1-1-1963

Loyola Digest

Loyola Law School Los Angeles

Repository Citation
Loyola Law School Los Angeles, "Loyola Digest" (1963). Loyola Digest. 18.
http://digitalcommons.lmu.edu/loyola_digest/18
Vol. 4—No. 2 LOYOLA UNIVERSITY SCHOOL OF LAW January, 1963

Alumni-Student Dance January 18

LOYOLA LAW SCHOOL ANNUAL DANCE will be held at the Sheraton-West Hotel, 2961 Wilshire Blvd, Hollywood, from 8:30 til 1:00 on Friday, January 18, with Verne Boyer and his orchestra playing for dancing in the Wedgewood and Regency rooms. Admission is free to all students, alumni, faculty and friends of the law school. No bids are necessary for admission.

In This Issue

Judicial Inefficiency 3
Not Tolerated
Justice T. C. Clark
Tax Planning of a Business Transaction 5
Donald W. Coven
To Kill or Not to Kill Thalidomide Babies
—Can Society Make a Choice? 6
Blackstone's Commentaries

APPOINT DEAN
J. Rex Dibble has been appointed dean of the Law School effective Dec. 15. Mr. Dibble has been acting dean since 1960 and now succeeds the late Sayre MacNeil as dean.

New Moot Court Rounds Begin

The Loyola Moot Court Committee has announced that preliminary rounds of oral argument in the Scott Moot Court Competition will be held on the first Saturdays of the Spring Semester. This year's problem is based on a federal aid to education statute. It has already been distributed and written briefs have been filed. The Legal Writing Professors are presently grading the briefs. The participants' performance in the orals will be determined by three judges with equal weight being given to the grades on the briefs.

The preliminary oral arguments will be held at the Law School, with the finals at the County Courthouse. Both are open to the public. Students

Law Wives

The activities of the Loyola Law Wives first fall season were well received and plans are now being formulated for the new semester. Many suggestions and ideas were discussed at a special meeting called by Mrs. John Goddard, president of the Lawyers' Wives of Los Angeles last October. The board members from U.C.L.A., U.S.C. & Loyola Law Schools attended this meeting at Mrs. Goddard's home in order to discuss our programs and projects for the coming year.

Our November meeting at the home of Mr. and Mrs. Joseph Powers was most interesting and enjoyable and we all extend our thanks to the Powers for their warm hospitality and for being our guest speakers.

Coffee and cookies were served to both the day and night law students on December 17th and this was a huge success thanks to Mrs. Charles Ibold and her committee. It was our "Christmas present" to the school, along with a tree which we decorated and placed by the front desk.

Our Legal Aid project for the fall semester was to collect toys and clothing for the nursery. We want to thank all the girls who donated to this worthy cause, and we received a wonderful surprise just before Christmas. Mr. Ross Guzzo, manager of the toy department of Sears, Roebuck & Co. in Torrance, donated approximately 135 toys to us for the nursery. These gifts were decorated and identified at a "gift wrapping party" at the home of Mrs. Samuel Meyerhoff, our Legal Aid chairman, on December 12th, and they were presented to the Legal Aid nursery just in time for Christmas.

—BARBARA SOLOMON

Employment Tips Offered to Seniors

Mr. Owen G. Fiore, Associate in Law on the Loyola Faculty, on December 10 and 12, conducted a seminar for the benefit of the class of '63 on proper approaches to securing employment after graduation.

Mr. Fiore pointed out the importance of providing the prospective employer with a thorough resume prior to the time of the interview. By so doing, he added, the party granting the interview has had the opportunity to become familiar with the qualifications of the candidate, and, can devote the interview to becoming personally acquainted and to raising additional questions about the applicant's qualifications and interests.

Mr. Fiore said that prospective employers are not impressed with an applicant who appears to be too ready to forego the kind of position he has said interests him; candor is apparently appreciated.

It was further stressed by Mr. Fiore that a measure of decorum should be maintained by the applicant during the interview despite the apparent casualness of the party conducting it. And a thank-you note for the time consumed in conducting the interview is something that is appreciated.

