

On Tax—Tom Brennan of Harvard Law School

Len Teti: Welcome to On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City.

On each episode of On Tax, I talk to professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

Today, we're joined by professor Tom Brennan. Tom is the Stanley S. Surrey Professor of Law at Harvard Law School. Tom, thanks for joining us. Welcome to the podcast.

Tom Brennan: Thank you very much, Len. It's a pleasure to be here.

Len: It's great to have you, Tom. You were a Cravath associate in the years before I joined. So, I've heard about you a lot over the years but never actually had the chance to sit down and have a long conversation with you. So, I appreciate this.

Preparing for today's podcast, Tom, I noted that you have a bachelor's degree in math from Princeton. And I went to Princeton a few years after you, and I know that that's a big deal. It's a small department and a very elite one. Then a master's and a Ph.D. in math from Harvard—that's all before you went to Harvard Law School for your J.D. So, it's clear to me that you've come to the tax field from a math perspective, or at least that's my assumption. But tell me about how you entered this field?

Tom: Yes, so my background is a bit mathematical for sure. And my original training is as a mathematician. But they started off as disjoint, my math training and my law training. I went through graduate school in mathematics and was planning to be a pure mathematician.

And then I went to law school thereafter for a variety of reasons. I come from a family of lawyers. My father and mother's father were lawyers—not tax lawyers, but lawyers—and they were in practice together. And as I grew up, I knew about the law, and it was always something I had thought about pursuing.

And at the end of college, I had applied to both math programs and then J.D. programs. And so I was back and forth between the two possibilities for some time. I've always loved, and still continue to love, math very much, but now I love tax as well.

Len: Was it during law school that you started taking tax classes? How did that happen?

Tom: Yes. So, when I got to law school, I had no knowledge of tax law other than having filed my own taxes. I took my first tax class at the beginning of my 2L year. My father had told me one should take a tax class. And I wandered into Bill Andrews's tax class, and it was just fantastic. And I took as many courses from Bill as I could thereafter, and as many other tax courses as I could. That was my 2L year.

And in the summer between 2L and 3L, I was very fortunate to be able to be a summer associate at Cravath, and even more fortunate to be able to work with Mike Schler. And by the end of that summer, I was like, "OK, absolutely, I have to do tax." It was just fantastic.

Len: So, Mike was a guest in the last season of the podcast and he came from a mathematical background as well, as I recall. Tell me what you remember about being a summer associate working with Mike. What sorts of things were you doing with him? And I can only imagine the conversations that the two of you had together.

Tom: Yeah, certainly. It was clear that he understood math wonderfully, but the things that would strike me about him were all the other things that he could do. I mean, the way he wrote was just beautiful and I was like, "Oh, I hope one day I can aspire to do a fraction of what he can do in terms of writing."

And the way he would think and analyze, it was just such a remarkable learning experience listening to him talk on a conference call and work through problems and figure out how he could help to get to a better tax result or figure out what tax traps there might be. It was just nonstop, constant learning along a whole bunch of different margins.

I just remember it as being extremely positive, and he was so generous with his time—just a really great mentor. So, it was a fantastic experience for many reasons, in addition to just the pure tax law.

Len: Well, I'm sure you know that everybody who worked with Mike has similar experiences and stories, for sure. So, you go back to Harvard as a third-year law student, and at this point you must have a lot of confidence in your interest in tax. You must know that that's going to be where you start your career at Cravath and in the tax group.

When you came back to the Firm, as a first-year associate, do you remember having an ambition then to go into academia, or was your plan to try being a practicing lawyer and see where that led?

Tom: I had no ambition at all to be a law professor. I didn't think they would have me, because I pictured that law professors were all experts on constitutional law and important things like that. And I didn't really imagine that there was a role for people who did tax or business or transactional type work.

Of course, now, I know better. And I'm extremely grateful that there is a role for people in those fields, but I didn't imagine that that was something I could do. I had always loved teaching and research as a mathematician. And once I found out that this was something that might be possible, I definitely was excited to pursue this direction. But when I started work, my plan was to have a career as a lawyer in practice.

Len: So, after law school, I'm guessing that you're sort of moving to New York for the first time. Tell us a little bit about what you remember about that fall.

Tom: Yeah, it was my first time living permanently as opposed to just a summer in the city, but I had lived two summers there. I was focused on a lot of details of tax law. I always found, and I tell my students, that there's no learning like learning in practice because it's urgent and you're focused. And you really learn very well.

