

# LORD, DAY & LORD

25 BROADWAY

NEW YORK  
CUNARD BUILDING

LUCIUS H. BEERS  
HENRY DE FOREST BALDWIN  
FRANKLIN B. LORD  
ALLAN B. A. BRADLEY  
ALLEN EVARTS FOSTER  
GEORGE DE FOREST LORD  
PARKER MCCOLLESTER  
RANDOLPH E. PAUL  
SHERMAN BALDWIN  
JAMES S. HEMINGWAY  
HERBERT BROWNELL, JR.  
THOMAS F. DALY  
HARRY J. RUDICK

CABLE ADDRESS  
LORDATTY  
NEW YORK

WASHINGTON OFFICE  
SOUTHERN BUILDING

August 8, 1941

The Hon. Marriner Eccles, Chairman  
Federal Reserve Board  
Washington, D. C.

Dear Marriner:

I was glad to hear you say yesterday that you were in favor of the joint return proposal. You and I are alike in that we have profited materially by the provisions of the existing law and were trying to talk our family economic units out of a fair amount of annual income. You may be interested to know that the New York Times could find no space for the communication Harry Rudick and I addressed to the paper. I would hate to think that our letter was not published because we were on the wrong side of the question.

Thank you for sending -- I suppose you were the one who did so -- a copy of the current issue of Fortune containing your article. I glanced at the proof of this at Jerome's house last week end, and I shall read the final article with interest.

Sincerely yours,



REP:A

LORD, DAY & LORD  
25 Broadway  
New York

July 31, 1941.

To the Editor of the New York Times:

Compulsory Joint Income Tax Returns

A Reply to Professor Griswold

In a letter to you which was published in your issue of July 27th, Professor Griswold of Harvard Law School opposed the pending proposal for compulsory joint income tax returns of husbands and wives. Of the commentators who are against the proposal, Professor Griswold is one of the few who recognize the extreme weakness of the arguments advanced by the average objector, i.e., (1) that the proposal is unconstitutional, (2) that it will impair the institution of marriage, (3) that it will promote immorality, and (4) that it constitutes a throwback to marital slavery for married women.

Professor Griswold, conceding the speciousness of such arguments, nevertheless objects to the measure on the ground of fairness. We have a profound respect for any opinion of Professor Griswold, particularly in the tax field, but we feel constrained to differ from him in this instance, and to attempt a rebuttal of his arguments.

1. Professor Griswold argues that there is a "certain element of retroactive unfairness" in the proposal to require joint returns because of the fact that Congress has encouraged husbands to make gifts of income-producing property to their wives and has exacted gift taxes for the privilege. This seems to be the most appealing of the arguments based on fairness, but it does not seem to us sufficient to overcome the inequitable distribution of the tax burden among married couples which exists under the present law. Moreover,

the gift tax was hardly intended to encourage gifts; if anything, it was intended to discourage gifts by exacting a cost for making them. The gift tax is designed to prevent escape from death duties, and is in large part a corollary of the estate tax. It is true that many husbands have made gifts to their wives and paid substantial gift taxes in order to reduce not only death duties, but income taxes as well. This, of course, was perfectly legitimate. However, we do not see why an individual by paying a gift tax (and thus saving death duties) should acquire a vested right to have his family's income tax reduced. Even under existing law a taxpayer who has made a gift to a member of his family, and paid gift tax thereon, may find himself taxed on the income from the gift property. See, for example, Helvering v. Clifford, 309 U.S. 331 (1940) and Helvering v. Horst, 311 U.S. 112 (1940).