SENIOR BROCHURE

Senior Placement Brochures were distributed to alumni, seniors, local law firms and governmental agencies last month. The 2000 copies contained pictures and biographical sketches of the candidates for graduation in June of 1963. Senior Carl Lowthorp was in charge of this, the second annual senior brochure.
Now that tranquility has been restored to the political arena and the laurel wreaths have been pressed down upon the brows of the victors, sprigs of olive extended to the vanquished, the organism of government is functioning at an accelerated tempo, to make up for the time consumed in our competitive democracy, in measuring the fitness of the various candidates vying for public office. ... RAY ROBERTS, '48, chose the rough route to initiate a judicial career. He filed for a vacant spot in the Los Angeles Judicial District, as did not a few other aspirants to the eminence. He finished at the top of the list ... in the run-off it was the survival of the fittest. ... Ray won in a walk—as they say in practice—with an interest in field development, subdividing himself the mantle of judicial valor, an attractive stipend, and some sort of a first or a near first. ... Rarely, if ever, has it happened that the ascent to judicial eminence has been started by the vote of the electorate. ... A note from JUD TAYLOR, '42, on the letterhead of Western Air Lines is pretty good evidence that Jud is bringing a lot of law into his executive position and doing a whale of a job as a working Vice President. ... BILL JENNINGS is performing valiantly as general counsel of the corporation. ... Dickerman is ... after all, he's in Florida and a native in the bargain. ... JIM BRICE, '31, the first session of the Second Vatican Council. That this year the election developed into a popularity contest for the office of County Attorney. ... His success is now an interesting historical item. How could it be otherwise in the case of a man like CHARLIE RONAN, '39, 1, honest, competent, with sympathetic understanding, a dedicated public servant. ... After two years in office he became so thoroughly entrenched he couldn't be shaken loose from the job. ... The result was that this year the election developed into a popularity contest for Charlie and a rout for his opponent. ... JIM BRICE, '31, man-about-town when he's based in this area—Hollywood and Vine—is at the moment man-at-large and in an extravagant way. ... Reliable sources reveal he's covering the European capitals—Moscow not included. ... Right now he's heading for Rome where he'll complete his mission in time for the close of the first session of the Second Vatican Council.
JUDICIAL INEFFICIENCY NOT TOLERATED

JUSTICE TOM C. CLARK
Supreme Court of the United States

I take the liberty of the kind invitation of your editor, to say a few words about the Joint Committee for the Effective Administration of Justice. Not long ago, Dean Robert F. Drinan, S.J. of Boston College Law School said: "The oath of a lawyer means that he promises to society, calling God as his witness, that he will act as his client's fiduciary, in which capacity he is the trustee of the legal and moral legacy which belongs as of right to all those citizens whom he serves."

...How can the toleration of judicial inefficiency be squared with the solemn covenants which a lawyer has made with man, God and his own conscience? Judicial inefficiency not merely wastes the taxpayers' money, not only alienates the public from the bench and the bar but—far more importantly—the presence and the daily condonation of judicial inefficiency silences and corrupts the consciences of the judges, substantive challenges of the past and future. John Q. Public is apathetic until he gets caught up in the anachronistic machinery of the law and then he utters an understanding "curse on both your houses" to the lawyers and the judges.

Failure of Judges and Lawyers

The truth about it is that "the present dissatisfaction" with the administration of justice can be laid at the door of the judges and the lawyers themselves. They have failed to give substance to the preamble to the American Bar Association's "Canons of Ethics" wherein it is held to be the duty of the legal profession to promote the "absolute confidence" of the public "in the integrity and impartiality" of the administration of justice.

I hasten to add that many judges, lawyers and law schools have now hit the trail and are showing a revival of interest in judicial improvement. In truth, there has been much hard work done and considerable progress made on the appellate level. And, in the federal system, much has been accomplished toward the modernization of the judicial process. Interest in the state courts of general jurisdiction has apparently been accentuated of late because of the backlog of cases which has congested the dockets of the metropolitan courts.

It might be said that the present revival started back in 1957 with the organization within the judge's section of the American Bar Association of the "National Conference of State Trial Judges." Emphasis, however, has certainly been forthcoming from the universities, the bar, the state bar associations, the American Judicature Society, the American Bar Foundation, and other cooperating organizations. The Association of American Law Schools is a valued member of the Joint Committee.

Aimed at State Trial Courts

The purpose of the program, which has been dubbed "Project Effective Justice," is to bring about more effective justice through improvements in the judicial system. It is centered at the state trial courts. The Joint Committee brings together into one massive operation the former duplicative efforts of the various organizations in the field. Some seventeen organizations—all working on judicial administration projects—have banded themselves together into the Joint Committee to carry on an all-out effort to solve the problems now confronting the effective administration of justice.

The Joint Committee drew on the national experience by enlisting, as Committee members, distinguished trial and appellate judges, practicing attorneys, leaders in legal education, court and bar administrators, and directors of the great reform organizations—all individuals of national stature. Together, they set about to chart their goal and their course.

The minimum standards of judicial administration proposed by the Joint Committee as its goal, recognize that effective justice may be attained in the courts only when judicial processes are:

I. Fairly Administered
Without Delay

With all litigants, indigent

(Continued on page 4)
II. By Competent Judges

Selected through non-political methods based on merit,
in sufficient number to carry the load,
adequately compensated, with fair retirement benefits,
with security of tenure, subject to an expeditious method of removal for cause.

