG., THE ECONOMICS OF FEDERAL SUBSIDY PROGRAMS 245-405 (Comm. Print 1972); J. COMM. ON TAXATION, 105TH CONG., JOINT COMMITTEE ON TAXATION TAX MODELING PROJECT AND 1997 TAX SYMPOSIUM PAPERS (Comm. Print 1997). For the contemporary debate on these issues, see Daniel Clifton, *Estate Tax Repeal Group Says JCT Overestimates Cost of Repeal*, TAX NOTES TODAY, July 10, 2005, LEXIS, 2005 TNT 138-26; Warren Rojas, *Economists Agree on Dynamic Scoring, Disagree on Details*, TAX NOTES TODAY, Dec. 10, 2004, LEXIS, 238 TNT 238-4 (2004).

139. *STUDIES*, *supra* note 1, at xi.

140. *Research Planned on Tax Reforms*, DALLAS MORNING NEWS, Sept. 18, 1969, at A10.

141. The Fund originally was financed by the Houston Endowment. See *id.*

Whereas *Studies* purported to be a "pilot" project, the Commission to Revise sets out a very ambitious agenda:

This project constitutes an in-depth study of the Federal income tax laws, supported by the Fund for Public Policy Research. The research was designed to meet the need to know more precisely and quantitatively how the present tax system works, and how a basic policy redirection which applies the income tax principle to a truly comprehensive base, would operate in terms of rate levels, equity, economic resource allocation, and total employment and output.<sup>142</sup>

The Commission to Revise included as members another impressive and powerful group of individuals: Charley and Arthur B. Willis carried over from the ABF/SMU project; Harvey E. Brazer, Professor of Economics at the University of Michigan, Deputy Assistant Secretary of the Treasury (Tax Policy), Director of the Office of Tax Analysis of the Treasury, and Consultant to the Council of Economic Advisers (1965-1969) and Chairman (1967-1970); Donald T. Burns, Certified Public Accountant, former President of the California Society of Certified Public Accountants, former Vice President of the American Institute of Certified Public Accountants, former Chairman of the Committee on Federal Taxation of the American Institute of Certified Public Accountants, former member of the Advisory Group to the Commissioner of Internal Revenue, former member of the Commissioner's Advisory Committee on Exempt Organizations; John Mendenhall, Certified Public Accountant, member of the Tax Committee of the American Institute of Certified Public Accountants, former member of the Advisory Board of the Tax Institute of America, former consultant to the Department of the Treasury, member of Federal Tax Committee of National Tax Association, member of Advisory Board of The Tax Adviser and the Bureau of National Affairs Federal Tax Committee.<sup>143</sup>

The Chief Investigators for the Commission to Revise were Attiat F. Ott and David J. Ott,<sup>144</sup> who had been the Principal Investigators for *Studies in Substantive Tax Reform* while they were faculty members at SMU<sup>145</sup> and now were faculty members at Clark University in Worcester,

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142. REFORMING, *supra* note 6, at 3.

Much new and comprehensive data were developed. They include an analysis of the burden of all Federal income, gift, and estate taxes on persons with different incomes, estimates of the impact of the Commission Proposal on the Nation's output, prices and employment over a five-year period, and a comparison of the reallocation of capital by major sectors if the Commission Proposal were substituted for present law.

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In addition, they [the Otts] developed models to demonstrate the beneficial secondary and tertiary impact on the path of growth in our gross national product.

*Id.* at 6.

143. *Id.* at 3-4.

144. *Id.* at 4.

145. STUDIES, *supra* note 1, at xiii.

Massachusetts.<sup>146</sup> Major contributions to the study were made by Dr. Gerard M. Brannon, formerly Associate Director, Office of Tax Analysis, and Dr. Richard E. Slitor, formerly Assistant Director, Office of Tax Analysis.<sup>147</sup> The Commission also engaged experts who acted as “technical advisors:” Laurence N. Woodworth, Chief of Staff, Joint Committee on Internal Revenue Taxation; Arthur A. Fefferman, Chief Economist, Joint Committee on Internal Revenue Taxation; Gerard M. Brannon, former Associate Director, Office of Tax Analysis, Department of the Treasury; Gabriel Rudney, Assistant Director, Office of Tax Analysis, Department of the Treasury; Otto Eckstein, Professor of Economics, Harvard University (member of the Council of Economic Advisors 1964-66); Arnold C. Harberger, Professor of Economics, University of Chicago; Joseph A. Pechman, Director of Economic Studies, Brookings Institution; and Sheldon S. Cohen, former Commissioner of Internal Revenue. The foregoing cast of characters truly is an impressive list of the best and the brightest.<sup>148</sup>

