April 6, 1973

University of Michigan Law School

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Continuing a procession of distinguished speakers in the Law School's Cooley Lecture Series, Boris I. Bittker, universally recognized tax authority and Sterling Professor of Law at Yale, delivered this year's addresses on the subject, "Income Taxation and Political Rhetoric."

Professor Bittker's theme was developed in three lectures given on Wednesday, Thursday and Friday afternoons this week. The title he chose for the series suggests his central thesis that income taxation is an area where much is said but little is understood. He traces the confusion to ambiguities -- hapless and intended -- which characterize the language of public discussion about taxation. As an outstanding example of this phenomenon, he cited the assault on "tax loopholes," a phrase always sounded with a pejorative ring.

The popular understanding of the phrase, Bittker said, is "gimmicks invented by crafty lawyers for the very rich." But, insofar as references to tax loopholes mean statutory drafting ambiguities and omissions which allow evasion of Congressional intent, Bittker felt that the Internal Revenue Code is impressively free of such inadvertences. Loopholes in this sense, he said, "are simply not the major targets of income tax reformers. They are interested, rather, in such statutory provisions as the deductions for local taxes, mortgage interest and charitable contributions, the exclusion of state and municipal bond interest, the percentage depletion deduction and the reduced tax rate on long term capital gains."

When CORE official James Foreman presented the Black Manifesto demanding reparations from American churches for injustices suffered by blacks, he created a temporary stir. But the inconvenient disruption of worship services at Riverside Church in Manhattan was soon forgotten and few of the "haves" had been induced to redistribute their wealth to the "have-nots." Now the controversial question is again being put to the American people, but this time cloaked in the respectability of the nation's leading tax scholar, Boris Bittker.

Bittker, in his just-published The Case for Black Reparation, approaches the problem as a lawyer, not a philosopher or theologian. That means he views reparation for black people from the perspective of a profession which routinely brings numerous damage suits for all sorts of injuries.

He was started thinking about the problem by a student in his seminar on "The Role of the Black Lawyer" at Yale who asked if he could "recover damages for the forced labor of his forebears." Bittker told the student no, but began brooding about it, and when Foreman raised the issue a few months later, Bittker went into action.

He flew to West Germany and studied that government's efforts at reparation for Jews and other persecuted minorities. Then he looked at provisions here for compensating native Americans for broken treaties. He concluded that far from being absurd, the idea of black reparation may well be feasible. Title 42, $1983 provides the legal mechanism.

Bittker cautions that his book should be
Tax avoidance tactics based on the existence of unintentional loopholes, Bittker believes, are successfully headed-off by judicial scrutiny and administrative diligence at all levels of the IRS. It was to the second sort of loophole, the one consciously inserted in the Code, that he turned his attention.

Bittker observed that academicians have supplied a plethora of alternative labels to "loophole," which are presumably more precise and connotive of intentional legislative purposes. "Exceptions," "preferences," "special privileges," and "erosion" are common examples of such substitutes. Yet, these terms, as well, have acquired overtones of undesirability. For instance, Bittker pointed to the accusation made by Michael Harrington that the system of lawful tax privileges is a "perverse welfare system that hands out $77 million a year, primarily to the rich."

Harrington's dollar figure, Bittker said, was drawn from a seminal 1972 study by Joseph Pechman and Benjamin Okner, Brookings Institute economists, for the Joint Economic Committee. In fact, Bittker asserted, the Pechman-Okner study shows that more than half of these tax allowances go to taxpayers with income from $5,000 to $25,000 and that 10 million American families with incomes between zero and $10,000, who now pay no income taxes, would have to be added to the tax rolls were such allowances abandoned.

"Payments to individuals present very great difficulties," Bittker said. "It may make more sense for the country to endow a university or set up a research institute." But he stresses that these are all open questions, and that he is only trying to stimulate discussion--"not trying to present a program but open a debate."

Bittker says black reparation is worth seriously discussing (contrary to what most of the educated establishment decided), but that there are no easy answers. "I don't want to give a two-sentence political summary," he said. Those who look for glib formulations to achieve immediate change may find Bittker's deliberate devotion to "all sides of the question" maddening. But without the serious, scholarly foundation he provides the high-flying rhetoric of popular advocates would be quickly grounded.
Abscond - to be unexpectedly called away to the bedside of a dying relative and miss the return train.

Accomplice - Your partner in business.

Defendant - in law, an obliging person who devotes his time and character to preserving property for his lawyer.

Enemy - a designing scoundrel who has done you some service which it is inconvenient to repay.

Estoppel - in law, the kind of stopple with which a man is corked up with his plea inside him.