III. Operating in a Modern Court System

Simple in structure, without overlapping jurisdictions or multiple appeals,
businesslike in management with non-judicial duties performed by a competent administrative staff,
with practical methods for equalizing the judicial work load,
with an annual conference of the judges for the purpose of appraising and improving judicial techniques and administration.

IV. Under Simple and Efficient Rules of Procedure

Designed to encourage advance trial preparation,
eliminate the element of surprise,
facilitate the ascertainment of the truth,
reduce the expense of litigation,
and expedite the administration of justice.

Concentrating, as I have said, upon the state trial courts, the Joint Committee has chosen, as its course, the design and execution of state and regional seminars for state trial judges. On request—and I emphasize that the Joint Committee only enters a state on request—the Staff gathers preliminary materials, discusses the nature of the problems which leaders in the state or region, and consults with those in other jurisdictions who have faced the same or similar problems.

For a typical seminar, five or six areas are chosen for discussion, such as, simplification of the court structure, court administration, the use of judicial councils in the state, improved methods of selecting judges, improvement in the jury system, rule making by the courts, discovery and pretrial procedure, improvement of trial practice and improved techniques in the disposition of cases. The Committee then edits and compiles special reading materials covering aspects of each topic chosen, drawing upon the experience of other states on the problem. Resource personnel, i.e., experts on each of the topics, are invited to participate as discussion leaders.

In small groups, the judges discuss among themselves the specific techniques which they employ. The expert on the topic assigned would, after finishing with one group, exchange within the expert on another group and lead the discussion of the same topic with it—and so on—until all groups have completed full discussions on each of the seminar topics. Law school deans or professors act as reporters for each topic and, at the conclusion of the seminar, present a final report to the entire assembly. In this way each group is made aware of the similarities and differences between its approach to each problem and the approach of other groups. These tributed for the permanent reference of all the judges.

So far, the Joint Committee has been joined in 12 state or regional seminars and one metropolitan seminar by a total of 1000 judges from 30 states.

On November 30th and December 1st, a special seminar was conducted for members of the largest trial court of general jurisdiction in the country—the 120 judge Superior Court of Los Angeles County. From this seminar, in one of the best run, metropolitan court systems in the triad, the Joint Committee gained much valuable experience in programming for the busy metropolitan judge where problems are often different in scope from those of his fellow judges in less populated areas.

In sum, the Joint Committee acts as a catalyst, bringing together and providing a forum for those who are vitally interested in a more efficient administration of justice. Its success, if any, is primarily due to the enthusiasm with which its services have been utilized by the trial judges themselves. Through their National Conference of State Trial Judges they have been an integral and most important part of the Joint Committee program. Indeed, it might be said that without the cooperation of the National Conference the program would have little effectiveness.

Law School Participation

Likewise the Law Schools have been most generous in not only joining the Joint Committee seminar space problems but in loaning us the expert counsel and advice of their law professors. In every seminar the law professor has played an important role as participant or reporter. In this connection I have for many years taken the unpopular position that the law schools should be more active in the improvement of judicial administration. I adhere to that position and would like to note that they are doing just that more and more each day. Only a few days past the Association of American Law Schools and the Joint Committee have organized a committee of six members to work out the *modus operandi* for an all out joint program. The importance of this cannot be underestimated.

Long before we reach our charter goal of "effective justice" in all of the states thousands of present-day law students will be in the practice and on the bench. If they are taught now the procedural fundamentals necessary to obtain "effective justice" in the courts, they will be ready to intelligently aid in obtaining those procedures after graduation. Moreover, by arousing their interest in the modernization of judicial administration they will learn the importance of efficient techniques in their practice.

I know that the members of the Joint Committee would want me to say that it is our purpose to stimulate enthusiasm for the modernization of the judicial systems and their procedures in the 50 states. We have high hope that the seminars will accomplish this goal. We solicit the suggestions and assistance of all interested people to the end that the watchwords "effective justice" may be a reality in every court in the land.
TAX PLANNING OF A BUSINESS TRANSACTION

DONALD W. COWEN
Assistant Professor of Law

Utilization of Sections 332, 334, and 337 of the Internal Revenue Code of 1954 by the Corporate Purchaser of a Corporate Business.