The Commission to Revise concluded that (1) the present system of federal taxation did not afford fair treatment for taxpayers, (2) economic prosperity was less than it could be due to (a) compliance costs associated with the federal tax system because of its excessive complexity and (b) distortion of choices as to consumption, savings, investment, and work, and (3) the tax system deluded the public as to the taxes paid and as to tax preferences or tax expenditures in the system.<sup>149</sup>

Based on those findings, the Commission proposed, in *Reforming the Federal Tax Structure*, substantial revisions to the Internal Revenue Code. The major changes proposed, many of which sound Galvin-esque and are subjects about which Charley wrote at some time during his career,<sup>150</sup> were as follows:

1. Broaden the individual income tax base:
  - a. to include the cash and cash equivalent items of income presently excluded,
  - b. to include the value of employee fringe benefits presently excluded,
  - c. to eliminate certain nonbusiness deductions and deductions for exemptions presently allowable,
  - d. to include certain items of imputed income,
  - e. to include the increase (or decrease) in value of assets owned.
2. Eliminate the corporate income tax and include the income presently being taxed to corporations in the individual income tax base.

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146. Clark University Faculty, <http://www.clarku.edu/departments/economics/faculty/facultybio.cmf?id=268&progid=9> (last visited July 24, 2006).

147. REFORMING, *supra* note 6, at 9.

148. *Id.*

149. *Id.* at 4-5.

150. See the recap of the Galvin writings *supra* Part III.A.

3. Eliminate estate and gift taxes and include the value of property received by gift or bequest in the individual income tax base of the recipient.
4. Establish the family as the taxable unit.
5. Allow a minimum credit to each family unit.
6. Lower the tax rates applicable to all taxable income levels.<sup>151</sup>

### 5. *Blueprints for Basic Tax Reform*

*Reforming the Federal Tax Structure* was published in 1973.<sup>152</sup> The next significant stop on our journey occurs in the period of 1975-77, when the Treasury Department, headed by William E. Simon, developed and published *Blueprints for Basic Tax Reform*.<sup>153</sup> In December of 1975, Simon delivered a speech to the Tax Foundation in which he called for a fundamental reform of the U.S. tax system.<sup>154</sup> He pithily observed that he would like a tax system “designed on purpose,” and he stated his willingness “to start over from scratch.”<sup>155</sup> He bemoaned the complexity and the lack of coherency of the relatively simple (relative to the present law) Internal Revenue Code as it was in 1975.<sup>156</sup>

Simon authorized his Treasury Department to undertake a major study of basic tax reform, and principal responsibility for the study was given to Charles M. Walker, Assistant Secretary for Tax Policy.<sup>157</sup> David Bradford, a public finance economist of wide renown who then was serving as Deputy Assistant Secretary for Tax Analysis, led the study.<sup>158</sup> This study was significant, as it reflected substantial interest in basic tax reform at the highest levels of the executive branch of the government.

*Blueprints for Basic Tax Reform*, which was published in 1977, proposed two major plans for fundamental revision of the federal tax system. The first proposal was for a comprehensive income tax base in which, as a general rule, all realized accretions to net worth would be treated as income.<sup>159</sup> The comprehensive income tax base included the proposal, carried forward from the SMU study in *Reforming the Federal Tax Structure*, to integrate the corporate income tax with the personal income tax.<sup>160</sup>

The second proposal in *Blueprints* relied on a comprehensive tax base, as in the case of the first proposal, but it would allow taxpayers a deduction for all investments or savings.<sup>161</sup> The second proposal would leave in

151. REFORMING, *supra* note 6, at 7.

152. *See generally id.*

153. BLUEPRINTS, *supra* note 7.

154. *Id.* Foreword.

155. *Id.*

156. *Id.*

157. *Id.* Walker was an organizer of the American Tax Policy Institute, and Charley was an early member of the Board of Trustees. Interview with Charles O. Galvin in Dallas, Tex. (Dec. 14, 2005).

158. Bradford recently died an untimely death. For a tribute to him, see Daniel N. Shaviro, *Remarks on David Bradford*, 58 NAT'L TAX J. 371-72 (2005).