I remember one series of very late nights in the Cravath tax library, learning the OID rules and what they really meant and how exactly to use them. It was something that I had come across in law school but only at a superficial level. But I knew for certain things I was working on, I needed to understand them well. And with the BNA Tax Management Portfolio, I went through every detail about how exactly they worked. That's a very pleasant memory, which says something about me.

I also remember one time Mike brought in this huge binder—it might have been multiple binders—to my desk one evening. And he said, "Check and make sure that this is debt rather than equity." And I had to figure it out. He was pretty sure what the answer was, but it made what was an abstract question in law school very concrete. And I had to figure out how does one go about making this sort of theoretical distinction in practical terms? And that was just fantastic. There were many experiences like that.

There were also the experiences of getting to learn from your fellow associates. So, I was very fortunate to have as an officemate Lauren Angelilli. And so, I would frequently turn around and say: "What do I do with this? How do I figure out this problem?" And she always had the best advice in the world.

Len: Lauren is now, of course, the Head of the Tax Department and five years senior to me at the Firm. But you must have been a second-year associate when you were her officemate.

Tom: Exactly. But she was already wise, far beyond the stage of a typical second-year associate. There was just learning in all directions, learning from the partners, learning from the people who were more at your level, learning on your own in the library. And all connected to what were, in most cases, urgent, pressing client matters. And so, you learn very well and very quickly. And that was a great experience.

Len: You've touched on an aspect of tax that we really haven't explored that much on the podcast, which is it's a very technical specialty, of course, and it requires a lot of learning, a lot of intellectual thoughtfulness and research and experience.

But, especially at a place like Cravath, it also requires very quick turnaround from this technical stuff to practical applications. We've talked a lot on the podcast about communicating technical stuff, but it's a slightly different skill to maneuver between a technical nimbleness and a practical application of that.

You're now in academia, where I imagine you get to spend a lot of time sort of thinking about the technical thing. But I wonder if you can comment on that experience of having to be very technical in one minute and then having to be very practical in another. It's discomfoting for some people, and it takes some experience to learn that skill.

Tom: Yes, I agree completely. And it's challenging and not completely natural. In terms of communicating, once you apply the technical to the practical, that has elements similar to teaching, I find. And so, that was not so foreign to me.

But the applying of abstract technical results and theory to, "Here's the practical problem that I have the documents right in front of me, and how am I going to figure out what exactly should happen?" I think I probably learned the most there of how to make that sort of connection. And it's something that is probably best learned in practice.

Len: So, how many years did you spend at Cravath?

Tom: Not including the summer, about a year and a half. So, fall of 2001 to late spring of 2003.

Len: Can you tell us a little bit about how you started thinking about leaving the Firm, what your options were at that point in your career and what your goals were by then, and how you decided to make a switch?

Tom: Yeah, so my switch came unexpectedly in many ways. My story deals with institutions but also lots of individuals. And a good friend was working at Goldman and happened to know of my tax background and also my math background, and said that there would be interest in my sending my resume to them.

And there was a group there that was well suited to the things that I knew and the things that I might be good at doing. And after I began a conversation with them, it seemed like a move might let me do things that would leverage both my law background and my mathematical background, even more than I would be able to do in traditional law practice.

And so, that was the path that led me out of practice of law, but it wasn't something that I had planned. It happened sort of serendipitously that somebody who knew me and knew what Goldman had in terms of needs connected us, and the conversation happened.

Len: Tell me about your experience there. Did you kind of get what you bargained for when you made that jump, and how long did you do that?

Tom: Yes, so, absolutely. I found that I learned there incredibly in a different dimension than I was learning in tax practice. I learned how to tear apart financials of an organization top to bottom, figure out what made it tick and then see what sort of products could be sold in order to enhance the performance, both in terms of accounting and in terms of economics for an institution.

So, I was there for just over two years, and I had an extremely good experience in terms of everything that I learned and was able to do.

Len: So, this must only be sort of 2005 or early 2006 at this point. This is about the time when I entered as a first-year associate at Cravath. What was your next step?

Tom: Right. So, the next step was perhaps unexpected, but life evolves sometimes in unexpected ways—unexpected but good. So, my girlfriend at the time had been going to move to the New York area. She was just finishing her medical residency and was going to start medical practice.

And then her plans changed and she moved to the Boston area to start her medical practice. So, in May of 2005, I moved out of the New York area and to Boston. So, I left Goldman and sought new employment in Boston. I moved to Boston without a job.

Len: Was it scary, or was it just where you were in life at the moment?