2. Professor Griswold argues that married persons have obligations which are not shared by many single persons, and he suggests that if no other way can be found to raise \$300,000,000, a further general increase in rates would be preferable to singling out a portion of the community and imposing a discriminating tax against its members. While married persons have obligations which are not shared by many single persons they also have certain privileges which are not enjoyed by many single persons. It is true that some of these privileges are wholly imponderable, but others are more tangible. For instance, a married couple is not likely to pay twice as much for rent and certain other living expenses as two unmarried individuals not living together. Moreover, assuming the necessity of realizing the revenue dependent upon the joint returns provision, the vast majority of married couples will pay less tax under a joint return requirement than they would if separate returns were permitted. The report of the Ways and Means Committee on the proposed new measure contains

tables showing that only six per cent of the married couples filing income tax returns file separate returns, and that the remaining ninety-four per cent will be obliged to pay higher taxes in order to make up the revenue lost by allowing the six per cent to file separate returns. Thus, if the family income amounts to \$10,000, all of it being earned by the husband, the tax would have to be \$1628 if separate returns were permitted, whereas it would amount to only \$1166 if joint returns are required. The discrimination which Professor Griswold complains of between married couples and unmarried individuals would thus be supplanted - if the joint return requirement is dropped - by a highly inequitable discrimination between couples where the income stems altogether or almost altogether from the husband and couples where the wife contributes a substantial part of the income. As indicated above, this last group comprises only six per cent of all married couples filing income tax returns, and we cannot see, on grounds of fairness or any other grounds, why this relatively small group should enjoy tax privileges which will react detrimentally to the great majority. As pointed out by the Ways and Means Committee, a husband whose wife enjoys an independent income may as a practical matter be thereby relieved from sufficient familial burdens to increase materially his ability to support the Government. For example, a husband in such a position is not under the same practical burden to provide life insurance as the husband whose wife has no independent income.

3. Finally, Professor Griswold suggests that what the Treasury may be aiming for is not really joint returns, but the elimination of the discrimination in favor of residents of the nine community property states. In such states the husband is taxed on only half of his earnings. The other half

is taxable to the wife, and by filing separate returns husband and wife - and thus the family economic unit - obtain the benefit of the lower bracket rates. (Incidentally, a general increase in rates, the alternative suggested by Professor Griswold, would aggravate this discrimination.) He further suggests that those who oppose compulsory joint returns should consider the possibility of turning the attack so that it will come to bear against the community property discrimination. We are certainly with Professor Griswold in his objection to the discriminations involved in the community property system, but to our mind the problem is broader than the elimination of this discrimination. There should also be eliminated the discrimination against families where all the income is earned by the husband. If each of two families has a \$10,000 income, each family is likely to spend the same amount for rent, food, education of children, etc., whether the income is earned wholly by the husband or whether it is earned in part by the husband and in part by the wife, or results in part from investments by the wife. In other words, each family is likely to maintain the same standard of living regardless of the source of income. This being so, why should there be a differential in the tax burden of the two families? Other countries, notably Great Britain, realistically consider husband and wife as a taxable unit, and the citizens of such countries have not considered themselves outraged by such treatment.

Tax laws must be practical and can hardly ever achieve the ideal of perfect equality. They cannot take into account all of the personal obligations and hardships burdening each particular individual. Inequalities should, of course, be kept at a minimum, but where we cannot achieve perfect equality, and must choose between inequalities, is it not the better part of wisdom to

accept an inequality affecting the few rather than the many?

Randolph E. Paul  
Harry J. Rudick

P.S. In today's Times there is an excerpt from a letter by Dr. Nicholas Murray Butler opposing joint returns. In support of his position Dr. Butler praises the British tax system, but fails to mention the fact that the British have required joint returns since 1914.

LORD, DAY & LORD

25 BROADWAY

NEW YORK  
CUNARD BUILDING

LUCIUS H. BEERS  
HENRY DE FOREST BALDWIN  
FRANKLIN B. LORD  
ALLAN B. A. BRADLEY  
ALLEN EVARTS FOSTER  
GEORGE DE FOREST LORD  
PARKER MCCOLLESTER  
RANDOLPH E. PAUL  
SHERMAN BALDWIN  
JOHN H. VINCENT  
JAMES S. HEMINGWAY  
HERBERT BROWNELL, JR.  
THOMAS F. DALY  
HARRY J. RUDICK

CABLE ADDRESS  
LORDATTY  
NEW YORK

WASHINGTON OFFICE  
SOUTHERN BUILDING

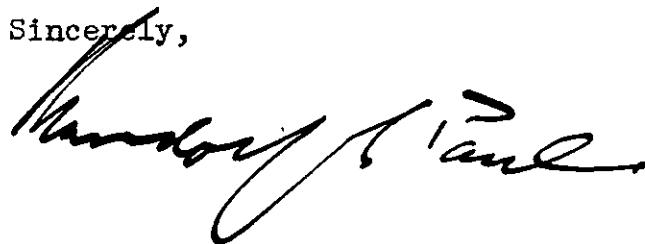
August 19, 1941

Mr. M. S. Eccles  
Chairman, Board of Governors  
Federal Reserve System  
Washington, D. C.