159. BLUEPRINTS, *supra* note 7, Foreword.

160. *Id.*

161. *Id.*



the tax base only the income that the taxpayer expended in consumption for the purchase of goods and services.<sup>162</sup>

Many people were involved in the Treasury Department efforts to publish *Blueprints*, prominent among whom were J. Scott Turner<sup>163</sup> and Gary Robbins,<sup>164</sup> who had worked on the SMU-based *Studies in Substantive Tax Reform* and *Reforming the Federal Tax Structure*. Two other SMU participants appeared for the first time: Roy Wycarver and Richard S. Barr. Wycarver obtained his Ph. D. from SMU, and he then joined the Treasury Department Office of Tax Policy.<sup>165</sup> His role in *Blueprints* was to manage computer simulations.<sup>166</sup> Richard S. Barr, then on leave from SMU and presently a faculty member at SMU, worked on *Blueprints*.<sup>167</sup> Barr had been engaged by the Treasury Department to program computer network optimization software to merge the Treasury Statistics of Income (or "tax") data file with Bureau of Census Current Population Survey (or "family" or "fam") data file to create a data set from which to make revenue estimates with respect to tax revision proposals.<sup>168</sup> At the time of the programming effort, this was the largest data optimization problem ever accomplished, and the program still is in use in the Treasury Department.<sup>169</sup>

Although *Blueprints* gave no explicit credit in the acknowledgments to the ABF/SMU *Studies in Substantive Tax Reform* or to *Reforming the Federal Tax Structure*, *Studies* is listed in the Bibliography at the end of the volume, as are some of Charley's writings and those of Arthur B.

162. *Id.*

163. *See supra* note 109 and accompanying text.

164. *See supra* note 102 and accompanying text.

165. Wycarver has had a long and distinguished career at the Treasury Department. As of December 1, 2005, he was Senior Advisor, Technology Development, Office of the Assistant Secretary of the Treasury for Tax Policy. U.S. Dep't of the Treasury, Treasury Officials, <http://www.treasury.gov/organization/officials.html> (last visited June 3, 2006).

166. BLUEPRINTS, *supra* note 7, *Acknowledgements*.

167. *Id.*

168. *See Barr & Turner, supra* note 133. The Foreword to the 1978 Compendium describes the article as follows:

The data requirements for many microanalytic models are often not contained on a single file; but, composite data files can be formed by merging two original files. The paper by Richard S. Barr and J. Scott Turner explains a method the authors have developed to merge large microdata files relating to individuals and households. The potency of their methods is demonstrated in their successful merging of a Treasury tax file with a Census file containing general characteristics of the population. The basic question their method addresses is what information records on one file should be associated with the information records on the second file, if the merged file is to mirror as closely as possible the underlying population which the two files have sampled. The generation of accurate merged files is of considerable interest to policymakers concerned with such issues as the aggregate revenue and distributional effects of taxing items of income not now subject to tax or of granting special exemptions to particular classes by expenditures. Turner and Barr first show how their method of "optimally" linking data files leads to large scale linear programs and then describe a set of computer programs known as the Extended Transportation System for solving such problems.

*Id.* at iv.

169. *See About Robbins, supra* note 130.

Willis (who was the Project Director of the ABF/SMU project and also a member of the Commission to Revise the Federal Tax Structure).<sup>170</sup> Notwithstanding the lack of explicit credit, the progression from *Studies* and *Reforming* to the *Blueprints* study is clear to my eye. The conceptual underpinnings of the *Blueprints* study run directly to the two study groups with which Charley was associated and to subjects about which Charley had written.<sup>171</sup>

*Blueprints* was published in January 1977, as the Ford administration was about to leave office.<sup>172</sup> Several of incoming President Carter's memorable campaign statements related to tax reform: he decried the "three-martini lunch,"<sup>173</sup> and he described the U.S. tax system as a "disgrace."<sup>174</sup> Notwithstanding that effective campaign rhetoric, from which one might expect some impetus regarding tax reform early in the Carter administration, *Blueprints*, the product of a preceding administration, languished. More generally, tax reform languished for lack of executive energy to move it forward.