An owner is often unwilling to sell a corporate business (hereinafter referred to as the "Old Corporation"), other than by a sale of stock, whereas the objectives of a proposed purchaser are usually not only to obtain control of a profitable business, but also to achieve a high basis for the assets currently held by Old Corporation for the purposes of attaining correspondingly high depreciation deductions on those assets which are depreciable, and also to ease the tax impact on sale of any of the assets in the future. It is suggested that the proposed purchaser, which is assumed to consist of several individuals, form a new corporation (hereinafter referred to as the "New Corporation"), which shall purchase all the shares of stock of Old Corporation and cause Old Corporation to distribute its property in complete liquidation, all pursuant to the requirements of Sections 332, 334, and 337, as hereinafter described. For the purposes of this article, it will be assumed, among other facts hereinafter set forth, that New Corporation will purchase all the shares of stock of Old Corporation in one transaction, that the individuals and New Corporation are unrelated to Old Corporation and its owners, and that there will be only one distribution by Old Corporation of its property in complete redemption of all its stock, and not a series of distributions.

An arrangement whereby several individuals buy the stock of Old Corporation, as individuals, liquidate it, and then reincorporate, has not been treated in this article for the reason that such a plan would apparently be subject to attack by the Internal Revenue Service either as a sham or as in fact a reorganization with no resulting stepped-up basis of the assets in the hands of the new corporation. Conference Report on the 1954 Code, H. Rep. No. 2543, 83rd Cong., 2d Sess. (1954). The corresponding consequences for purposes of California taxation are also not dealt with herein, but they will evidently be similar to those under federal law in this area, in accordance with Sections 24502, 24504, and 24512-24514 of the Revenue and Taxation Code.

Purchase and Liquidation

The first step to be undertaken is to form New Corporation and cause it to purchase all the stock of Old Corporation (or at least 80 per cent of the total combined voting power of all classes of stock entitled to vote and at least 80 per cent of the total number of shares of all other classes of stock, except non-voting stock which is limited and preferred as to dividends), and New Corporation must remain the owner of such stock at all times until the receipt of the Old Corporation property in complete liquidation. Section 332(b)(1). Thereafter the board of directors of Old Corporation should as soon as practicable adopt the appropriate corporate resolutions authorizing the distribution of all its assets in complete liquidation, or redemption of all its stock, and such resolution should be adopted by all the shareholders of Old Corporation, which presumably consist only of New Corporation and Old Corporation should then distribute all of its property within the taxable year to New Corporation. Section 332(b)(2). In accordance with Section 6043, and its accompanying regulation, Form 966 must be filed within 30 days after adoption of the resolution. Section 332(a)(1) provides that no gain or loss shall be recognized on the receipt by New Corporation of the property distributed in complete liquidation of Old Corporation, if the requirements set forth above are fulfilled, but attention is directed to Reg. §1.332-6, which sets forth the records to be kept and information to be filed with the return of New Corporation, and which relies, among other things, that the plan of liquidation must be adopted by each of the corporate parties thereto, and the adoption must be shown by the acts of the duly constituted responsible officers, and must appear on the official records of each such corporation. It appears that strict compliance with this regulation as well as the code provisions is necessary to insure the success of this arrangement.

It is possible to comply with the provisions of Section 332 by the utilization of a series of distributions within a three year period by Old Corporation in complete cancellation or redemption of all its stock pursuant to Section 332(b)(3), but the Internal Revenue Service would then require New Corporation to file a waiver of the statute of limitation on assessment and collection, and a bond, and so it is assumed for the purpose of this article that there will be one distribution by Old Corporation which shall occur within the taxable year, as described above.

Basis of Property

Section 334(b)(2) provides that if property is received by New Corporation in a Section 332(b) complete liquidation of Old Corporation, and if such distribution is pursuant to a plan of liquidation adopted after June 22, 1954, and adopted not more than two years after New Corporation purchased all the stock of Old Corporation, and if New Corporation purchased such stock during a period of not more than 12 months, then the basis of the property in the hands of New Corporation shall be the adjusted basis of the stock with respect to which the distribution was made. These requirements will be met if the time sequence outlined above is followed. It is evident that the figure for the adjusted basis of the stock of Old Corporation which has been redeemed and cancelled as a result of the complete liquidation must be determined, for the property received by New Corporation is awarded this adjusted basis. The second sentence of Section 334(b)(2) provides:

"For purposes of the preceding sentence, under regulations prescribed by the Secretary or his delegate, proper adjustment in the adjusted basis of any stock shall be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items."

