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## Forward: Paul Bator: Legislative and Administrative Courts Under Article III Symposium

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## Foreword

PATRICK L. BAUDE\*

Speaking at a commemoration of Paul Bator's life and work in May of 1989, Richard Stewart said: "The publication of his last works will confirm and enlarge his contributions to scholarship."<sup>1</sup> This issue of the *Indiana Law Journal* provides one opportunity to judge that observation. Professor Bator delivered the Addison C. Harris lectures in Bloomington in October of 1986. We who heard the lectures can attest, as could anyone who ever heard Paul Bator lecture on any subject, that his words could have been transcribed verbatim and simply published as a characteristically elegant, balanced and insightful essay. But those were not the author's standards for his own writings. His own standard was perfection and it was with that goal that he continued to work on the manuscript while his health permitted. The week before his death in February, 1989, Bator wrote to Charles Fried, "I haven't had the energy to do anything about the Article III piece. I hope to next week. If I don't, after I'm gone, it can be printed pretty much as is, with just cites added, don't you think?"<sup>2</sup> With Professor Fried's support and advice, here is "the Article III piece."

The editors have added as little as possible to the manuscript. In its original form, the manuscript contained no footnotes. When a citation seemed both necessary and unmistakable, the editors have added it. Changes in the text have been sparing and either at the suggestion of or with approval from Charles Fried. There is, however, one major addition to the manuscript. Professor Fried asked the *Journal* to append a section of Paul Bator's brief written on behalf of the Sentencing Commission for the United States Supreme Court in *Mistretta v. United States*.<sup>3</sup> The deep separation-of-powers issue in *Mistretta* is also central to Bator's thesis in the Harris lectures—one can read the appendix and see a marvelous continuity between the effective advocate and the constitutional theorist. Of course *Mistretta* was no ordinary case: As Paul Freund recently said, "[a] case could not have been more artfully designed for his talents and interests and philosophy."<sup>4</sup> Even so, this "is more than a brief; it is a vision . . ."<sup>5</sup> For me

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1. Remarks at a commemorative celebration of the life and work of Paul Bator, held at the Harvard Law School (May 25, 1989), reprinted in 41 HARV. L. BULL., Autumn, 1989, at 5, 7.

2. Quoted in Fried, *Paul Bator*, 56 U. CHI. L. REV. 419, 422 (1989).

3. 109 S. Ct. 647 (1989).

4. HARV. L. BULL., *supra* note 1, at 5.

5. Fried, *supra* note 2, at 420.

at least, and I suspect for most of us who were one way or another students of Professor Bator in the subject of federal courts, his work was inspiring in a special way. To him, the profession of the lawyer, the craft of the judge, the vocation of the scholar, were not always and permanently inconsistent worlds—reading his article together with his *Mistretta* brief shows how much those worlds can have in common.

As part of revising his manuscript, Professor Bator naturally circulated it to other scholars, who, as scholars do, responded critically. The author obviously did not pick his readers simply to agree with him. Each of the readers made suggestions directly to the author. At the request of Professor Fried and the *Journal*, Judge Easterbrook and Professors Kramer, Meltzer and Strauss agreed to revise and publish their comments along with Bator's article. These authors have not written for the purpose of praising Paul Bator (although of course they sometimes do); they have written for the more important purpose of discussing his ideas about article III. The result, we hope, is not a festschrift but an ongoing intellectual project.