## 6. Treasury I and II

For many years Charley may have felt like a preacher who was not being heard by the congregation, but the Reagan administration, taking office in 1981, no doubt gave him some satisfaction regarding his many pleas for thoughtful and serious executive branch consideration of fundamental tax reform; it appeared that those pleas had been heard at the highest reaches of the Reagan administration. Ronald Reagan was elected with a substantial tax reform agenda, and he led off with the dramatic Economic Recovery Tax Act of 1981,<sup>175</sup> which stood as the largest tax reduction bill in the history of the nation.<sup>176</sup>

The revenue losses associated with the 1981 legislation, plus President Reagan's interest in further revisions to the tax structure, prompted serious consideration of further presidentially-supported tax legislation. In his 1984 State of the Union address, President Reagan called upon the Treasury Department for a plan of action to simplify the entire tax code.<sup>177</sup> In November 1984, under the leadership of Secretary Donald T. Regan, the Treasury Department issued a thoughtful four-volume Report entitled *Tax Reform for Fairness, Simplicity, and Economic Growth*.<sup>178</sup>

170. BLUEPRINTS, *supra* note 7, at 217-30.

171. See *supra* Part III.A.4.

172. BLUEPRINTS, *supra* note 7.

173. The President's News Conference, 1 PUB. PAPERS 331, 332 (Feb. 17, 1978).

174. Report to the American People, 1 PUB. PAPERS 69, 74 (Feb. 2, 1977).

175. Pub. L. No. 97-34, 95 Stat. 17.

176. See, e.g., Symposium, *Federal Tax Policy in the New Millennium: A Cultural Perspective on American Tax Policy*, 2 CHAP. L. REV. 33, 60 (1999).

177. Address Before a Joint Session of the Congress on the State of the Union, 11 PUB. PAPERS 87 (Jan. 25, 1984).

178. Regan had considerable credibility on Wall Street, so the far-reaching proposals were not immediately dismissed by that sector. Interview with Charles O. Galvin, *supra* note 157.

The Report considered four options: (1) a "pure flat" tax, (2) a "modified flat" tax, (3) a tax on income that is consumed, and (4) a sales tax (including a retail sales tax and a value-added tax).<sup>179</sup>

This Treasury Report does not contain a statement of contributors to the effort or of the tax reform efforts (within the Treasury Department or without) that preceded the Report, so there is no explicit credit given to *Studies in Substantive Tax Reform, Reforming the Federal Tax Structure*, or any individuals who had been involved in those efforts.

The 1984 Treasury Report states that its proposals are "bold, and they will be controversial."<sup>180</sup> Indeed, they were controversial, and the White House backed off of many of the more controversial components of the Report, and *The President's Tax Proposals to the Congress for Fairness, Growth, and Simplicity* (referred to sometimes as "Treasury II") was issued in May 1985. The President was prepared to recommend very significant revision of the Internal Revenue Code, because he considered the present tax system as "a source of ridicule and resentment," and as unfair, too complicated, and impeding growth.<sup>181</sup> He proposed, among many other specific items: (1) substantial rate reductions and base broadening, (2) elimination of special subsidies or preferences for specific industries (specifically mentioning oil and gas), and (3) a reduction in the tax preference accorded long-term capital gain income.<sup>182</sup> Those proposals are related to, if not directly descended from, the efforts of the Galvin Committee, the ABF/SMU *Studies in Substantive Tax Reform*, and *Reforming the Federal Tax Structure*.<sup>183</sup>

The President's proposals generated considerable political momentum that led to substantial efforts by the House and the Senate.<sup>184</sup> Eventually, the Tax Reform Act of 1986 ("1986 Act")<sup>185</sup> became law,<sup>186</sup> and it was a dramatic legislative accomplishment from a tax policy perspective.<sup>187</sup> The 1986 Act accomplished considerable base broadening and rate reduction, matters dear to the heart of Charley, and the Act even did away with the preferential treatment of long-term capital gain income.<sup>188</sup>

179. See 1 DEP'T OF TREASURY, *TAX REFORM FOR FAIRNESS, SIMPLICITY, AND ECONOMIC GROWTH* iii (1984).

180. *Id.* at iv.

181. THE PRESIDENT'S TAX PROPOSALS TO CONGRESS FOR FAIRNESS, GROWTH, AND SIMPLICITY (1985), available at <http://www.treas.gov/offices/taxpolicy/library/tax-reform/pres85cur.pdf>.

182. *Id.*

183. See generally *id.*

184. See J. COMM. ON TAXATION, 98TH CONG., *ANALYSIS OF PROPOSALS RELATING TO COMPREHENSIVE TAX REFORM* (Comm. Print 1985).

185. Pub. L. No. 99-514, 100 Stat. 2085.

186. See generally J. COMM. ON TAXATION, 99TH CONG., *GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986* (Comm. Print 1987).

187. For an interesting read on the dynamics of the legislative process as to the 1986 Act, see ALAN MURRAY & JEFFREY BIRNBAUM, *SHOWDOWN AT GUCCI GULCH* (1987).