The unadjusted basis to New Corporation of the Old Corporation stock is cost according to Section 1012, but pursuant to the second sentence of Section 334(b)(2) quoted in full above, this basis must be adjusted in the manner prescribed by the regulations. Reg. §1.334-1(c)(4) sets forth very involved and complicated rules for making adjustments to the basis of the Old Corporation stock in the hands of New Corporation, which are summarized as follows. The adjusted basis of such stock must be reduced by the amount of all distributions received by New Corporation from Old Corporation during the period from the date New Corporation purchased the Old Corporation stock through the date of adoption of the plan of liquidation. In addition, the adjusted basis of such stock must be reduced by the amount of cash and its equivalent received, and by the portion of the deficit in earnings and profits of Old Corporation during the period from the date New Corporation purchased the stock of Old Corporation through the date of distribution in liquidation, and the adjusted basis of such stock must be increased by the amount of any unsecured liabilities assumed by New Corporation, and by the portion of the increase in earnings and profits of Old Corporation during the period from the date New Corporation purchased the Old Corporation stock through the date of distribution in liquidation. Reg. §1.334-1(c)(4)(vi) sets forth the proposition that for the purpose of determining any increase or deficit in the earnings and profits of Old Corporation during the established period, any gain or

(Continued on page 7)
LIFE OR DEATH OF THALIDOMIDE BABIES

Can Society Make a Choice?

PRO

By BURTON KATZ

between the idea and the reality between the motion

A jury of 12 men, all parents but one, acquitted a young mother, three relatives and their family doctor in a trial conducted in Liege, Belgium. The crime alleged to have been committed by these individuals was the killing of an 8-day-old baby. In fact, the mother administered a barbiturate resulting in the baby's death. The others were charged with complicity. Strange, that a jury consisting of parents would acquit a mother, who was responsible for her child's death... or was she?

The defense attorney in his final argument, addressing himself to the jury stated: "You know, as we do, that this trial should also have considered the responsibility of society, science, some doctors and all the merchants of infirmities who should be on the bench of the accused. My clients are victims of thalidomide." (Oh, yes, I forgot to mention, the 8-day-old baby was an armless thalidomide baby possessing a malformed intestinal tract.)

Two possible solutions are suggested: (1) Abortion; and (2) euthanasia. Abortion is defined by Webster's Collegiate Dictionary (5th ed), in the following manner: "The expulsion of the human foetus prematurely, particularly at any time before it is viable." Abortion may or may not be legally sanctioned. For example, a mother who is in danger of losing her life, may upon examination and certification obtain an abortion. As a result the "foetus" is destroyed.

The question arises, whether there exists an inalienable right to live? If so, then the necessary corollary is an absolute duty not to interfere with this right. The conclusion must follow that there is no justification for capital punishment (perhaps there isn't), killing of a human being by an officer in the line of duty, war, accidental killings, etc. And yet we observe from day to day, the qualifications placed by society of this "inalienable right to live." Society is said to exist and function for the common good. As members of society we are more fully able to exhibit and realize the qualities of "humanity" bequeathed to our species. In return for this privilege, society exacts certain responsibilities from each individual... in order for society to function. For violation of its tenets, society can deprive a human being of his life. In reality, the right to life is qualified by these social exceptions.

A human being as differentiated from other forms of animal life, possesses qualities of perception, emotional qualities of sympathy, pleasure, rational qualities peculiar to the race, to wit the ability to perceive, formulate, relate or communicate ideas. Query whether a foetus possesses such qualities. Arguably, it is not capable of functioning in the above manner.

There are some adherents to the viewpoint that where the foetus develops to the point of possessing an independent circulatory system, a "human being" exists. Others look to the viability of the foetus at which stage the foetus is said to be capable of sustenance independent of the mother. While both of these views are useful in this respect, they become artificial when used for the purpose of defining a "human life" as we ordinarily think of one.

Some theorize that from the moment of conception if there is development at all, it will be a human being. However this reasoning is fallacious. By the above reasoning the sperm and ovum, if they develop at all must be human beings, and therefore the sperm and the ovum are human beings.

Our proponent of euthanasia suggests that "the desires of the individual concerned should control, this would perhaps be relatively simple. But to justify the killing of the thalidomide babies, specifically the victims of thalidomide. Proposals of the killing of these infants show great resourcefulness in the development of arguments which they bring to bear. In a recent Belgium case, where a mother was acquitted on charges that after she had "relieved" her thalidomide-deformed baby from its sufferings, the main argument apparently was that the crime was committed by "society"; the defendant was merely another victim of this crime. Others have argued that the good of society is at stake: it would be useless for society to support so worthless a life. Or, the euthanist will argue that the good of the individual should be considered; he or she should not be required to continue its suffering. Morality is even brought to bear: it is said that it violates our moral code to permit a person to suffer when it would be so simple to end it all.

In this paper we will examine these arguments. We will first show why euthanasia cannot be pragmatically justified. Thereafter we will consider the moral issue.

