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QUASI-JUDICIAL REFLECTIONS ON TAX ADMINISTRATION

ROGER J. TRAYNOR

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It is good to be one of you again, if only for a day. In 1910 I left off being a professor of taxation at the University of California and consulting tax counsel for the California State Board of Equalization to become a judge of the California Supreme Court. One could describe such a change in terms of frying pans and fires. I like to think of it as an orderly evolution from a dogged watch on the revenues to a dogged watch on the times. The first task was more satisfactory. One could always exclaim: Who audited this! Now one can only guess at the debits and credits that would help answer the perennially recurring questions: Whodunit and why?

Still there is no better preparation for grappling with those questions than training in taxation. Some sage has commented that we can measure a civilization by the way in which it collects and spends public revenues. I verified the wisdom of that test in the quiet of the library as I reflected on the theory of taxation and in the turmoil of the legislature as I witnessed the lively spectacle of tax laws in the making.

Right now we seem to have come part cycle round to the days when I served my apprenticeship in the state capitol. A young professor commuting regularly between the halls of learning and the halls of the lawmakers was in for a jolting education. Gentle career men in public service like Dixwell Pierce, Secretary of the Board of Equalization, deeply concerned about the state's financial troubles, and dedicated elected representatives of the people, serving them without stint far beyond the exactions of office, gave no clue to the rough and tough going that awaited the pilgrim in the partisan atmosphere of the legislative halls themselves. It became my job to participate not only in the drafting of California's first sales tax but in its presentation to the legislature. In the desperate year of 1933, when new sources of revenue had to be found, the most cynical legislators reluctantly took to listening even to a specialist in taxation encumbered with book-learning, perhaps in the belief that in desperate times what you know won't hurt you any more than what you don't know. A few of them made it clear, however, that they were on their guard against a character who was suspiciously without any axe to grind and alarmingly eager to explain some proposals for getting money into the treasury. His idea was apparently to make everything clear as crystal, in violation of the belief hallowed by some that the name of clarity is mud.

I learned then on occasion—fortunately not too often—what it means to appear before men of non-judicial temperament, occupying the seats of vantage and concerned not with the broad perspective and the long morrow but with the worm's-eye view of tape traders for a day, for the days when they hold office. There were nonetheless hilarious moments in all the discouragement. The era of prohibition was ending and the state capitol resounded with the cries of "Set 'em up!" Every time the innocent invader from the university heard the cry, he proceeded to pull his books and papers out of briefcase and pockets and paper bags. He was going to set them up, all right, and read from them to anyone who would listen. His mission was education; the motto of the town he came from was "Let There Be Light." He was always sure that those frostbitten listeners not previously visited by missionaries would be electrified, and they always looked as if they were about to be electrocuted.

One veteran legislator, by now thoroughly aroused against the menace within the gates, turned livid every time the innocent turned up in his hallowed territory. "You again!" he would splutter. "Whoever first let you in anyway?" Then turning to his fellows he would declaim wrathfully: "We have with us again the lectle Professor SoandSo who's going to tell us all about the revenues. He needs no introduction—he's been bobbing up everywhere ever since he came here out of nowhere. Anybody here who hasn't heard of lectle Professor SoandSo before? Anybody here want to hear him this morning? Anybody here figured out yet what a guy's doing around here who's got no visible means of support for his program but a mess of studies he keeps wanting to outline on a blackboard?"

Then placing his feet on the table and looking pointedly at the clock, he would address me in a fierce bellow: "Well, professor, get on with the lesson. There isn't a man here doesn't know you want to spend the whole day on some ideas of yours again, but you're not going to get it. Just for the record, I'd like to remind you some of us have been here a lot of years and what interests us is the Realities." He pronounced the word with a capital R, and I can still remember that he looked mighty realistic as he spat out his welcome.

More than once at the end of such a meeting I would walk outdoors again and look up, sometimes through the sunlight of a California valley town and sometimes through the dusk that sud-

denly envelops it in its pioneering past, to the words that mark one of its public buildings: "Bring Me Men To Match My Mountains." The stirring words rang in the mind even as the clamor rose in the neighboring lobbies where congregated some of the men who had been brought. Yet now and again, indeed surprisingly often, there came to the capitol men who did honor to the inscription. I remember still these devoted men, unconcerned about rewards, with abundant courage against any odds, who made the public interest a meaningful phrase.

