Complete Transplantation of the Adopted Child--A Plan for California

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COMPLETE TRANSPLANTATION OF THE ADOPTED CHILD—A PLAN FOR CALIFORNIA

By DAVID POMERENK

In June 1966, in Estate of Goulart, it was held that the brothers and sisters of an adopting parent can be classified as “strangers,” i.e., class D transferees for inheritance tax purposes when succeeding to the estate of their brother’s adopted child.

Less than three years before, in Estate of Goulart, the same court had ruled that after adoption the “kindred” of an adopted person are his adopted relatives and not his biological ones.

The earlier Goulart decision indicated that the adoption created a completely new familial relation while the second decision recognized only a partial integration of the adoptee into the adoptive family. The conflict in these cases is a result of an inconsistency in the treatment of...

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2 CAL. REV. & TAX. CODE §§ 13307-10 classify the transferees for inheritance tax purposes. Sections 15110-13 use the same categories to classify transferees for gift tax purposes. A class A transferee is granted a $5000 exemption plus the most favorable tax rate. Class A transferees are the spouse, lineal issue (including adoptees) and lineal ancestors of the decedent. Class B transferees receive a $2000 exemption and are the brothers and sisters of decedent and their descendants. Class C transferees are the brothers and sisters of decedent’s parents and their descendants. They receive a $500 exemption. Everyone not included within the other sections is a class D transferee and is given a $50 exemption. The tax exemptions are established by §§ 13801-04. The tax rates are set by §§ 13404-07. These rates are progressive, the larger the inheritance, the higher the tax rate. The beginning rate for a class A transferee is 2%, while B, C and D transferees begin paying 6%, 7% and 10% respectively. The maximum paid by a class A transferee is 10% (on the excess clear market value of the transfer over $500,000) while the B, C and D transferees pay a maximum of 18%, 18% and 24% respectively.

On a transfer of property with a clear market value of $5000 the class A transferee pays no tax, the B transferee pays $180, the C transferee $315 and the class D transferee pays $495.

Where the transfer has a value of $50,000 the class A transferee pays $1150, the B $3880, the C $4715 and the class D transferee pays $6945.

This decision was based entirely on Revenue and Taxation Code §§ 13309-10. The court recognized that Probate Code treatment of the adoptee differs from the Revenue Code treatment, but said that different objectives prevail in the two areas. See text accompanying note 38 infra.


5 The decision in this case is based entirely on PROBATE CODE §§ 92 and 257. See text following note 25 infra.

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adoption among the California Civil,\textsuperscript{6} Probate\textsuperscript{7} and Revenue and Taxation Codes.\textsuperscript{8} It is the purpose of this comment to discuss these inconsistencies and to propose a method of resolution.

THE HISTORICAL DEVELOPMENT

The history of the treatment of the adopted child in California has been amply discussed elsewhere.\textsuperscript{9} Suffice it to say here that until 1955 the cases recognized that adoption established the legal relation of parent and child\textsuperscript{10} and terminated the legal relationship with the biological parents.\textsuperscript{11} But the adoption did not change the child's relationship with reference to anyone other than his biological and adoptive parents.\textsuperscript{12}

By recognizing only parental substitution, and therefore denying any new legal rights beyond the parent-child relationship, the law excluded the adoptee from full participation in the adoptive family. The injustice of this treatment was made clear in a 1955 case, \textit{Estate of Calhoun}.\textsuperscript{13} The legislature responded quickly, amending Probate Code section 257 to give the adopted child the status of a "descendant of one who has adopted him, the same as a natural child, for all purposes of succession by, from, or through the adopting parent."\textsuperscript{14} The amendment put California in accord with the trend to transplant the child from his natural family into his adoptive family.\textsuperscript{15}

EXPANSION OF RIGHTS

The amended statute terminated all rights of intestate succession between the child and his biological relatives\textsuperscript{16} and granted him full