EUTHANASIA CANNOT BE PRAGMATICALLY JUSTIFIED

If it is assumed, as the proponents of euthanasia necessarily must assume, that either individuals or society have a right to take a human life because of what that human being is rather than what that human being has done, it becomes necessary to formulate a standard to determine who is entitled to continue to live and who isn't. Were we to draw the standard as being that the desires of the individual concerned should control, this would perhaps be relatively simple. But to justify the killing of the thalidomide babies, specifically the victims of thalidomide. Our euthanist is in too much of a hurry; he doesn't have time to allow the baby to reach an age where it can rationally decide whether it wishes to continue to live.

The proponent of euthanasia now has the burden of developing a standard; a checklist of qualities to which every baby has to measure up to be permitted to continue its God-given life. Oh, but our euthanist will be very quick to point out that euthanasia is only to be applied in very few situations; in other words it is going to be quite easy to qualify for a continuation of life, his checklist is going to establish very low minimums. After all, the club isn't going to be made too exclusive! But, however minimal the standards will be, someone is going to have to develop them. Our euthanist will usually send you to the doctor; he conventionally proposes a "panel of physicians" to determine whether euthanasia is to be administered. After all, the implication is, our "panel of physicians" is infallible. Concededly this point cannot be argued since it is common knowledge that physicians and lawyers never make mistakes.

However, let us assume that a fool-proof standard can be developed. Medical advances during the last decades have made it very apparent that what is a continuation on Pg 8 Col 1

CON

By BILL RYLAARDSAM

"... one man's life is equal to all the work of Creation.

-(The Talmud)

Recent newspaper accounts of babies deformed because of the mother's use of the drug thalidomide have again brought the question of euthanasia to the public attention. Euthanasia, or mercy-killing, can be applied to a variety of situations; it is argued that the victim of incurable cancer should not continue to live; the hopelessly deformed baby, it is said, is better off if it is mercifully put to death; some supporters of capital punishment even develop a variant of this theme: the argument runs, is it not less cruel to kill a man than to imprison him for life without any hope of ever being set free?

In this article we are primarily concerned with euthanasia of mentally or physically deformed babies, specifically the victims of thalidomide. Proposals of the killing of these infants show great resourcefulness in the development of arguments which they bring to bear. In a recent Belgium case, where a mother was acquitted on charges of the murder of her thalidomide-deformed baby from its sufferings, the main argument apparently was that the crime was committed by "society"; the defendant was merely another victim of this crime. Others have argued that the good of society is at stake: it would be useless for society to support so worthless a life. Or, the euthanist will argue that the good of the individual should be considered; he or she should not be required to continue its suffering. Morality is even brought to bear: it is said that it violates our moral code to permit a person to suffer when it would be so simple to end it all.

In this paper we will examine these arguments. We will first show why euthanasia cannot be pragmatically justified. Thereafter we will consider the moral issue.

EUTHANASIA CANNOT BE PRAGMATICALLY JUSTIFIED

If it is assumed, as the proponents of euthanasia necessarily must assume, that either individuals or society have a right to take a human life because of

Continued on Pg 8, Col 3
TAX PLANNING
(Continued from page 5)

loss from sales or exchanges of property held on the date of purchase of Old Corporation stock by New Corporation shall be computed by substituting for the basis of such property a new basis determined by reference to the part of the adjusted basis of the stock allocable to such property, which is in effect the basis of the Old Corporation stock to New Corporation on the date of its purchase allocated among the assets held on such date on the basis of their net fair market values on such date. Reg. §1.334-1(c)(4)(vii) provides that on adjustment of the basis of the stock as so provided, such basis as adjusted shall be allocated as basis among the various assets received (except cash and its equivalent) both tangible and intangible (whether or not depreciable or amortizable), and such allocation shall be made in proportion to the net fair market values of such assets on the date received (i.e., the net fair market value of any asset is its fair market value less any specific mortgage or pledge to which it is subject), with provisions made for adjustment on account of any liens on the property.

The foregoing discussion of Section 334(b)(2) indicates that although difficult problems of adjusting the basis of the Old Corporation stock may arise, it is apparent that these apparently will not affect the great benefit of Section 334(b)(2) to New Corporation and its shareholders, to wit the attribution to the assets received by New Corporation on the complete liquidation of Old Corporation of the adjusted basis of the Old Corporation stock and the proportion to the net fair market values of such assets on the date received.

If Section 334(b)(2) were inapplicable, then the general rule of Section 334(b)(1) would establish the basis of the assets in the hands of New Corporation to be the same as in the hands of Old Corporation, which would be much lower than the adjusted basis of the Old Corporation stock to New Corporation, because of the prior large depreciation deductions taken by Old Corporation.