Dear Marriner:

Thank you for the comments in your letter of the 18th. Since you were so interested in the subject, I enclose herewith also a copy of a letter of recent vintage from Harry Rudick to Senator George. I am in agreement with the letter. Griswold has expressed his tentative dissent and we are trying to convert him.

Sincerely,



REP:T encl.

August 18, 1941.

Mr. Randolph E. Paul,  
25 Broadway,  
New York City, New York.

Dear Randolph:

I want to thank you for sending to me a copy of the letter you and Harry Rudick sent to the Editor of the New York Times as a reply to Professor Griswold on "Compulsory Joint Income Tax Returns".

I found it intensely interesting and a very powerful argument. I am in full sympathy with your ideas.

I have taken the liberty of having copies made of the letter and am distributing them here.

With kindest regards,

Sincerely yours,

MSE  
VE



August 18, 1941.

Governor Ransom

Chairman Eccles

Randolph Paul, who is one of our New York directors, sent to me a copy of a letter which he and Harry Rudick sent to the Editor of the New York Times in reply to a letter from Professor Griswold published in that newspaper. It is such an effective argument for "Compulsory Joint Income Tax Returns", that I thought you would like to read it in case you had not already seen it. I am, therefore, enclosing a copy herewith.

---

August 18, 1941.

Dear John:

Randolph Paul sent to me a copy of a letter which he and Harry Rudick sent to the Editor of the New York Times in reply to a letter from Professor Griswold published in that newspaper. It is such an effective argument for "Compulsory Joint Income Tax Returns", that I thought you would like to read it in case you had not already seen it. I am, therefore, enclosing a copy herewith.

Sincerely yours,

Mr. John L. Sullivan,  
Assistant Secretary of the Treasury,  
Washington, D. C.

August 18, 1941.

Dear E. G.:

Randolph Paul sent to me a copy of a letter which he and Harry Rudick sent to the Editor of the New York Times in reply to a letter from Professor Griswold published in that newspaper.

Knowing your interest in this subject, I thought you might be interested in what seems to me to be a most formidable argument in favor of joint returns. Whether we personally like it or not, I must admit it is difficult to make a strong argument against it.

With kindest regards,

Sincerely yours,

Mr. E. G. Bennett,  
c/o First Security Corporation,  
Ogden, Utah.

LORD, DAY & LORD  
25 BROADWAY  
NEW YORK  
CUNARD BUILDING

LUCIUS H. BEERS  
HENRY DE FOREST BALDWIN  
FRANKLIN B. LORD  
ALLAN B. A. BRADLEY  
ALLEN EVARTS FOSTER  
GEORGE DE FOREST LORD  
PARKER MC COLLESTER  
RANDOLPH E. PAUL  
SHERMAN BALDWIN  
JOHN H. VINCENT  
JAMES S. HENNINGWAY  
HERBERT BROWNELL, JR.  
THOMAS F. DALY  
HARRY J. RUDICK

CABLE ADDRESS  
LORDATTY  
NEW YORK

WASHINGTON OFFICE  
SOUTHERN BUILDING

August 7, 1941.

Honorable Walter F. George  
Chairman, Senate Finance Committee  
Washington, D. C.

Sir:

While the House Ways and Means Committee was considering the 1941 Revenue Act, I wrote to Chairman Doughton supporting his stand with respect to mandatory joint income tax returns from husbands and wives. Mr. Doughton read my letter into the Congressional Record and it may have come to your attention. The House has defeated the compulsory joint return requirement. To my mind its defeat was due, first, to the concentrated opposition of the representatives from the community property states who were, of course, not disinterested since the present system affords their citizens an unfair advantage over the taxpayers of the rest of the country, and, second, to a lack of realization on the part of representatives from the other states that in opposing the joint return requirement, they were acting to the detriment of the great majority of their constituents. With few exceptions, the newspapers, even those in non-community property states, have given an inordinate amount of space to arguments against the measure and have ignored the arguments supporting it, with the result that most people probably think

Honorable Walter F. George - 2.