\begin{itemize}
\item \textsuperscript{6}CAL. CIV. CODE §§ 228-29.
\item \textsuperscript{7}CAL. PROB. CODE § 257.
\item \textsuperscript{8}CAL. REV. & TAX. CODE §§ 13307-10, 15110-13.
\item \textsuperscript{10}Estate of Newman, 75 Cal. 213, 16 Pac. 887 (1888).
\item \textsuperscript{11}Estate of Jobson, 164 Cal. 312, 128 Pac. 938 (1912).
\item \textsuperscript{12}Estate of Darling, 173 Cal. 221, 159 Pac. 606 (1916). See Estate of Jones, 3 Cal. App. 2d 395, 39 P.2d 847 (1934) (adoptee prevented from succeeding to the estate of his adoptive parent's intestate relative); Estate of Calhoun, 44 Cal. 2d 378, 282 P.2d 880 (1955) (biological relatives permitted to succeed to the estate of an adopted out intestate).
\item \textsuperscript{13}44 Cal. 2d 378, 282 P.2d 880 (1955). Calhoun, an adopted child, died intestate survived by an adoptive sister and biological siblings. The adoptee had a close family relationship with the adoptive sister and had been separated in fact from his biological relatives by the adoption. The court determined that the adoptive sister was not the adoptee's legal sister within the meaning of the succession statutes and ruled that the biological collaterals were Calhoun's heirs at law.
\item \textsuperscript{14}Cal. Stat. 1955, ch. 1478, § 1, at 2696. The statute also terminates all rights of intestate succession between an adoptee and his biological relatives.
\item \textsuperscript{15}6 Pow. REAL PROP. § 1094 (1958).
\end{itemize}
succession rights in the estates of his adoptive relatives.\textsuperscript{17} Hence, the adopted child was completely transplanted into the adoptive family "for all purposes of succession."\textsuperscript{18} However, at the time of the amendment to the Probate Code there was no corresponding clarification of the Civil Code "parental substitution" concept, nor was there any analogous amendment to the Revenue and Taxation Code.\textsuperscript{19}

In the eleven years since the 1955 amendment the courts have affirmed the equality of adopted and biological children in a number of inheritance cases. The right of an adopted child as a taker under a class gift to "lawful issue"\textsuperscript{20} or "children"\textsuperscript{21} is recognized and regarded as consistent with the trend "toward making the adopted child a child of the adopter to all intents and purposes."\textsuperscript{22} The courts also have held that the severance of rights of succession from the biological family prevents an adopted child from being a pretermitted heir of his natural grandparents.\textsuperscript{23}

The 1963 decision in \textit{Estate of Goulart} is the broadest application of complete transplantation yet handed down by the California courts. The case arose over a bequest by the testatrix, who had been adopted as an adult, to her natural brother and two natural sisters. Two of these siblings predeceased her but left lineal descendants. The court held that the bequest failed and should pass intestate because the deceased brother and sister were not "kindred" within the meaning of the antilapse statute.\textsuperscript{25} "We believe the public policy of the state is to give an adopted child the same status as a biological one, and that in light of this policy, the kindred of an adopted person are its adoptive relatives, not its biological ones."\textsuperscript{26} The court said that taking under the antilapse statute was analogous to taking by intestate succession and therefore Probate Code section 92 could and should be construed in accordance with Probate Code section 257. Although the court suggested, by way of dictum, that Probate Code section 257 was intended to accomplish "a complete severance of the former relationship of the adoptee with his biological, relatives,"\textsuperscript{27} the decision

\textsuperscript{17} Id. at 629, 337 P.2d at 498 (dictum).
\textsuperscript{18} CAL. PROB. CODE § 92.
\textsuperscript{19} Sections 13308-09, 15111-12 of the Revenue and Taxation Code were amended in 1959 to extend the scope of classifications B and C to some adopted transferees. See notes 53-56 infra and accompanying text for a discussion of their limitations.
\textsuperscript{20} Estate of Heard, 49 Cal. 2d 514, 319 P.2d 637 (1957).
\textsuperscript{21} Estate of Stanford, 49 Cal. 2d 120, 315 P.2d 681 (1957).
\textsuperscript{22} Id. at 139, 315 P.2d at 692.
\textsuperscript{24} 222 Cal. App. 2d 808, 35 Cal. Rptr. 465 (1963).
\textsuperscript{25} CAL. PROB. CODE § 92 provides that a devise or bequest to predeceased kindred of the testator does not lapse, but passes to lineal descendants of the devisee or legatee.
\textsuperscript{26} 222 Cal. App. 2d at 824, 35 Cal. Rptr. at 475.
\textsuperscript{27} Id. at 820, 35 Cal. Rptr. at 473.
does not extend the section beyond what the court regarded as the area of intestate succession.

THE INHERITANCE TAX CASES

The next relevant case is Estate of Zook,\textsuperscript{28} decided in 1964. A testatrix bequeathed equal shares of property to her natural grandchildren. She recognized in her will that two of these grandchildren had been adopted out of her line by the present husband of her son's ex-wife. The issue was whether, for inheritance tax purposes, these legatees were "lineal issue" of the testatrix and therefore class A transferees, or "strangers" and therefore class D transferees.