Nonrecognition of Gain

Section 337(a) sets forth the general rule that if a corporation adopts a plan of complete liquidation on or after June 22, 1954, and commences or begins on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, then no gain or loss shall be recognized to such corporation from the sale or exchange of property within such 12 month period. Section 337(b) excludes from the term "property sold or exchanged by Old Corporation" any asset to which it is subordianated if not eliminated, and therefore causing an appraisal to be made of the fair market value of such assets on the date received, and therefore causing an appraisal of the fair market value of such assets as of the date received would appear to be a good measure to take in order to establish the basis for depreciation and possible later sale of each asset, as well as to help substantiate the position of New Corporation should such fair market values ever be questioned by the Internal Revenue Service.

Pursuant to the provisions of Sections 332 and 334(b)(2), it has already been pointed out that Old Corporation should distribute all of its property within the taxable year to New Corporation, which presumably may be a shorter period than the 12 month period of Section 337, but except for this requirement which must be followed in order that the benefits of Section 332 be obtained without the necessity of the filing of a waiver of the statute of limitations on assessment and collection, and a bond, the advantages of Section 337 may be obtained, accordingly to Section 337(c)(2)(B), to a limited extent on the sale or exchange at a gain by Old Corporation of property during the period within 12 months from the date of adoption of the plan of complete liquidation through the date of distribution of its assets in complete liquidation. Section 337(c)(2)(B) limits the nonrecognition privilege of Section 337 to such an arrangement as is present here by providing that such section shall apply only to that portion, if any, of the gain which is not greater than the excess of the portion of the adjusted basis of the Old Corporation stock allocable to the property sold or exchanged by Old Corporation over the adjusted basis of Old Corporation of such property.

Government Approval

The Internal Revenue Service has evidently given its approval to this type of transaction, according to Rev. Rul. 60-262, 1960-2 C.B. 114, wherein it is reported that a new corporation was organized in 1955 by an individual for the purpose of acquiring the going business of another corporation through purchase of all its stock, and that on such acquisition the new corporation liquidated the old corporation within the provisions of Section 332 and was entitled to a stepped-up basis for the assets so acquired pursuant to Section 334(b)(2), based on the consideration paid by it for the capital stock of the liquidated corporation.

It is especially worth noting the statement in Rev. Rul. 60-262 that "The fact that the continuing corporation was originally organized by an individual for the purpose of obtaining a 'going business' would not operate to deny it the benefits of Section 334(b)(2) of the Code," in connection with the concluding paragraph of Rev. Rul. 60-262, to wit: "In this connection, the formal steps themselves are significant under the 1954 Code and the element of purpose or intent is immaterial. Accordingly, the continuing corporation is entitled to a stepped-up basis in the assets received, equal to the adjusted basis to it of the capital stock of the 'purchase' subsidiary corporation. See Section 1.334-1(c) of the Income Tax Regulations."

Rev. Rul. 60-262 indicates that the desired result of a stepped-up basis to New Corporation of the Old Corporation assets can be achieved, but only by a strict compliance with the requirements of the relevant sections of the Internal Revenue Code and their accompanying regulations, for the subjective intent and purpose of the parties are subordinated if not eliminated, and the objective mechanical formal steps to be taken are the significant factors.

As pointed out above, Reg. §1.334-1(c)(4)(viii) provides that the adjusted basis of the Old Corporation stock shall be allocated among the various assets received in proportion to the net fair market values of such assets on the date received, and therefore causing an appraisal to be made of the fair market values of such assets as of the date received would appear to be a good measure to take in order to establish the basis for depreciation and possible later sale of each asset, as well as to help substantiate the position of New Corporation should such fair market values ever be questioned by the Internal Revenue Service.

Books:
CURRENT & CHOICE


* * *

Race Relations and American Law. By Jack Greenberg. Columbia University Press, 1959. 481p. Other studies may go deeper into particular issues but this book provides a well-furnished starting point for each special line of exploration. The author, general counsel for the NAACP, is not "neutral."

He assumes that the law's business is not to decide whether racism is unimpeachable but to do as much as it can to eliminate it.

* * *

Holmes-Pollock Letters; the correspondence of Mr. Justice Holmes and Sir Frederick Pollock, 1874-1932. Edited by Mark DeWolfe Howe. Two volumes In One; 2nd edition. Belknap Press of Harvard University Press, 1961. 359p. These letters record the meetings of two exceptional minds, each blessed with a talent for graceful, witty and incisive expression. The critic Clifton Fadiman, has written that these volumes recall to us something forgotten these days: the charm . . . of scholarship when it is the easy tool of men who are more than scholars.