Tom: It was terrifying. A good friend of mine described it at the time as “swinging without a net.” And indeed, I was swinging without a net, but sometimes those are the right moves to make.

So, I moved to Boston and I had the thought in mind of maybe I could be an academic. I still didn’t imagine that a law school would hire me. So, I applied to finance departments and also law schools to see if they had anything I could teach in the upcoming fall semester of 2005.

The schools uniformly, except for one, wrote back to me or didn’t write back to me, and said no or implied no. And so, here I am in Boston, just having quit my job at Goldman Sachs, in an apartment I’ve got to pay rent on every month and no jobs.

And then thank heavens, a wonderful person named Andrew Lo, who’s at Sloan at MIT, responded to an email I had sent him and said: “You sound like an interesting person to talk to. Let’s have a conversation.”

And things worked out incredibly. He was able to arrange for me to get a position as a visiting scholar at Sloan. And I was able to begin doing finance research with him for the next two years and get my legs under me as an academic again.

Len: Now, let’s stop right here. Let me just observe something because we’ve already established you have a bachelor’s degree in math from Princeton. You’ve got three advanced degrees at Harvard, including a law degree. You’ve got Cravath on your resume, you’ve got Goldman Sachs on your resume. And still you go to Boston and you have this experience of being told no.

And then by serendipity, you get one nibble and somebody who is willing to meet you and then kind of professionally adopt you into a two-year research program. I think it’s a really good lesson for listeners, for young law students out there, to understand that, yes, there’s a lot of hard work involved. Yes, there’s a lot of credential-enhancing that one needs to do in this world.

But even professor Tom Brennan with amazing credentials out of these schools and professional service firms endures some professional adversity and gets some professional good fortune. And I think we all need to recognize the mix of hard work and dedication and personal effort, but also, the effort of others and reflect on gratitude and good fortune.

So, I’m sure that’s the message you intend to be sort of suggesting, but I think it’s worth really focusing on.

Tom: Yes, I couldn’t agree more, Len—everything you just said. Perseverance is necessary. No matter how well you’re doing it, how hard you try, things won’t always work out, but sometimes they will. And sometimes it will be just luck, but oftentimes, it will be kindness and support from good people—in this case, certainly, Andrew Lo. And also, as I found out years later, my Ph.D. advisor happened to know Andrew Lo and happened to put in a good word for me.

Len: There you go.

Tom: And I was totally unaware of it at the time, but it’s been much more often than once that good people behind the scenes have had wonderfully positive impacts in my life. And I’m incredibly grateful for all the help so many have given.

Len: That's remarkable. OK. So, tell us about this two-year research assistant assignment. What did you experience during that time?

Tom: Yeah, so it was a great experience. Professor Lo and I worked on several different projects. One of them, we proved that mathematically the CAPM, the Capital Asset Pricing Model, almost certainly can't be right in a sort of a very precise way and under all sorts of conditions. That became a lead article in *Management Science*, a couple years later.

We also embarked on a research agenda that talked about how certain behaviors that people manifest in terms of their risk tolerance and what risks they're willing to take—that might seem suboptimal when you look at the individual level can actually be optimal when you look at the population level.

And so, when you think that people are evolved to further the population, rather than a single individual, this can explain why some sort of odd behaviors come up in how people manage risks—maybe even managing risks with respect to financial investment, for example.

So, much work and many papers came out of that. And also, thanks to a good word from professor Lo, I was able to get time teaching Investments at Boston University's business school in the evenings for those two years. So, I got extra teaching experience in finance as well.

And just to round out the story, at the end of my time there, I got engaged to the person who had been my girlfriend. And so, that story worked out well, too.

Len: That's great. So, that's kind of a two-year transition period professionally and personally. Now, I don't know for a fact, but I'm going to guess that the next part of the story has to be that you applied again for sort of jobs in the teaching sphere, and this time you had your pick of some good options. Is that right?

Tom: That's right. So, I applied first to finance jobs, to be a professor in a finance department. And then, because I thought it was good to try to keep options open, I added on applications to law schools to see if I could be a law professor. I still didn't really believe a law school would hire me.

It turned out that law schools expressed more interest than I had imagined, and I was able to get some offers I did not really expect. I don't look like the typical person applying for a law professor job. I'd been doing finance and I have this math Ph.D., and no one knew quite what to make of me. And my research was not really strictly legal, but there was interest.

And I remember one person at one school said quite wisely—he said, "You're either going to place really high or really low on the law faculty market because people have no idea what to do with you, and there's high variance."