Fault - one of my offenses, as distinguished from one of yours, the latter being crimes.

Guilt - the condition of one who is known to have committed an indiscretion, as distinguished from the state of him who has covered his tracks.

Habeas Corpus - a writ by which a man may be taken out of jail and asked how he likes it.

Incumbent - a person of the liveliest interest to the outcumbents.

Judge - a person who is always interfering in disputes in which he has no personal interest.

Jurisprudence - the kind of prudence that keeps one inside the law.

Jury - a number of persons appointed by a court to assist the attorneys in preventing law from degenerating into justice.

Lawful - compatible with the will of a judge having jurisdiction.

Lawyer - one skilled in circumvention of the law.

given one by the Administration on condition that he leave the country.

Corpse - a person who manifests the highest possible degree of indifference that is consistent with a civil regard for the solicitude of others.

Defendant - in law, an obliging person who devotes his time and character to preserving property for his lawyer.

Enemy - a designing scoundrel who has done you some service which it is inconvenient to repay.

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Lawful - compatible with the will of a judge having jurisdiction.

Lawyer - one skilled in circumvention of the law.
Litigation - a machine which you go in as a pig and come out as a sausage.

Misdemeanor - an infraction of the law having less dignity than a felony and constituting no claim to admittance into the best criminal society.

Passport - a document treacherously inflicted upon a citizen going abroad, exposing him as an alien and pointing him out for special reprobation and outrage.

Peace - in international affairs, a period of cheating between two periods of war.

Trial - a formal inquiry designed to prove and put upon record the blameless characters of judges, advocates and jurors. In order to effect this purpose it is necessary to supply a contrast in the person of one who is called the defendant, the prisoner or the accused. If the contrast is made sufficiently clear this person is made to undergo such an affliction as will give the virtuous gentlemen a comfortable sense of their immunity.

Truth - an ingenious compound of desirability and appearance.

Ultimatum - in diplomacy, a last demand before resorting to concessions.

Shamelessly swiped from Ambrose Bierce, The Devil's Dictionary (1911).

More Bittker I from p. 2

This point was seized upon by Senator Humphrey in the 1972 California presidential primary, where the charge of taxing the unmarried and childless to finance welfare mothers seriously cut McGovern's margin in the state. Furthermore, the demogrant plan "was no more financed by the rich and the super-rich," said Bittker, "than were similar proposals; middle-income taxpayers would still bear the greatest part of the plan. So problematic was the demogrant that McGovern finally dropped it for a more orthodox program, but not before critical damage could be done to his presidential prospects by the Republicans. Candidate Nixon charged that the Democratic plan would have added 82 million people to the welfare rolls. In so doing, Bittker concluded, "Nixon simultaneously demonstrated that the term 'welfare' as a label for tax allowances was a two-edged sword, tendered to him by a political opposition that did not realize which edge was sharper."

While expressing his belief that "a comprehensive income-maintenance program, integrated with the federal tax system, should be high on our national agenda," the tax expert regretted that it was "hard to deflate rhetoric of the type" seized upon by the Nixon administration to smear tax reforms.

On Thursday, Bittker treated horizontal aspects of tax reform: "Taxing Equals Equally" and on Friday, he will turn to vertical effects in "Taxing Unequals Unequally."

-- J.J.S.
Notes on Congress

Digest of important bills submitted to the Senate, 93rd Congress, 1st session. Bills are listed according to subject matter, then their number, description, page in Cong. Rec. vol. 119 (1973) at which summary or text of bill may be found, and Senator introducing.


National Health Insurance - S.3, summary S33; S.14 would provide federal aid for health maintenance organizations (HMO's), summary S85 (Kennedy); S.444 would amend Social Security Act to allow voluntary health insurance funded for the poor by the fed and for others through tax credit, text S893 (Hartke); S.587 would provide only for national catastrophic illness insurance, text S85 (Beall); S.915 would expand role of private carriers and federally insure those not covered privately, text S2820 (Javits).

National Pension Protection - S.4 requires that plans be registered with Sec. of Labor in Office of Pension and Welfare Plans Administration if they meet minimum standards of vesting, funding, and portability, text S35 (Williams); S.75 would create a Federal Pension Insurance Corporation and strengthen disclosure requirements, summary S141 (Griffin).

Higher Ed. Tax Credit - S.18 would give tax credit to families of college students by following formula:

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<thead>
<tr>
<th>Qualified expenses</th>
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Newsperson Shield Law - S.36 would give absolute protection from federal grand jury, agency or Congressional inquiries about unpublished materials and sources, and qualified protection in federal courts based on relevancy, alternative means of obtaining info and compelling national interest, text S114 (Schweiker); S.158 gives absolute protection in both federal and state proceedings of all governmental bodies, text S152 (Cranston); there are over 80 more bills in Congress on the subject.