August 7, 1941.

that compulsory joint returns would increase their income tax bill, whereas in fact the requirement would reduce the tax for the vast majority of them. This assumes, of course, that the revenue lost by elimination of the joint return requirement must be recouped by way of higher rates and lower exemptions.

Because of the misinformation with which the public has been fed, the joint return requirement may not now be politically palatable. Nevertheless, I hope your Committee will recommend it. However, if your Committee is disinclined to restore the stricken requirement, may I suggest an alternative. What I have in mind is the enactment of a provision which the House passed as part of the 1921 Revenue Act, and which was also recommended by the Senate Finance Committee, but which, unfortunately, was eliminated on the floor of the Senate. This provision - part of Section 213(a) of the 1921 Act as reported by the Senate Finance Committee - read as follows:

"Income received by any marital community shall be included in the gross income of the spouse having the management and control of such community property, and shall be taxed as the income of such spouse."

The enactment of such a provision would not, of course, eliminate the present inequitable distribution of the tax burden between families where the husband is the sole source of the family income and those where the wife contributes. But it would obliterate the even more inequitable tax differential between citizens of the

Honorable Walter F. George - 3.

August 7, 1941.

community property states and those of the non-community property states. Moreover, such a provision would not be subject to attack on the anemic moral grounds which were set up in opposition to the mandatory joint return provision.

I have given some thought to the provision which was apparently suggested by Representative Dingell of Michigan, to wit: An amendment of the income tax law which would throw open to the married couples of the non-community property states the privilege of splitting their income, which is now enjoyed by married couples in the community property states. This, it is true, would treat all families throughout the country uniformly and would eliminate the unfair discrimination between families. It is defective, however, in that it would unduly increase the tax burden of the unmarried.

I think nearly all will agree that there is no persuasive reason why a husband who earns a salary in New York should pay a higher federal income tax than a husband who earns the same salary in California. The provision I have suggested above would eliminate this inexcusable disparity. Although the attempt to enact it failed in 1921, I think there would now be a substantial chance of success because of the fact that the attention of the country at large has been focused on the matter.

As I am Chairman of the Committee on Taxation of the Association of the Bar of the City of New York, I add that the views expressed herein are my own and not necessarily those of

Honorable Walter F. George - 4.

August 7, 1941.

the Committee.

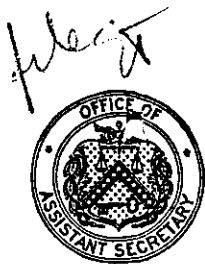
For your convenience, I enclose herewith a copy of my letter to Chairman Doughton, also a copy of a letter which my partner, Randolph E. Paul, and I jointly addressed to the New York Times, but which the Times did not print.

HJR:C

Respectfully,

Enclosures

HARRY J. HUDICK



TREASURY DEPARTMENT

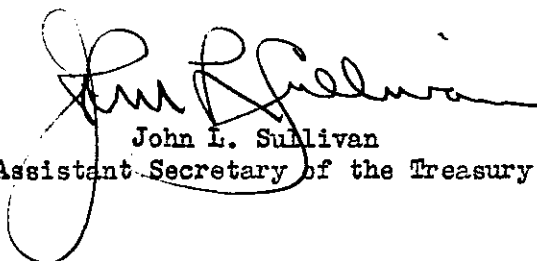
WASHINGTON

SEP 3 1941

Dear Marriner:

Thank you for sending me a copy of the letter which Randolph Paul and Harry Rudick sent to the Editor of the New York Times with respect to compulsory joint returns. I was especially pleased to read what they had written on the subject.

Sincerely yours,



John L. Sullivan  
Assistant Secretary of the Treasury

Honorable Marriner S. Eccles  
Chairman, Board of Governors  
Federal Reserve System  
Washington, D. C.