188. This was effectuated by repealing the then-applicable preference in I.R.C. § 1202, which provided a deduction of sixty percent of the excess of the net long-term capital gain over the net short-term capital loss. Because the I.R.C. § 1202 deduction was repealed and there was no special rate that applied to such excess, the excess was taxed at the same rates

The 1986 Act, which repealed many tax preferences, stands as the high water mark of our generation in terms of revision of the tax laws in the direction of greater fidelity to the Haig-Simons definition of income.<sup>189</sup>

### 7. American Law Institute Federal Estate and Gift Tax Project

Charley also was significantly involved with the American Law Institute ("ALI") regarding the transfer tax system. In the early 1960s, the Maurice and Laura Falk Foundation of Pittsburgh provided funding to the ALI to undertake a study of the wealth transfer tax system.<sup>190</sup> A. James Casner of the Harvard law faculty was appointed Reporter, and David Westfall and William D. Andrews, also of the Harvard law faculty, were appointed Assistant Reporters.<sup>191</sup> Charley was a member of the Tax Advisory Group that eventually advocated three fundamental proposals:

1. unification of the gift and estate taxes,<sup>192</sup>
2. an unlimited marital deduction for inter-spousal transfers,<sup>193</sup> and
3. a generation-skipping transfer tax.<sup>194</sup>

Charley relates that a number of tax professionals thought that those proposals were unrealistic and that the efforts of the study group would be for naught,<sup>195</sup> but eventually each of the three proposals was enacted into law: unification of the gift and estate taxes in 1976,<sup>196</sup> the unlimited marital deduction in 1981,<sup>197</sup> and the generation-skipping transfer tax in 1986 (ignoring the unsuccessful and retroactively-repealed version enacted in 1976).<sup>198</sup> Patience is a virtue with respect to tax reform because initial negative reactions eventually may be overcome by the force of reason and good policy.

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as ordinary income. Eventually, a tax preference for "net capital gain" was restored; it was implemented in I.R.C. § 1 in the form of favorable tax rates applicable to such income.

189. See R. Glen Hubbard, Chairman, Council of Economic Advisers, Tax Notes 30th Anniversary Remarks 7 (Dec. 10, 2002), available at [http://www.whitehouse.gov/cea/taxnotes30th\\_anniversaryspeech\\_dec10\\_2002.pdf](http://www.whitehouse.gov/cea/taxnotes30th_anniversaryspeech_dec10_2002.pdf).

190. See A.L.I. FEDERAL ESTATE AND GIFT TAX PROJECT, STUDY DRAFT NO. 1 (1965).

191. See *id.*

192. See *id.* at xxvii-xxxi, 1-14.

193. See *id.* at xxxiii-xxxiv, 58-70.

194. See *id.* at xxxi-xxxiii, 98-108.

195. Interview with Charles O. Galvin, *supra* note 157.

196. See Tax Reform Act of 1976, Pub. L. No. 94-455, § 2001, 90 Stat. 1520, 1846-54. See generally J. COMM. ON TAXATION, 94TH CONG., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1976, JCS-33-76, 525-30 (1976).

197. See Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, § 403, 95 Stat. 172, 301-06. See generally J. COMM. ON TAXATION, 97TH CONG., GENERAL EXPLANATION OF THE ECONOMIC RECOVERY TAX ACT OF 1981, at 231-40 (Comm. Print 1981).

198. See Tax Reform Act of 1986, Pub. L. No. 99-514, §§ 1431-33, 100 Stat. 2085, 2717-32. See generally J. COMM. ON TAXATION, 99TH CONG., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986, at 125-68 (Comm. Print 1987).

The 1976 version was enacted in Tax Reform Act of 1976, Pub. L. No. 94-455, § 2006, 90 Stat. 1520, 1879-90. See generally J. COMM. ON TAXATION, 94TH CONG., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1976, at 564-83 (Comm. Print 1976).