* * *

With This Ring. By Louis H. Burke. McGraw-Hill, 1958. 269p. A discussion of the causes and pitfalls of domestic infelicity demonstrating the need for some reconciliation machinery in domestic relations cases. A former judge of the Conciliation Court of Los Angeles, Justice Burke outlines the evolution of his famous "Reconciliation Agreement" which is set out in the appendix to this book.
What is the moral sanction where a foetus is aborted to save the mother's life? Everywhere you and I turn, we are forced to make value judgments. Society makes a value judgment in sanctioning capital punishment or justifying the sacrifice of a person's life during wartime, or recognizing self defense as “justifiable homicide.” Non action in no less manner constitutes a value judgment. Looking a little closer we observe that this “society” is nothing but a social fiction operated by and for the benefit of individuals like you and me. Hence society’s “value judgments” are really our judgments collectively, and singly. A mother whose life is endangered is saved at the expense of the foetus. A value judgment has been made. The necessary conclusion is that this foetus is relegated to an inferior position on the “valuation tables of life.” Yet many opponents of abortion state that no-one is entitled to make such a value judgment. In fact as indicated above, these judgments are regularly made. Denial of abortion under certain circumstances may be morally reprehensible. This author urges that abortion should be sanctioned only upon substantial medical evidence produced at a summary proceeding, to the effect that the foetus suffers from the effects of thalidomide or other drugs producing the same effects. As a further limitation, this writer suggests that only the parents may initiate such proceeding.

There are those who will say that once a concession regarding the disposability of innocent life is made in one sphere, it will invariably spread to others. They say that inevitably this will lead to an atheistic society or indeed to another Third Reich. This is fallacious, because any good principle if carried to absurd extremes will become malevolent. Thus democracy is evil because this will lead to anarchy; religious dogma is evil because, as in the past, it will lead toquisitions.

There is dignity in life, and no less so, because a baby or person is malformed in some particulars. However, where the defective individual is unable to function as a “human being” (as we ordinarily think of one), the dignity of life lacking these inherent “qualities of humanness,” ceases ... or more accurately never existed.

It is advanced that all fellow man’s life may be taken only where such person unjustly oppresses other individuals, or is an aggressor against the common good. Query who decides what is for the good? The very people who deny the right to make a value judgment regarding euthanasia of hopelessly deformed babies, justify the destruction of a person possessing all the “qualities of humanness,” where such individual is said to be an aggressor against other individuals or the common good. What are the alternatives? Shall we let the child grow up and make his own decision as to whether he or she should continue to live? By this writer’s definition, such a child would possess the “qualities of humanness”—if able to comprehend the situation and make a rational decision pertaining thereto, what is the social justification for allowing that which cannot function as a human being, as we know it, to survive? The fact of living must subserve the manner in which we live. A full life is not co-terminus with length measured in days.

It is submitted that euthanasia of thalidomide babies can be justified in only the cases where such babies no longer possess the “qualities of humanness.” An armless baby is not such a person as above described. The baby must be so defectively formed so as to be unable to comprehend its existence—in the same manner that a hydrocephalic idiot would be unable to appreciate its existence. A further limitation to the exercise of euthanasia is that a decision must be made to destroy this “baby” within a few days from birth. The value judgment would not be vested alone in the attending physician, but rather a medical board authorized by the law, upon presentation of substantial evidence and examination of the “baby,” would make its recommendation to the proper authorities. Thus the above suggestion would circumvent a situation (as in the Belgium case) where individuals were compelled to make individual value judgments.

Conclusion. The opponents point to the modern trend away from the concern for the individual in favor of society as a whole. While this may be an unfortunately true, this is not an answer to this problem; for the variant on our earlier question, “Who is to set the standard?”

EUTHANASIA CANNOT BE MORALLY JUSTIFIED

The “Thou Shalt Not Kill” of Mount Sinai has melded our Judaico-Christian civilization. It echoed in the “inalienable right to life ...” with which our founding fathers believed every man was “endowed by his Creator.” It is still echoing in the repulsion with which we consider the brutal disregard for the sanctity of life shown in Nazi-Germany and under Communism. This concept of the sacredness of a human life which is so basic to our beliefs is being insidiously attacked by our euthanist. If he wishes to re-examine this concept, it is his prerogative to do so. But he doesn’t re-examine the concept; he ignores it. He sentimentally mouths a morality of “right not to suffer,” in its stead.

The burden is on the euthanist. He has to show that our basic concept that life, being a gift of God, cannot be capriciously taken away, is wrong, and he has failed to sustain the burden.

Our society has as one of its pillars an almost absolute respect for the rights of the individual. I believe that this is but an aspect of the faith in the sanctity of human life. The current agitation in favor of one form of euthanasia or another is indicative of an erosion in this concern for the individual in favor of a concern for “the good of society,” i.e. the good of “the state.” Society is nothing but a collection of individuals; as long as a concern for individual rights prevails, the good of society will be served.