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MARVIN CHIRELSTEIN

Boris I. Bittker

I occupied the office next to Boris Bittker's for nearly twenty years at the Yale Law School. It was a harrowing experience. My own scholarly life, to call it that, consisted chiefly of an agonizing, daily effort to think up a writing project that I could regard as respectable, and there were weeks and months, never mind years, when absolutely nothing worthwhile entered my head. On the other side of my office wall, too thin to be entirely soundproof, I heard the steady and relentless tap-tap-tap of Boris's typewriter as he began, finished, and then went on to another brilliant research project in what appeared to me to be an endless succession of scholarly triumphs. He never ran out of ideas, he never ran out of energy, and he behaved at all times with a calm, unfailing self-assurance that exactly mirrored the reverse of my own fevered mental state. The fine portrait of Boris that hangs in the student lounge at Yale Law School misses only one thing, and that is a tiny cartoon of me in the lower right-hand corner in the attitude of *The Scream*.

Boris was a perfect scholar. He loved his topic, loved to write, and of course wrote beautifully. His books, treatises, and articles in the tax field were of the highest quality and originality, and the volume of his output was, to my mind, miraculous. Along with that, however, he never appeared to be hurried, there was never a "Do Not Disturb" sign on his office door, and he was always readily interruptible. In short, he was the scholarly ideal we all hoped to match, but never could.

Boris had the courage of a true liberal in the modern sense. What that means (to me) is that he believed that decent, reasonable men can make a better world, without ever succumbing to an ideology of absolutes. Nothing, even in his chosen field of federal taxation, could be asserted without room for exceptions and reservations, or with undisputed certainty. His attitude was one of healthy irony, which is, of course, the only way to bear the failures and contradictions that inevitably appear in hindsight. Boris's style of argument was that of a practical philosopher. Moral propositions, even legal propositions, were never final; they could always be challenged by extension to

a new set of facts and circumstances and be shown thereby to have limitations and shortcomings. That mode of thought and argument was once endemic to the law teaching profession, though now, I think, abandoned by many. It has the virtue of creating doubt and self-examination, as well as tolerance (but skepticism) toward the views of others. And it is, he felt, the best defense against mistake and folly.

Boris and I walked together to the law school almost every weekday morning during the years I spent in New Haven. He liked best to tell stories of his early days, and I think one of those stories deserves to be remembered. Boris was a very knowledgeable and sophisticated man, but if there was one thing in the world he knew absolutely nothing about, it was sports. Indeed, he couldn't catch a ball if you handed it to him. As a rifleman in an infantry company during World War II, Boris took a machine gun bullet in his right ankle and found himself face down on a muddy field pouring blood from the wound. Knowing that a medical field station lay a few hundred yards behind him, he dragged himself in that direction and finally came within sight of the station. This was a time when German soldiers, dressed in captured American uniforms, infiltrated our lines with deadly effect. As Boris approached the field station, an armed sentry stopped him and demanded that he prove he was an American. "Answer me one question!" called the sentry, raising his rifle. "Who won the World Series last year?"

"My God!" Boris groaned. "I don't know. Was it the Yankees?"

It wasn't, but he survived.

Boris was kind and generous and (fortunately for me) never competitive with others. He knew his worth, he required no reassurance, and he never sought the admiration that he very well deserved and got in abundance. He was a great friend, and he helped me in a thousand ways. I will always be grateful for those walks to school, and for that adjoining office.

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