### C. OPPOSITION DIRECTED AT REFORM EFFORTS

As discussed above, Charley led or was associated with tax reform efforts that sought to bring greater rationality to our tax laws. Those activities, which I describe as seeking greater "rationality" to the tax system, were viewed by others, however, as attacking important tax law provisions that were very valuable to the effected taxpayers.<sup>199</sup>

Early in his professional career, Charley testified before the Tax Revision Compendium Panel of the Committee on Ways and Means of the House of Representatives, and a Washington syndicated columnist wrote about Charley's testimony in such a way as to leave the impression that Charley was "against" the oil industry, and Charley felt the need to respond publicly by authoring an article in the Dallas Morning News.<sup>200</sup> In addition, as the work of the Special Committee on Substantive Tax Reform progressed into *Studies in Substantive Tax Reform and Reforming the Federal Tax Structure*, considerable opposition developed.<sup>201</sup> Even though the Committee and *Studies in Substantive Tax Reform and Reforming the Federal Tax Structure* had made no recommendations, the investigations of some of the sacred cows of the Internal Revenue Code set off considerable criticisms. Most of the members of the Committee felt pressure to some extent.<sup>202</sup>

Charley was particularly exposed for two reasons: (1) he was the Chair of the Special Committee and a likely target for criticisms and pressure<sup>203</sup> and (2) the various reports and studies suggested that the tax accounting rules for the oil and gas industry might be overly generous. Charley attended an ABA meeting when he was serving as Chair of the Special

199. See Porth Lecture, *supra* note 40; see also Mac Asbill, Jr., *Charles Galvin—A Courageous Advocate of Tax Reform*, 32 Sw. L.J. 1057, 1059 (1979).

200. Charles O. Galvin, *Minerals Need Own Tax Rules*, DALLAS MORNING NEWS, Dec. 29, 1959.

201. STUDIES, *supra* note 1, at 6; Asbill, *supra* note 199, at 1059 (the reaction came with "hurricane force.").

202. Asbill, *supra* note 199, at 1059-60:

Industry groups and their representatives fiercely attacked the work of the committee, challenging its purpose, taking elements of its deliberations out of context, and applying every available pressure to bring the study to a halt. Most of us on the Committee felt these pressures to some extent . . . ."

STUDIES IN SUBSTANTIVE TAX REFORM includes the following:

The Committee emphasized that the entire project was not undertaken for the purpose of taking a position on any one item or combination of items but solely for the purpose of demonstrating what the results of base broadening might be. Once information was abroad, however, that the study was under way, the Committee's efforts were misinterpreted. Although the Committee had made clear that the entire undertaking was only a demonstration and that many more factors would have to be considered in a long-range program of study, committee members were subjected to considerable harassment in their work and were accused of taking positions contrary to the interests of particular taxpayer groups. Such words as "capital gains," "tax-free interest," and the like, when associated with such words as "tax reform," evoke an immediate outcry from sectors of the economy that have assiduously defended particular tax preferences. STUDIES, *supra* note 1, at 6.

203. Asbill, *supra* note 199, at 1060 ("the pressures felt by the rest of us were mild compared to those exerted on Galvin.").

Committee, and he was called upon to meet with Lewis Powell, then-President of the ABA and eventually Associate Justice of the United States Supreme Court, regarding the work of the Special Committee.<sup>204</sup> Sufficient commentary had been communicated to Powell that he wanted to hear from Charley about the Special Committee efforts. Charley's explanation satisfied Powell, and the work of the Committee progressed. As to the oil and gas matters, one can only speculate as to the consequences to a Texan, who then was the Dean of the SMU law school, of being involved with a group studying the tax treatment provided to the oil and gas industry.

Charley received a large volume of mail, much of it critical of the Special Committee's efforts and some of it quite harsh.<sup>205</sup> The critics were so bold as to exert pressure against SMU regarding Charley's work on the Special Committee, but SMU's then-President Willis Tate and its then-Chairman of the Board of Trustees William Clements rebuffed the pressure and thereby earned Charley's ever-lasting gratitude.<sup>206</sup>

#### D. ASSESSMENT OF THE EFFORTS WITH WHICH GALVIN WAS ASSOCIATED

Charley's extensive participation in and leadership of organized tax reform efforts was time well-spent. Those efforts resulted in the publication of two path-breaking reports, *Studies in Substantive Tax Reform* and *Reforming the Federal Tax Structure*, and the trail from those reports to *Blueprints*, Treasury I, Treasury II, and the Tax Reform Act of 1986 is very clear to me. The efforts led by Charley and reflected in *Studies in Substantive Tax Reform* and in *Reforming the Federal Tax Structure* provided to those subsequent governmental efforts: (1) helpful technical/analytical techniques, (2) support and momentum for fundamental tax reform from tax professionals, as both attorneys and accountants had been represented on the Commission to Revise, (3) support for overarching themes of base broadening and rate reduction, and (4) human resources for staffing the efforts eventually undertaken by the Treasury Department. Charley should be proud of his many important contributions, not only to the various policy debates and the technical studies, but also to the salutary changes in the tax law in the Tax Reform Act of 1986.

