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CHARLEY GALVIN—A MODEL FOR TODAY'S TAX TEACHER AND SCHOLAR

by
*Meade Emory**

OUR federal tax law has been described in many ways. In a political context it has been labeled a "national disgrace." Even if one does not agree with this campaign-generated appellation, there are few who would not agree that its growing complexity and its constantly changing technical terrain pose a serious threat to a revenue system that has been the most successful and admired in the world. Administrations come and go and in the coming canonize fresh battalions to propose new changes in the tax law. The electorate regularly selects those (from whose ranks emerge the handful of legislative chiefs who exercise incredible power over the shape of tax laws) who dispose of the Executive's recommendations. This cast of characters becomes, then, the titans of our federal tax bureaucracy who, annually it seems, bulldoze the federal tax landscape.

The *dramatis personae* is not complete, however, without a look at those curious habitués of the groves of Academe who teach the intricacies of tax law and policy to lawyers-to-be—many of whom have become, and will continue to become, titans in their own right, either as proposers or disposers, of federal tax policy. What kind of person is it, and what kind of person should it be, that takes on the task of threading future lawyers through the labyrinthine ways of tax law and policy? In so many respects Charley Galvin is the model for the tax law teacher and, curiously, he was this model teacher and scholar well before the model was shaped into its present form. Galvin was, indeed, the prototype.

It has been noted many times that tax law is a Johnny-come-lately to law school curricula. When Dean Griswold's casebook first appeared in 1940, Harvard Law School offered one course in Federal Taxation in the third year.¹ This is not the place, of course, to chronicle the development of law school offerings from these meager beginnings to the fully rounded programs in tax and tax related business courses which are offered by even modestly-sized law schools. Suffice it to say that Charley Galvin, along with a handful of others—most notably, Stanley Surrey, Erwin Griswold, and Boris Bittker—marched along with this development and growing in-

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1. E. GRISWOLD & M. GRAETZ, *FEDERAL INCOME TAXATION* xv (1976).

terest, and shaped the role that is being played by today's tax law professor—a truly unique figure in contemporary law school academics.

Several facts about the teaching of tax law became apparent to these young teachers of this complex, growing area of American jurisprudence. While Charley Galvin's threshold interest in this area—and hence the subject of his scholarship—was in the technical intricacies of statute, it soon became apparent that the fundamental, and by far the most interesting, problems were mired in the fascinating policy questions to which the tax teacher and scholar must eventually turn. As the teacher of tax law would not find total satisfaction in the constant massage of the arcane technicalities of the law, so too, would students of tax law begin to ask "why does the law provide . . . ," and "wouldn't it be better if the statute provided" Given the mission of the federal tax statute and its almost universal coverage of the populace, questions relating to its equity, fairness, distribution, and, perhaps, its undue complexity, were certain to arise. There was no justification for these questions to be the exclusive province of the law professors' brethren from economics. If familiarity with the statutory labyrinth is a prerequisite to the making of policy oriented judgments—and it would appear that it is—the tax law professor is perhaps the one best able to give thought, time, and ability to the myriad policy considerations thrown off by the fabric of the statute.

Naturally, then, the more able tax thinkers on law school faculties turned to the thorny policy questions—not only in their scholarship, but in the classroom as well. Not only did law school curricula sprout policy oriented tax courses, but, more importantly, the well taught basic tax course involved consideration of policy oriented questions. Dean Galvin recognized this need. If students were to understand the tax law, it was essential that they comprehend why the law took the shape it did. This knowledge was not only important in the resolution of interpretative dilemmas, but could also be used by the advocate in tax disputes with the Internal Revenue Service. Last, but certainly not least, this kind of training equips lawyers to become leaders in the development of the law—whether articulating a position as a member of a bar group or as one of the titans at the Treasury. Dean Galvin took cognizance of this need, not only in his own teaching, but in the program developed at SMU. Because of the perception of Galvin—and his immediate contemporaries—a certain amount of policy orientation is today considered almost *de rigueur* in law school tax courses. The foresight of academics like Galvin has produced legions of tax lawyers with both a good technical training and a solid policy focus. It is not saying too much to note that this kind of training is at least partially responsible for the fact that management of the tax law in this country—both from the tax policy and the administrative side—is solidly under the control of those members of the legal profession who have made tax law their specialty. The recent past is not marked with an occasion when the Assistant Secretary of the Treasury for Tax Policy

and the Commissioner of Internal Revenue were not chosen from amongst the tax bar.