So, my first job was at Drexel's law school, which was brand new. I was there in its second year, and I was the whole tax department, which terrified me, but it was a fantastic experience. The students were entrepreneurial, of goodwill, hardworking. The faculty was all just engaged and hardworking.

So, Drexel was a fantastic place to be, and it was very close to Penn's Law School. And more people that I have to be extremely thankful for are the people there, the tax people: Michael Knoll, and Reed Shuldiner, and Chris Sanchirico. They took me under their wing and said: "Come to our seminars, and we'll introduce you to the tax community. We'll help you figure out how to be a tax professor."

I met someone from Northwestern, Nancy Staudt, who was giving a talk at Penn. We got to talking at dinner. She said, "Oh, you're a tax guy who has a math Ph.D., send me your resume and stuff."

Len: More serendipity, right?

Tom: More serendipity, facilitated by very kind people who are a great help to me. And two months later, I had a job offer from Northwestern and I moved a few months after that, right after the marriage, which happened a few months in the middle.

Len: Wow. And at Northwestern, now you're a full-fledged tax professor where your background has been embraced. This is the high variance you were talking about.

Tom: That's right.

Len: They're attracted to you as a professional and as a professor because of your experience and the direction from which you came into the tax field. So, what did they have you teaching at Northwestern?

Tom: Well, so interestingly, sometimes curricular needs trump everything. So, I began teaching Contracts. That was my first course. And what they said is in the summer, "We need you to teach Contracts." And I said, "Of course, I'm glad to teach Contracts," which I was.

So, I taught Contracts. I also of course taught basic tax, also a seminar in tax and finance and strategy. So, I taught a variety of tax courses, but Contracts was the very first thing.

Len: Well, so at this point, you're kind of making your own luck. You're now at a top law school. You're at panels all the time. You have opportunities to see other professors and other representatives of law schools come through, and you're making professional connections now that are much more typical. So, it's just got to be a very rich experience at this point.

Tom: Oh, absolutely. I was just delighted. I couldn't ask for anything better. It was fantastic colleagues, fantastic connections, and I could just build my research agenda more and more. And the students were just wonderful to teach, of course. So, I finally ended that thing that began swinging without a net to get to a place that was just fabulous to be.

Len: So, at this point, you really have a good foundation for this part of your career. How are you thinking about growing your professional profile, your research interests, your personal ambition for your professional life?

Tom: So, I've been trying the whole while I've been a legal academic to try to figure out where I can add the most value, do things that are sort of uniquely strengths of mine. And the way that I think I can do it best is to sort of take what I know from finance, particularly in the theory and the asset pricing, and combine it with what I know about the details of the tax law, so that you can understand better what a law is doing—what the rules that are stated clearly, but it might not be clear what the economic impact is, what exactly they're doing.

And then once you know what they're doing, how you might want to say, "Well, maybe we should re-craft it some other way." So, it's both figuring out how exactly the rules actually work in terms of financial and economic impact, and how you might get to a better tax system. And so, that's what I was doing when I got to Northwestern. That's what I've tried to build on since, and that's what I'm still doing.

Len: And eventually, you change law schools and you end up at Harvard. How did that come about?

Tom: Oh so, in some ways, everyone's always presenting their work and people are always evaluating it and trying to figure out when there's hiring needed at institutions who you might want to hire and who might be a good fit.

I was very fortunate to have people notice my work and think that there were good things about it. And it was spring of 2014 when I visited at Columbia Law School and taught there for a semester. And, at the same time, took the train back and forth from New York to Boston and did a mini-visit at Harvard Law School. And so, you get to know the faculties at both schools, and they get to know you, and you get to present your work and try to figure out what might be possible. And I was very grateful that Harvard made me an offer and I was able to come here. To go to the school where you were a student is incredibly intimidating: "I don't belong here, I feel like, at least not in this capacity." And to have an office near the people who taught me, it's a dream, a very good dream come true. But yeah, it still feels surreal.

Len: This summer at Cravath, we have several of your students in our Tax Department as summer associates. They rave about their experience in your class.

Tom: Oh, that's very kind.

Len: It's not the first summer where that's been the case. I mean, now, every summer we frequently have a couple of students who've taken your courses.

Can you talk about the experience, which I gather is a relatively new experience, of encouraging very bright law students to think about a career in the tax field, number one. And then those who have expressed that interest, pointing them towards law firms or other professional positions?

Tell me about that experience, because it's clear to me that the people who have talked to you about these kinds of things are really benefiting from your advice and mentorship in this area.