#### IV. CONCLUSION

Charley lived (and guided many others) through periods of profound change to the U.S. federal tax system: the Great Depression and the New

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204. Interview with Charles O. Galvin, *supra* note 157.

205. Interview with Charles O. Galvin, *supra* note 11; Porth Lecture, *supra* note 40. Interview with Peggy Galvin in Dallas, Tex. (Dec. 14, 2005) (those reactions gave her new insight as to what people in public service go through).

206. Interview with Charles O. Galvin, *supra* note 11; Porth Lecture, *supra* note 40 (The Participation by SMU); Asbill, *supra* note 199, at 1060.

Deal, the Second World War and its aftermath, runaway inflation,<sup>207</sup> burgeoning federal expenditures and deficits to support a wider array of social welfare support,<sup>208</sup> the ebb and flow of the debates regarding the comprehensive income tax base and the consumption base,<sup>209</sup> the ebb and flow of the debates regarding progressive versus flat/flatter rates, the declining significance of the federal income tax and the increasing significance of payroll taxes,<sup>210</sup> and unification of the transfer tax system and addition of the generation-skipping transfer tax. He labored on through decades against considerable political inertia, and notwithstanding the adverse comments that came his way. The aggravation of those two matters during his career would have made many reformers discouraged, if not depressed, but not Charley.<sup>211</sup>

In reviewing the topics that Charley addressed during his career, one cannot but be impressed with some features of his *oeuvre*: (1) the broad scope of subjects, from the narrow and technical (such as the details of the oil and gas industry) to the broadest of fundamentals (such as the appropriate tax base), (2) the works included considerable attention to both micro-economic and macro-economic matters, (3) perhaps because of education in statistics, he was a "numbers" guy, who was a regular reader of the Commissioner's Statistics of Income,<sup>212</sup> (4) a life-long commitment to providing to policymakers better data (developed through rigorous and quantitative analysis of tax data),<sup>213</sup> and (5) an unceasing desire for broadening of the tax base by removal of tax preferences.

Along the path of his career, he testified before the House Ways and Means Committee<sup>214</sup> and twice was appointed to the Advisory Group of the Commissioner of Internal Revenue (Commissioner Mortimer Caplin

207. See Galvin, *supra* note 68.

208. Does anyone remember that from the middle 30s until 1964, individual income tax rates ranged from 20% to 91%, corporate income tax rates were as high as 54% (with a rate of 95% on excess profits during World War II and the Korean conflict), and estate tax rates ran to 77% (gift tax rates to 57 3/4 %)? With that structure, we paid the cost of World War II and the Korean conflict, financed the Marshall plan to rebuild post-war Europe, and were a creditor nation to all the world. The country had low inflation and good productivity. How did we get mesmerized into believing that low taxes with high deficits would lead us to the Promised Land?

Galvin, *A Consumed Income World—The Low Income and Prospects for Simplification—Replies to Professors Fleming and Yin*, *supra* note 62, at 558.

209. See Galvin, *Tax Legislation in the Reagan Era—Movement To or From a Consumption Base?*, 48 *LAW & CONTEMP. PROBS.* 31, 53 (1985).

210. In 1963 he recounts how the income tax then was seventy percent of administrative and trust fund receipts. That percentage has declined sharply since that time, replaced to a significant extent by the growth in wage-based taxes. See Galvin, *supra* note 55, at 210.

211. Only in 1983 did I detect a note of discouragement in his *Tax Notes* article in which he states that "I do not believe that the income tax system can be reformed." Charles O. Galvin, *It's VAT Time Again*, 21 *TAX NOTES* 275, 277 (1983).

212. See Charles O. Galvin, *The Commissioner's Statistics of Income: Required Reading for Tax Reformers*, 27 *TAX NOTES* 945, 945 (1985).

213. See *supra* note 105 and accompanying text.

214. See *Income Tax Revision: Hearing Before the H. Comm. on Ways and Means*, 86th Cong. 475 (1959); *General Revenue Revision, Part 2: Hearing Before the H. Comm. on Ways and Means*, 85th Cong. 2322 (1958).

and Commissioner Randolph W. Thrower). He also acted as a consultant to the United States Treasury Department. In the early 1960s, he was offered the position of Commissioner of the Internal Revenue Service in the Johnson administration, but he declined.<sup>215</sup> He has been a long-time member of the ALI and the American College of Tax Counsel.