As the days wore on, one found it heartening to work along with a small band of men determined to work out a sound financial structure and efficient administration for the state. We inched our way out of the chaos that thrives on a public lethargy not easily dispelled even by economic hardship. Before the end of 1933 California had not only a revised bank and corporation franchise tax act, but its first general retail sales tax. By 1935 it had a corresponding use tax to assure the equal treatment of local and interstate sales, and a personal income tax act. During that period there was also a fundamental change in the taxation of public utilities.

Administering the California Sales Tax

It fell to the State Board of Equalization to collect the sales tax from some 200,000 retailers, and the Board called on me to direct its administration. I took a leave of absence from the teaching of law at the University, with particular regret at the interim relinquishment of the course in taxation that I had succeeded in establishing in the curriculum despite widespread doubt that lawyers would find much opportunity to put such impractical training to use.

We were proud that we had carried through proposals designed to distribute the tax burden as equitably as possible. We wanted the new laws to work in the fairest possible manner and with the maximum possible efficiency. Day after day taxpayers trudged through the Board offices, educating us in turn on the manifold problems that can arise in a single state. No problem was too small for a hearing. Baby carriages and doll carriages were no less important than the largest fleet of machines. Snowed with work as we were, we knew that in the long run administration would be facilitated by the understanding cooperation of the very taxpayers who were now asking us to explain how the new law was going to affect them.

The problems that rolled in were a chronicle of Everyman in every age. What to do with the paper in which butchers wrapped meat? What to do with the paper in which bakers wrapped bread? What

to do about candlestick makers who were having a hard time making ends meet? What about candles on PTA. birthday cakes? What about pearls that turned up in an oyster? What about pearls that turned up on new strings? What about the reused wool in the re woven coat that was offered for resale in the house Jack rebuilt? What were we going to do about shoe leather that resoled shoes for the third time or fourth, as happened a good deal in the thirties? Were shoelaces part of the shoes or did they have independent personality, and if so, was it split? What of the polish that went into the shoeshine? What of the lather that went into the mug? What of the shampoos that went into the hairdo? What of the newsprint that went into the news? What about instruments sharpened by doctors? What about pencils sharpened by lawyers? Would we tax their wits if they sharpened them?

And what, oh what, of the baby chicks? They were having a regular renaissance, and sending more than one administrator into a rapid decline. The sun never set on the baby chicks. The moon rose more than once on tired men sitting around a table worrying about the incidence of the tax on the small bits of live fluff that were rolling relentlessly into the world with every tick of the clock. We borrowed a slogan from the resistant Gaels, adapting it to our special emergency. It fluttered limply but bravely above our desks; it read: "Baby Chicks, We Will Never Surrender!"

In all that turmoil we scrupulously respected the taxpayer's right to fair notice and the opportunity for a fair hearing. We took pride in the fact that problems stubbornly defying solution eventually got settled satisfactorily and on a budget so economical as to give pause even to those who talked glibly about the capital-R Realities. Our financial compensation was modest indeed, as the compensation of men in public service still is, but it was deeply gratifying to work with independent spirit for no interest but the public one.

Perhaps you will forgive an aside here for what seems to me its deep relevance. Early in those years I married a girl endowed with such a rare combination of gentleness and high spirit that I thought with some misgiving of her settling down in a town that could be pretty rough and tough and at times all too drearily realistic. We had an apartment with a small kitchen and one huge room stacked high with tax books and papers that nearly blocked out a stunning view of the capitol building and park. They were not to be moved—who knew what baby chicks might run out headless if they were disarranged? One night at nearly midnight, as we sat down for supper, I noted the bright illumination in the black night of the capitol

building I had just left. My wife looked at me pensively, then out at the capitol grounds. "It's so cozy," she murmured, "with just us three. Just thee and the capitol building and me." She didn't look a bit tearful as I had expected. She just looked at me kind of quizzically and said, "You believe in the law and I believe in you. How stands the rest of the triangle? Is the capitol against the law or for it?"

It was not long before we in California as well as tax administrators elsewhere had to look beyond local borders. Clarence Jackson, then Director of the Indiana Gross Income Tax Division, with the enthusiastic backing of Governor Paul McNutt, communicated with his fellows in other states, enlisting the help of Dixwell Pierce and Fred Stewart of the California State Board of Equalization to recruit delegates for two meetings in 1934. By dint of those two first meetings in a year, this Association was enabled to celebrate its silver anniversary last year by holding its twenty-fifth annual meeting at Poland Spring, Maine. It has done honor across a tumultuous quarter of a century to the leadership at the early meetings not only of the gentlemen from Indiana and California but of such fine tax administrators as Allen Maxwell of North Carolina, Alfred Stone of Mississippi, Simeon Leland of Illinois, and Forrest Smith of Missouri, later Governor of that state. The list is by no means exhaustive; an esprit de corps ran through the Association that produced many another memorable leader.