The policy focus that Galvin adopted in the classroom soon became reflected in his scholarship. He continued to do competent and perceptive technical pieces dealing with such topics as income realization to a corporation distributing property in-kind.² The policy questioning, however, would come soon, first in pieces dealing with controversial single topics,³ and later, in his important debate on the comprehensive tax base with Boris Bittker, R. A. Musgrave, and Joseph Pechman,⁴ and the equally fundamental dialogue with Professor Bittker on progressivity in the income tax.⁵ There is also (the list seems endless) the report of the Commission to Revise the Tax Structure, funded by the Fund for Public Policy Research⁶ and the *Studies in Substantive Tax Reform* in which Galvin's hand was heavy.⁷ The stuff of this scholarship is grist for the mill of tax policy—not scholarship placed unconsulted on the library shelf, but material to be thumbed, discussed, thought about, and referred to by many, including those in a position to shape the law. The exercise of this kind of input is part of the Galvin model.

There are other features of the contemporary tax law professor—of which Galvin is truly a precursor—that are worthy of mention. While the finely honed concepts of areas like constitutional law are beautifully taught by the cadres of bright young former Supreme Court clerks who emigrate to Academe without being besmirched by law practice, the same cannot probably be said of federal tax law. Despite the broad policy objectives that dictate its shape, taxation has a real world quality to it that is best mastered through time in the trenches of law practice. Charley Galvin is the product of a private practice—an experience that, no doubt, enhanced his mastery of the subject and gave to his teaching a luster of reality and practicality that made his classes more authoritative and credible. Galvin, and others like him, whose leaving of the law practice was not without considerable financial sacrifice, can take a large measure of pride in the fact that today's young tax teacher most often comes from law practice or, just as importantly, from high level governmental responsibilities in the tax area—at the Treasury, the Service, or on Capitol Hill.⁸ This is

2. Galvin, *Taxable Income to a Corporation from Dividends in Kind*, 42 ILL. L. REV. 534 (1947).

3. E.g., Galvin, *The "Ought" and "Is" of Oil-and-Gas Taxation*, 73 HARV. L. REV. 1441 (1960).

4. B. BITTKER, C. GALVIN, R. MUSGRAVE & J. PECHMAN, *A COMPREHENSIVE INCOME TAX BASE? A DEBATE* (1968). See also 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 (1968).

5. C. GALVIN & B. BITTKER, *THE INCOME TAX: HOW PROGRESSIVE SHOULD IT BE?* (1969).

6. COMMISSION TO REVISE THE TAX STRUCTURE, *REFORMING THE FEDERAL TAX STRUCTURE* (1973).

7. C. GALVIN, A. WILLIS, A. OTT, G. ROBBINS, S. TURNER & R. TINNEY, *STUDIES IN SUBSTANTIVE TAX REFORM* (1968).

8. The following are representative examples of the kind of scholarship and insight

the Galvin model and it appears destined to serve present day needs well.

There is another feature of the way Charley Galvin shaped his own responsibilities that is most surely to be adopted by the tax law professor of today and tomorrow. Not content to give vent to his energies only in the classroom and the pages of the legal periodicals, Galvin adopted a vigorous course of tax orientated professional activities that, as Mac Asbill shows in these pages, have made a lasting contribution. Asbill's comment that Galvin, first as vice-chairman, and later as chairman, of the ABA Section of Taxation's Special Committee on Substantive Tax Reform, "led a large segment of the tax bar to its initial realization that lawyers are well equipped to play a significant role in the development of tax policy"⁹ says an enormous amount about Galvin's view of the tax teacher and tax scholar. To convey technical expertise to students is certainly important, but there is so much more to do. With a solid group of tax policy issues, these students could go forth as lawyers, as Charley Galvin himself has done, and help shape the form of the law—or at least be able to say with a considerable degree of articulateness what the law should be. Well before it became fashionable to do so, Galvin envisaged the law professor as having a responsibility beyond the walls of the law school—to present a perspective of his discipline different from that of the harried practitioner. The teacher-scholar that Galvin has been—and will, we know, continue to be—is truly a model for his younger brethren.

which are available when the real world lawyer turns academic: Graetz, *Reflections on the Tax Legislative Process: Prelude to Reform*, 58 VA. L. REV. 1389 (1972); McDaniel, *Federal Income Tax Simplification: The Political Process*, 38 TAX L. REV. 27 (1978).

9. Asbill, p. 1061 *supra*.