Bicycle Transportation - S.61 allows federal highway funds to be used for constructing bicycle lanes, shelters and parking facilities, text S135 (Cranston).

Openness in Government - S.260, the so-called "Government in the Sunshine Act," would allow all federal government agencies and congressional committees' meetings to be open to the public, except when majority of committee or agency votes for closed session where national security, privacy of personnel, informers, or trade secrets would be substantially damaged, text S373 (Chiles).

Bi-lingual Education - S.414 would provide federal aid for bi-lingual job training centers and bi-lingual instructor training (Spanish), text S816 (Tower).

Congressional Control of War-making - S.440 would set 30-day limit on use of U.S. forces in the absence of a declaration of war unless sanctioned by Congress, text S870 (Javits).

Congressional Control of Impoundments - S.373 would limit presidential impoundment of funds to 60 days without Congressional approval of reasons submitted by President, text S636 (Ervin).

Consumer Protection - S.707 would set up an independent Consumer Protection Agency to intervene in federal agency proceedings and give aid to state and local consumer protection programs,
NOTICES

HONORS

This year's convocation will be held in Room 100, Hutchins Hall at 4:00 p.m., Friday, April 13, 1973. A reception for the honored guests, their families and friends will follow in the Lawyers Club Lounge at approximately 5:00 p.m. The Convocation is open to all.

Invitations are being sent to all of the students to be honored at the Convocation and they are asked to tell Marilynn Williams, Room 300, Hutchins Hall, if they plan to attend. Those who will be honored include many students who have qualified for a wide variety of individual awards on the basis of their academic achievements. Others have been selected by the Scholarship and Awards Committee in accordance with the terms describing the various prizes and awards, where academic excellence is not the sole criterion. These recipients have usually demonstrated leadership and dedication to their fellow students to the legal profession, and to a number of very worthy causes or groups of people through participation in one or more extra curricular activities during the year. Nominees for these awards come from both students and faculty. Groups that will be recognized are the newly elected members of the Order of the Coif, the editorial boards of the Review and Journal, the Senior Case Club Judges, and the officers and directors of the several student organizations that are sponsored through the Law School Student Senate.

The principal speaker at the 1973 Convocation will be Dean Donald E. Stokes, Horace Rackham School of Graduate Studies.

LWA

On Saturday, April 14, the University of Michigan Law Wives Association is sponsoring their annual spring luncheon. It will be held at the Campus Inn's Regency Ballroom and will feature cocktails, a luncheon, the installation of new officers, presentation of PHT (putting husband through) diplomas, and a fashion show by Kay Baum's.

Cocktails will be served from 12:00 to 1:00, and the luncheon will begin at 1:00 P.M.

Tickets are available until April 10 from Jane Salstrom, any interest group chairman, or at the April general meeting. Please plan to attend the luncheon. It should be an enjoyable afternoon.

VOLUNTEER WORK

The World Peace Tax Fund, a group of local concerned citizens, has a bill before Congress which would amend the Internal Revenue Code to permit those people who qualify as conscientious objectors, whether or not of draft age, to allocate their tax monies to be spent solely for non-military purposes. The WPTF seeks a 2nd year law student willing to donate some of his or her time as an advisor and legal researcher. The maximum time required is about 5-10 hours per month. Please call John Arnold at 663-9580 for information.

THE INTERNATIONAL LAW SOCIETY

presents

Dr. William H. Lewis,
U.S. State Department,
Discussing

U.S. AID POLICY IN AFRICA

— PROSPECTS + PORTENTS

MONDAY, APRIL 9
6:45 P.M.

LAWYERS CLUB MAIN LOUNGE
Oleck, Howard L., Nonprofit Corporations, Organizations and Associations, 2d Ed., §104, "Contents of Bylaws", at page 208:

It should be obvious that there is no fixed form for bylaws. They must be tailored to the purpose and special situation of each organization. Their content, length, and amount of detail are largely a matter of common sense. Like a lady's dress, they should be long enough to cover the subject and short enough to invite study.

--- Ron Landsman

From Tom Watson: Agrarian Rebel by C. Vann Woodward (1938)

quoted from 1891 speech: "You will hear much said about English common law. You will hear it praised as if it were some divinely inspired oracle. Don't believe a word of it. The English common law was the brutal code of half-naked savages. The truth was not in it, and it fell. It deserved to fall. Under it a woman was a serf, and a man a poor slave. It's land tenure was infamous, its methods of trial were heathenish and idiotic, its punishments were revolting in their devilish cruelty."
LSD-ABA

The Law Student Division of the American Bar Association is looking for student liaisons to the various A.B.A. Section Committees. Each A.B.A. section includes a student representative as a voting member. The LSD wants students from U of M to participate. Selection for these posts is made in late May on the basis of qualifications and expressed interest.