Responsibilities of Tax Administration

When I left your lively ranks, I felt about as elated as a boy up at bat who had just been called out to hear that he was to be honored with the job of umpiring the game. I needn't have been so concerned about the prospective tedium. The umpire's position looks mighty calm to those who are in there swinging, but when the going gets rough, as you all well know, then everyone swings on him. There's not too much difference in what we do, except that you exercise judgment in a specialized field, and I have to do it at large. Each task requires concentration and the insight we call sound discretion. You must gauge situations at closer range than we do, but no less objectively for that. Fair procedure is the obligation of your office as it is of ours; a taxpayer is entitled to fair play as a litigant is entitled to a fair determination of his contest.

It seems to me superficial to think of administrators as doing their jobs by the day, as if judges alone had the long-range view. The consequences of your discretion are as far-reaching as the consequences of ours — perhaps more so, for the consequences of yours are also directly apparent to a

great many people. You have a major influence on popular opinion of government. Public confidence can be shattered by tax laws that play favorites and by bungling administration.

At the 1956 conference of the National Tax Association, I spoke on a simple theme: **Tax Laws Deserve Sound Administration.** In the years spent in tax administration and since, I have come to believe that the responsibilities of tax administration are so great as to demand the very best possible men in the field. It is high time that we realize the pound-foolishness of our penny-wise economies. I speak with particular earnestness about tax administrators because of their multiple responsibility of developing laws that progressively keep pace with the times, of serving as enlightened interpreters of the laws for the legislators that come and go, of maintaining relations of mutual respect with the whole community of taxpayers, and of determining issues that arise with all the fairness that due process implies.

Every day is Law Day for you who are tax administrators. It is perhaps too large a hope that the fairness of your own conduct will quicken a spirit of comparable conduct in those who vitiate the tax laws with ruses just clever enough to avoid the ugly name of evasion. Such ruses are many and devious. A taxpayer bent on avoidance may assemble twigs of words in the law itself to bend to his inclination. He may uncouple phrases that seem to go together and strew them in the path of coupled circuits with electrifying effect. He may persuade others that the law only seems to deem what it says. He can turn a homely little phrase like "tax-deductible ordinary and necessary expense" into a tax-deductible flying carpet to extraordinary outposts where invention is the mother of new concepts of necessity. If the law speaks of taxing recognized and realized gain, he can transform gain beyond recognition and studiously fail to realize what can be realized anon.

You are the first to know when the tax laws are operating inequitably, and the high responsibility falls properly to you not only to note such inequities but to alert the public to them. You can do this in many ways without undue deviation from the daily grind of administration. You can give the alert to scholars and to responsible journalists and legislators and legislative counsels and community organizations. They can publicize inequities and undertake studies for revision and enlist public support for remedial measures. It takes initiative and sometimes courage to give that alert, but once you have done so you may be surprised at the enthusiastic support you will have set in motion for the job of equalization — a homely synonym for equity.

Though the technical structures of present tax

laws engendered by a complicated economy facilitate tricks and devices of circumvention, these are alien to our traditions. It has after all been the eighth wonder of the world that for so many years so many taxpayers have without surveillance made out their returns with the utmost scrupulousness. That phenomenon would do honor to any country; it is proof that citizens voluntarily act responsibly as a matter of individual conscience. It augurs well for a strong popular support of whatever periodic revisions in the tax laws are necessary to insure equality of treatment. Citizens who for the most part have proved themselves trustworthy in respecting the tax laws have a very real interest in supporting whatever revisions prove necessary to insure the

applicability of the laws to those who have successfully devised schemes for avoiding them.

Whatever reservations one may have over the current fashion of conferences on everything under the sun, there can be none as to such conferences as yours, whose delegates have so many real problems in common, and so much to gain from an annual exchange of experience and ideas. As one who participated in your pioneer meetings, I still recall the spirited discussions on common problems. That wonderful spirit still thrives in an Association so ably represented by its Executive Secretary, Charles F. Conlon, and its other devoted officers.

You must know how honored I am to be with you today. I salute your courage and stamina for the tasks that lie ahead.

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