

## PAUL BRUTON

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I am delighted that this volume of testimonials to Professor Bruton has not been reserved for posthumous publication. The reason is not only a continuing regard for Paul's good health, but also because Paul in the flesh is a reliable deterrent to the doleful exaggerations to which a eulogist is usually drawn. Paul's company is always productive of a light and happy heart. Recollection may lead to a degree of literary license, but I think these liberties will serve all the more to validate my affection and esteem.

Our acquaintance dates from sometime in the mid-forties, and during the following six or seven years we shared a rather unique association during an explosive period in tax law and its practice.

Prior to the New Deal, there were relatively few lawyers outside of Washington, D.C., whose practice was concentrated in federal taxation. The increasing significance of federal taxes beginning with the Internal Revenue Act of 1932, coupled with the decentralization of the Bureau of Internal Revenue, provided both a new need and a new incentive for specialization locally. For better or worse, it also marked the beginnings of the tax departments that are found today in most of our larger law firms.

Sometime during this period, a number of neophytes at the Philadelphia Bar—each principally interested in federal tax law and each associated in practice with a different law firm—began to meet once a month for dinner and for discussion of topics of mutual interest in their tax practices. Each month one of the members in rotation presented a paper on a subject of current tax interest interrupted by the static of line-by-line challenge and criticism. Modelled upon a similar group in New York City, the self-styled Tax Group of Philadelphia has met uninterruptedly except during the war and with no more membership changes than had to be expected with the lapse of almost forty years. The group has achieved its own kind of immortality, displaying a vitality that has spawned a junior group, a junior-junior group and a number of junior-junior-junior groups.

When Paul came to Philadelphia, the group was still in its

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formative stages, and Paul became a charter member. The unwritten articles of association were amended to provide for the admission of not more than one member who was not engaged in practice, "providing he was otherwise qualified and providing further that he was an associate or full professor at the University of Pennsylvania Law School teaching federal taxation."

Paul was slightly older than the rest of us. We tended to treat him with the courteous respect that our generation had been bred to extend to our elders and with the discriminating respect we extended to men of parts in our profession and on the faculties of our law schools. I have neither recollection nor record of the various papers delivered during these years. I do recall that both papers and discussions sought the analytical skill, thoroughness and judgment which we had been trained to consider essential disciplines in the law. There was no notion that the wisdom of the universe automatically passed each year to the members of the entering class or even to the newly-graduated. The discussions were somewhat savage but always in the style to which we wished to become accustomed. With his added years of legal study and experience, Paul brought stature and professional competence to our do-it-yourself efforts for a continuing legal education.

Paul always spoke with the affability and natural dignity that are so much of his personality. It would pervert the critical spirit of the group to speak too highly of the effectiveness of his comments. On the other hand, it was customary at evening's end to wash away all signs of prior bloodshed by warmly complimenting the speaker for a job well done, and in keeping with this tradition I can say with all propriety that Paul generally did extremely well.

There was ample opportunity for lively discussions during those years. Elderly readers will recall that by 1947 the country had finally become conscious of the fact that married couples residing in a few community property states in the Southwest enjoyed a lower income tax rate than married couples in the rest of the country. Since each spouse in a community property state is entitled to one-half of the "community" income, married persons in these states could split their income down the middle for tax purposes. Quite in keeping with our national history, before and since, there was dwindling hope for a congressional solution. Finally the legislatures of a number of common law states, including Pennsylvania, decided to look after their own by statutory adoption of community property law.

About this same time, members of the Tax Group joined with others in forming the Pennsylvania Tax Institute, now an established Philadelphia institution. A member of the initial Advisory Committee, Paul was one of the key figures in its creation and development.

The brochure announcing the First Annual Institute rather plaintively observed that the new community property law "presents many problems for tax practitioners in this state, and while the subject is complex, and there is of course no Pennsylvania case law, an opportunity to study some of the particular phases will prove of value to all tax men."

Two weeks before the date scheduled for the opening of the Institute on December 8, the Supreme Court of Pennsylvania held the community property law unconstitutional.<sup>1</sup> The unanimous opinion, handed down but sixteen days after oral argument, was lengthy and thorough. The only point it left untouched was the dilemma posed the new Pennsylvania Tax Institute; but the Institute simply ducked its head with no visible signs of regret. The announcement a year later of the Second Annual Pennsylvania Tax Institute reported that ". . . after the law was declared unconstitutional by the Supreme Court, the program was revised to cover the same basic subjects but omitting reference to the Community Property Law. The sessions were well attended and enthusiastically received. . . ."

The topics of discussion—read these many years later—sound appallingly dull. In 1947 Paul's subject, for example, was the "Gross Estate—Succession and Inter-vivos Transfers" and in 1948 it was "Section 162(b) and (c)." That the lectures should have been received with "enthusiasm" is indeed a tribute to the ability of the lecturers—even after discounting the report of our friends in public relations.

By this time, Congress had discovered an easy way to eliminate the community property loophole: open it up to all. The 1948 Act put all married persons in the same position by creating new reduced rates for joint income tax returns and the marital deduction provisions of the estate tax and gift tax laws. This remedy may seem to have discriminated against unmarried persons, but presumably a tax incentive to marry was considered desirable in the public interest regardless of opportunity, age, or the course of true love; furthermore in those days single people apparently did not have much political clout. The residents of community property states were understandably unhappy to find

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<sup>1</sup> Willcox v. Penn Mut. Life Ins. Co., 357 Pa. 581, 55 A.2d 521 (1947).

themselves treated no differently from the rest of the country, but they did find solace in their percentage depletion and other forms of native resource.

These changes in the federal tax laws, soon followed by the Internal Revenue Code of 1954 (designed, so it was alleged, to simplify these laws), provided continuing incentive to the practice of federal tax law. It was common gossip, however, that Paul was not unswerving in his loyalty and that he had long let his eye wander toward constitutional law; yet to the best of my knowledge there were few indeed who suspected him of dallying with local taxes. His agreement in 1953 to become the first Chairman of Philadelphia's newly created Tax Review Board was received by the Bar with mixed amazement, admiration and pride.

There is nothing novel in the thought that the resolution of controversies at the very lowest levels is just as important to the administration of justice as the most significant pronouncement of our highest courts; but we offer neither honor nor emoluments to attract men of ability to these tasks. In our judicial and administrative hierarchy, one would be hard put to find a tribunal more inferior (jurisdictionally, that is) than the Tax Review Board. Paul's six years of service as Chairman of the Board was a contribution to the public weal which has few counterparts.

Twice before I have been privileged to participate in the publication of a law review issue dedicated, in those instances, to distinguished graduates of the school rather than to a distinguished member of its faculty. The March 1931 issue of the law review of which I was then an editor was dedicated to Mr. Justice Holmes on the occasion of his ninetieth birthday.<sup>2</sup> The November issue that same year was dedicated to Mr. Justice Brandeis on the occasion of his seventy-fifth birthday.<sup>3</sup> I have waited a long, long time for Professor Bruton to reach his seventieth.

One cannot really feel toward a contemporary in the same way that we felt forty years or more ago toward the great legal masters of those days. I think Paul will understand and forgive my slight restraint at this point. Nevertheless, I suspect that he has always cherished the ideals that they exemplified and that when he is ninety, he too will acknowledge the belief "that not place or power or popularity makes the success that one desires, but the trembling hope that one has come near to an ideal. . . ."<sup>4</sup>

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<sup>2</sup> 44 HARV. L. REV. 678 (1931).

<sup>3</sup> 45 HARV. L. REV. 1 (1931).

<sup>4</sup> 44 HARV. L. REV. 678, 691 (1931).