Tom: Thank you. I mean, that's just wonderful to hear. And my perspective on it is that I'm very fortunate to be able to get to talk to these excellent, just fantastic students. And by the time they're talking to me about tax, they've already had at least some of a course. Or maybe if they're in an advanced course, they've had more than a course and they already know that tax resonates a bit with them, or that they think they have an interest in it.

And I'm so glad to be able to tell them that, "Yes, this seems like it's something that you're interested in. It's something really to pursue because it's intellectually rich and satisfying. And the people who are in this field are good people, and you'll have great colleagues. You'll have great work. You'll have great things to think about."

And there are other fields where that's true too, of course, but this is one that I know about. And I can tell them firsthand that depending upon which of my several things had worked out, if I had been a practicing lawyer my entire career doing tax, I would be very satisfied and very fulfilled. If I had stayed at an investment bank doing tax-inflected finance work, I would've been very satisfied and fulfilled. And if I'm a professor, I would be very satisfied and fulfilled as well.

The sorts of things that you get to think about, and the puzzles you get to solve, and the neat little ideas that you get to have is just a very rich and fulfilling way to spend your career if you find that kind of stuff interesting. But if you do, it's just fantastic.

Len: This brings me to a question I've been wondering about as I was preparing for our talk. On a lot of our episodes, I have asked guests, "What do you think the best tax lawyers do well?" And there've been some different answers to that. And there's also been some consistent themes.

Slightly different question I was wondering about for you: When you see a tax student who has particular aptitude, how does that aptitude reveal itself to you? What are the markers of that?

Tom: Yeah, that's a wonderful question. I don't have a single answer to it. There are obviously students who are incredibly well prepared and can answer all the questions in class, and they're fantastic.

There are a couple of students who will ask questions that you've never thought of before and that are really surprising. And maybe there are even questions that "No, no, no, that's not the right way to think about it. But it's really neat that you had that idea and that can lead to a lot more things."

And when somebody knows that the material's interesting and knows that they want to think more about it, and then is open to thinking about new and different ideas about it and explain it in their own head. Then you say, "Ah, yeah, they're going to do really good stuff."

Len: Yeah, I bet. So, in the few minutes we have left, Tom, I'd like to talk to you about non-tax stuff. What are your hobbies? How do you like to spend time outside of the law?

Tom: Oh, sure. Well, my wife and I have three young sons and we're mostly with them. We go exploring a lot with them, seeing new things, going on walks in the woods and hiking. So, that occupies a lot of my non-work hours.

If I had a hobby from before they were born and that I'll have in the future, I do a lot of genealogy work, too. All my ancestors came from Ireland and worked in coal mines and stuff like that. And so, I like to piece together what the past looked like and what people did and the generations before.

Len: I'm picturing it. It's not unlike drawing structure charts for complicated sort of corporate families. Sort of designing your family tree. How do you do that? Do you do that mostly online? Have you made trips to Ireland and old town halls and church files?

Tom: Well, I started it and did most of it back 20 years ago, and I would go to the microfilm archives in the U.S. and write for some records from Ireland.

Nowadays, you can do so much online than then. Now, you can read all the old newspapers and everything else. So, I've been able to put together richer pictures of people from obituaries and things like that, that you can find in the newspapers.

But I'm sure there's more you can do with modern technology that I just am not up on because I've been away from it for the past five to 10 years or so. But yeah, someday a trip to Ireland would be nice to go and see—like I know a church where one set of great-great-grandparents were married. I know a spot in a town where a house that another set of great-great-great-grandparents lived in was. And so, I'd like to see those someday.

Len: Have any of your boys expressed an interest in hearing about this from you or not quite yet?

Tom: I have told them various stories, and they are very kind to listen to those stories, but they're still pretty young. The twins are the oldest and they just turned 10. So, maybe in a few years, they'll be more interested to hear the details.

Len: I see. Well, Tom Brennan, the Stanley S. Surrey Professor of Law at Harvard Law School and a Cravath alumnus himself, it's been a pleasure to speak with you today. Thank you for joining us.

Tom: Thank you so much, Len. It was just delightful to be here. I really appreciate the opportunity.

Len: That's all for this episode of On Tax—A Cravath Podcast. You can find us online at cravath.com/podcast, and don't forget to subscribe on Apple Podcasts, Google Podcasts or Spotify.

If you enjoy the show, please consider rating or reviewing us wherever you listen. We'd also love to hear from you directly. You can tell us what you'd like to hear on the show by emailing podcast@cravath.com.

I'm your host, Len Teti—thanks for listening.