Time and again, Charley's path of life intersected the paths of the tax greats of the day. One cannot review the participants in *Studies in Substantive Tax Reform, Reforming the Federal Tax Structure*, and the ALI Federal Estate and Gift Tax Project documents without considerable awe as to the quality of the persons involved. Charley's life, time and again, intersected with persons who were, or were destined to be, prominent government tax officials or leaders on tax policy issues. This might be viewed simply as Charley's good fortune, but I view these intersections as inescapable certainties in Charley's life. He was destined for leadership in matters of tax policy, and his abilities and good works brought him into contact with the tax luminaries of his time.<sup>216</sup> By virtue of his intellect, his interpersonal and leadership skills,<sup>217</sup> and his industry, Charley became one of those luminaries.

Charley started one of his articles as follows:

“There is a tide in the affairs of men,  
Which taken at the flood, leads on to fortune:  
Omitted, all the voyage of their life  
Is bound in shallows, and in miseries.”<sup>218</sup>

And so one more plaintive cry for tax reform goes into an already overstuffed record. Nothing new has been said here; others have said the same things more eloquently. We seem to be repressed by an all-pervasive apathy, an insouciance, yea, a downright indolence about real reform. And so we will limp along until the whole wretched enterprise creates such a miasma that sweet reasonableness and rational resolution have less and less possibility of success. We still have the chance to take fortune at the flood; let's not toss the chance away.<sup>219</sup>

Charley, much about which you have written and spoken during your career has been addressed by others, but few have spoken so tirelessly, eloquently, effectively, and with such grace. When I started this odyssey through the professional history of Charley Galvin, I did not anticipate how interesting and satisfying my journey would be. I have learned much about Charley's role in the tax policy debates of the last fifty years (even though at the outset of my research I had a sense of the richness of Charley's record), but what I was not prepared for was the fact that so much of

215. Interview with Charles O. Galvin, *supra* note 11.

216. Needless to say, the Galvins had many important and life-long friendships that resulted from Charley's participation in the various tax reform groups. Interview with Peggy Galvin, *supra* note 205.

217. For a tribute to Charley's committee leadership skills, see Asbill, *supra* note 199.

218. WILLIAM SHAKESPEARE, JULIUS CAESAR, act 2, sc. 3

219. Galvin, *supra* note 55, at 226.



what Charley talked about, and was involved in, is absolutely dead-on relevant today. The vast majority of the issues about which he has written, or with which he was associated in the various tax reform groups, are tax policy issues of today: simplification in general, a more comprehensive tax base (and "tax preference" or "tax expenditure" items), income versus consumption tax base, integration of the individual and corporate tax regimes, revision of the transfer tax system, tax policy with respect to the oil and gas industry, "dynamic" revenue estimates, etc. If I had the capacity to take decades off of the age of Charley by taking him as he was in the 1960s and turn him loose in the tax policy debates of today, he would be able to carry on (and no doubt lead) without concession to the intervening years. The Internal Revenue Code clearly is worse now than it was in the 1960s in terms of complexity, but the fundamental issues that occupied Charley during his tax policy career are the issues that today occupy the President's Advisory Panel on Tax Reform and should occupy both the President and the tax writing committees of Congress.<sup>220</sup>

I will close with another quote from Charley:

In any event, and whatever way we go, it is most important that those in government, in industry, and in the professions and, indeed, all thoughtful members of the citizenry continue a vigorous and extensive dialogue on the tax system and all its ramifications. There are no ultimate truths or external verities, but thoughtful people from different vantage points must keep the discussion open, and I am pleased to have been and to continue to be part of this process.<sup>221</sup>

Yes, Charley, you have been a part of the process, a very large part. Indeed, in the tax policy arena, you have been a Man for All Seasons.<sup>222</sup>

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220. The policy debates continue today, with some seeing the recent Bush administration rate reductions and compression as tools for economic growth; others see it as a recipe for a new Gilded Age in the U.S. with robber barons and great economic inequality. See Ajay K. Mehrotra, *Envisioning the Modern American Fiscal State: Progressive-Era Economists and the Intellectual Foundations of the U.S. Income Tax*, 52 *UCLA L. REV.* 1793 (2005).

221. Charles O. Galvin, *A Response*, 32 *Sw. L.J.* 1067, 1073 (1979).

222. *A MAN FOR ALL SEASONS* (Columbia Pictures 1966).

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