The liaisons I spoke to in Memphis, Tenn. at the 6th Circuit Convention last week-end were enthusiastic about their Committee experiences. A.B.A. Section Committee members are attorneys from around the country who by their experience, expertise and activities are quite often the top practitioners in that particular area of law. The sections are responsible for the position taken by the A.B.A. as to developments in their field of the law. The students participate fully.

How much time will it take? That depends on what the individual wants to do. Each section meets four times per year in various parts of the country. Liaison expenses are paid by the A.B.A.

Those sections and committees having openings are: the Section of Patent, Trademark and Copyright Law; Criminal Law Section; Section of Public Utility Law; Section on Taxation; Section on Real Property, Probate and Trust Law; Section on Taxation; Section on Real Property, Probate and Trust Law; Section on Legal Education and Admission to the Bar; Insurance, Negligence and Compensation Law Section; Section on Bar Activities; General Practice Section; Section on International Law; Labor Law Section; Section on Natural Resource Law; the Individual Rights and Responsibilities Section; and the Young Lawyers Section. Additionally, standing or special committees with openings are: the Committee on Housing and Urban Development Law; the Committee on Legal Aid and Indigent Defenders; the Committee on Education About Communism; the Committee on Legal Assistance to Servicemen; the Law Day Committee; and the Special Committee on CLEO (the minority recruitment program).

A letter of application and a resume should be sent to LSD-ABA within three weeks. If interested, call Don Duquette, LSD representative at 769-7685.

-- D. Duquette

SUMMER LAW INTERN PROGRAM

Eight full-time positions in the Law Intern Program are open for the Summer, 1973. All second and third year students are eligible (including, I was told, May 1973 graduates until they take the Bar).

If funding becomes available the jobs are likely to continue through next school year on a part-time basis. The work will begin right after finals have been completed.

The slots open are: two with the Public Defender; three with the Prosecutor; one with the Probate Court; and two with the Circuit Courts.

The prosecutor and defender interns have close daily contact with the attorneys in the office. Among the duties is assisting in the preparation of briefs for trial motions and appeals.

The judicial interns will handle those functions traditionally delegated to clerks.

Applications are available in Room 300 Hutchins Hall. Deadline: April 18, 1973. Interviews may be required.

-- Bailey Kuklin
In preparation for our budgetary hearing, here is a record of our activities for the past year.

1. Working under a grant from the Department of Natural Resources, a team of students drafted a comprehensive zoning act governing Shorelands use. This was done in conjunction with the Legislative Aid Bureau.

2. We prepared and presented a statement on an inverted rate structure in hearings before the Public Utility Commission.

3. In a case in which the constitutionality of the Michigan Environmental Protection Act was challenged, we filed a brief of Amicus Curiae.

4. In a case involving the sale of some public lands, we filed an Amicus brief on the public trust issue.

5. In the controversy over the channelization of the River Rouge, we gave advice to the Rescue the Rouge Committee concerning the adequacy of the Environmental Impact Statement filed by the Corps of Engineers.

6. In the controversy over the expansion of the Eisenhower Parkway in Ann Arbor, we gave advice concerning possible legal remedies to a group of concerned citizens.

7. In conjunction with the Legal Aid Bureau, we drafted and worked to pass the recently enacted ordinance banning no-deposit no-return bottles in Ann Arbor.

8. We did an analysis of the Environmental Impact Statement (draft) for the Super Sewer, and submitted questions to the Environmental Protection Agency.

9. In conjunction with the Legal Aid Bureau, we have drafted legislation to amend the enabling act of the Huron-Clinton Metropolitan Authority.

10. We submitted comments to the Department of State Highways on Their proposed action plan.

11. We have established an arrangement with the Wayne County Air Pollution Control Board whereby we will provide them with legal advice.

12. We have continued to provide speakers on the problems of Environmental Law to interested groups, including citizens groups, college classes, and in one case a group of Police officers in Detroit.

13. In conjunction with the supervisor of Lima Township we are working to draft and enact a land use planning ordinance.

14. We are currently studying the problem of the issuing of discharge permits by the EPA under the Federal Water Pollution Control Act of 1972.

15. We are continuing our work of the past several years concerning the establishment of a nuclear plant in Midland, Michigan.

