6-9-1958

Quasi-Judicial Reflections on Tax Administration

Roger J. Traynor

Follow this and additional works at: http://repository.uchastings.edu/tax

Recommended Citation
Roger J. Traynor, Quasi-Judicial Reflections on Tax Administration (1958). Available at: http://repository.uchastings.edu/tax/15

This Conference Proceeding is brought to you for free and open access by the The Honorable Roger J. Traynor Collection at UC Hastings Scholarship Repository. It has been accepted for inclusion in Taxation & Traynor by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.
I is good to be one of you again, if only for a day. In 1930 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: Why? perennially recurring questions: Whodunit and debits and credits that would Why? Who audited this! Now one can only guess at the enues to a dogged watch on the times. The first task spent public revenues.

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 text 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 capital. A young professor commuting regularly between the halls of learning and the halls of the lawmakers was in for a jolting education. Gentle earnest 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 capital 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 troubleshooters, 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 leetle Professor SoandSo who’s going to tell us all about the revenues. He needs no introduction—he’s been ballyhooed up everywhere ever since he came here out of nowhere. Anybody here who hasn’t heard of leetle Professor SoandSo before? Anybody here want to hear him this morning? Anybody here figure 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 dust that sud-
REVENUE ADMINISTRATION — 1958

densely 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, unencumbered
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 deter-
mined to work out a sound financial structure and
efficient administration for the state. We incred
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 per-
sonal 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 col-
clect 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 cur-
riculum, despite widespread doubt that lawyers
would find such an opportunity to put such imprac-
tical 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, edu-
cating 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 car-
rriages 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 ex-
plain 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 rewoven coat that was offered for re-
sale 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 shoecases parts of the shoes
or did they have independent personality, and if
so, was it split? What of the polish that went in-
to the shoe shine? What of the lather that went
into the mug? What of the shampoos that went in-
to the hairdo? What of the newsprint that went
into the news? What about instruments sharpened
by doctors? What about pencils sharpened by law-
ers? 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 relent-
lessly into the world with every tick of the clock.
We borrowed a slogan from the resistant GaeiS,
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 eco-
nomical as to give pause even to those who talked
grubly about the capital-R Realities. Our financial
compensation was modest indeed, as the compen-
sation 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 build-
ing 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 mid-
night, as we sat down for supper, I noted the
bright illumination in the black night of the capitol

2
building, I had just left. My wife looked at me
pensively; there was at the capital grounds, "It's so
cozy," she murmured, "with just us three, just thee
and the capital building and me." She didn't look
a bit tearful as I had expected. She just looked at
me kind of quizically and said, "You believe in
the law and I believe in you. How stands the rest
of the triangle? Is the capital 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, en-
listing 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 Associ-
ation 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 Illi-
nois, and Forrest Smith of Missouri, later Governor
of that state. The list is by no means exhaustive;
an aspirit de corps ran through the Association that
produced many another memorable leader.

Responsibilities of Tax Administration

When I left your lofty ranks, I felt about as
clashed at 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 too much difference in what we do, ex-
cept 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 dis-
tinction. 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
content.

It seems to me superficial to think of adminis-
trators as doing their jobs by the day, as if judges
alone had the long-range view. The consequences
of your decisions are as far-reaching as the conse-
quences of ours—perhaps more so, for the conse-
quences 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 1936 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 administra-
tion 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 economics.
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 deter-
mining issues that arise with all the fairness that
due process implies.

Every day is Law Day for you who are tax ad-
nistrators. 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 rules just clever enough to avoid
the ugly name of evasion. Such rules are many and
devious. A taxpayer bent on avoidance may as-
semble 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 responsi-
bility 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 counsel and community
organizations. They can publicize inequities and
undertake studies for revision and enlist public sup-
port 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 enthusi-
astic 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 voluntarily 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.
Nat'l Assn of Tax Admin
26th Annual Conference
Coronado CA June 9, 1955