16. We are currently preparing for hearings in the Fall concerning the proposed expansion of Route 131 in Big Rapids.

17. We are currently studying the proposed re-organization of the Department of Natural Resources by Governor Milliken.
The University of Michigan Journal of Law Reform is now accepting applications for positions on the 1973-74 junior staff. The Journal, since its inception in 1968, has sought to promote the improvement of law and its administration. It strives to identify needed reforms in all areas of the law and to suggest practical proposals for change. The Journal is particularly concerned with disseminating information about significant legal experimentation in the hope that new approaches may be identified and encouraged.

For the student, the Journal provides an expanded opportunity for legal writing at Michigan. A substantial portion of the contents is student writing, so that most junior staff members are able to proceed from basic research, through editing, to publication. This process provides an opportunity for disciplined analysis and writing unavailable outside of legal publications. Overall, the Journal is committed to an innovative interdisciplinary approach to legal scholarship with emphasis on stimulating reform.

The editorial board of next year's volume of the Journal selects the new staff on the basis of writing samples alone. Students who began law school in the summer or fall of 1972 are eligible to serve on the staff. Any legal writing prepared during the first year of law school, typically memoranda and briefs written for case club, may be submitted for consideration. Since this staff selection is supplementary to the Joint Writing Competition for the Journal and the Law Review, anyone who has entered the Competition need not submit additional samples.

Writing samples with name and summer address attached should be submitted to the Journal office, Room 731, Legal Research Building, by May 11, 1973. Those selected for staff positions will be notified during July and will be expected to return to Ann Arbor by Monday, August 20, 1973, to begin orientation and research.

An informational meeting about the Journal will be held Wednesday, April 11, at 3:15 p.m. in Room 120 Hutchins Hall.

ELS from p. 9

13. We are currently investigating the possibility of enacting flood plain zoning in Ann Arbor.

19. We have recently completed an analysis of the draft Environmental Impact Statement for the proposed Expansion of Metro Airport, with a view to considering legal action if the inadequacies in the statement are not corrected in the final statement.

20. We have just established a working relationship with Ralph Nader's Organization for his project on the Energy crisis. We expect to do research on various aspects of the problem in conjunction with other members of the University community.

Jon Y. Arnason
Alan S. Miller
Members, Board of Directors

LEARN TO HANDLE U/M EMPLOYEES' GRIEVANCES

Law students interested in representing University of Michigan employees in discrimination grievances against the institution are urged to attend the training session, "Disparate Treatment and Disparate Effect," which will be conducted by a former state Equal Employment Opportunity Project Director.

The session will be held on FRIDAY, April 13 from 11:00 a.m. to 1:00 p.m. in the Faculty dining room of the Lawyers Club. All interested persons are invited to attend.
Senate Budget Hearings Agenda  
Saturday, April 7, 1973  
Lawyers Club Faculty Dining Room

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<tr>
<th>Time</th>
<th>Activity</th>
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<tr>
<td>12:45-1:00 p.m.</td>
<td>Lawyer's Guild</td>
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<tr>
<td>9:00-9:15 a.m.</td>
<td>Environmental Law Society</td>
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<td>9:20-9:35</td>
<td>Legislative Aid Bureau</td>
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<td>9:40-9:55</td>
<td>International Law Society</td>
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<td>10:00-10:15</td>
<td>Social Committee</td>
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<td>10:20-10:35</td>
<td>Codicil</td>
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<tr>
<td>10:40-10:55</td>
<td>Speaker's Committee</td>
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<tr>
<td>11:00-11:15</td>
<td>Michigan Inmate Assistance Program</td>
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<tr>
<td>11:20-11:35</td>
<td>Women Law Students</td>
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<tr>
<td>12:00-12:45 p.m.</td>
<td>LUNCH</td>
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<tr>
<td>1:05-1:20</td>
<td>Nguyen Van Troy-Children's Hospital</td>
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<tr>
<td>1:25-1:40</td>
<td>Football Machine</td>
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<tr>
<td>1:45-2:00</td>
<td>Res Gestae</td>
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<td>2:05-2:20</td>
<td>Law Wives Association</td>
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<td>2:25-2:40</td>
<td>B.L.S.A.</td>
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<tr>
<td>2:45-3:00</td>
<td>Legal Aid Society</td>
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<td>Sports Committee</td>
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<tr>
<td>*11:40-11:55 a.m.</td>
<td>Day Car Project Taskforce</td>
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<tr>
<td>3:25-3:40</td>
<td>Law Student Division--A.B.A.</td>
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Any organization which is not listed, please contact Rosella Williams immediately 764-8970, or Doug Watkins at 764-8936.