The district court of appeal stated that the Revenue and Taxation Code should be "construed in the light of the 1955 amendment to Probate Code, section 257 and interpreted in harmony with the present policy of the law relating to the status of adopted children."\textsuperscript{29} The court found the children to be class D transferees, reasoning that the "adoption resulted in a complete substitution of family and upon its consummation [these] children departed the Zook family and entered into the family of their adoptive parent, for all purposes."\textsuperscript{30}

This decision was vacated by the California Supreme Court in 1965,\textsuperscript{31} holding that the children were class A transferees. The court found no affirmative indication that the legislature intended that there be total correlation between probate law and taxation law. The court said that in circumstances such as these, i.e., where the grandparent testatrix, not a party to the adoption, subsequently exhibits a continuing bond of affection by naming the adopted out child in a will, the Revenue and Taxation Code must be read in its literal sense, resulting in the transferee being classified as "lineal issue." "[T]he ties between that child and the testatrix cannot be said to have been severed in fact as they have been in law."\textsuperscript{32} The court recognized that this interpretation of the Revenue and Taxation Code can result in an adopted child being a class A transferee of both his adoptive parents and biological family, but said the resulting detriment to the state is outweighed by the encouragement offered to the expression of affection by the child's natural family.\textsuperscript{33}

The Zook decision carefully distinguished the earlier Goulart case

\textsuperscript{28} 39 Cal. Rptr. 484 (1964), vacated, 62 Cal. 2d 492, 42 Cal. Rptr. 597, 399 P.2d 53 (1965).
\textsuperscript{29} Id. at 486.
\textsuperscript{30} Id. at 485.
\textsuperscript{31} Estate of Zook, 62 Cal. 2d 492, 42 Cal. Rptr. 597, 399 P.2d 53 (1965).
\textsuperscript{32} Id. at 495, 42 Cal. Rptr. at 600, 399 P.2d at 56.
\textsuperscript{33} Id. at 496, 42 Cal. Rptr. at 600, 399 P.2d at 56.
by finding that “irrespective of any testamentary effect given to section 257 beyond its express language of succession,” it is not determinative of tax classifications of those taking under a will.

In the respondent’s petition for rehearing in Zook, the State Controller indicated that an application of the Zook holding to the fact situation in Goulart could result in a gain of revenue for the state. This did in fact occur.

Consistent with the Zook decision, the biological sister who took under the will of Louise Goulart, the adopted testatrix, was taxed as a class B transferee. The heirs at law of Miss Goulart, biological collaterals of her adoptive father, were taxed as class D transferees. This classification the heirs appealed. The district court of appeal said that the reasoning of the Zook case was readily applicable to Goulart and affirmed the holding that the successors were class D transferees. This decision clearly means that the reference in Revenue and Taxation Code section 13309(a) to “the father or mother of the decedent” does not include adoptive parents. In situations where there is a closer personal relationship between heirs and decedent, or where other general social considerations so warrant, the court suggests that the literal language of the statute might be extended. But here the fact that testatrix’s will evinced affection only for her biological relatives, that she was adopted as an adult, and that there was no evidence

\[34\] Id. at 494, 42 Cal. Rptr. at 599, 399 P.2d at 55.


\[36\] Inheritance taxes on the Zook legatees were $5035 less after the children were held to be class A transferees. Clerk’s Transcript, p. 19, Estate of Zook, 62 Cal. 2d 492, 42 Cal. Rptr. 597, 399 P.2d 53 (1965). Taxed as class D transferees, the Goulart heirs paid $7008 more than they would have paid as class C transferees. After applying the Zook holding to the Goulart facts the net gain to the state was $1973. Appendix A to Agreed Statement of Facts on Appeal, Estate of Goulart, 242 A.C.A. 950, 51 Cal. Rptr. 808 (1966).


\[38\] Revenue and Taxation Code § 13306 defines a transferee as “any person to whom a transfer is made, [including] any legatee, devisee, heir, next of kin, grantee, donee, vendee, assignee, successor, survivor or beneficiary.” This statute equates all transferees indicating that one who takes by intestate succession will be taxed equally with one who takes by will.

The Goulart court used the fact that the heirs were not mentioned in Louise Goulart’s will as one of its considerations in determining their inheritance tax classification. This tax classification, based upon a differentiation between testate and intestate taking, disregards the clear meaning of § 13306.

\[39\] The court indicates that the maturity of Louise Goulart at the time of her adoption is important to the holding of the case. This should not have been determinative. A person adopted after majority is a class D transferee from his adoptive parents or ancestors. Cal. Rev. & Tax Code §§ 13307(b), (e), 15110(b), (c). However, this is the only section which decrees different treatment of the adopted adult. The distinction
of her having known these heirs precluded their being given class C status. "The legislature has tended to recognize an adoptee as a lineal descendant for tax purposes, but has not, in its tax enactments, embraced the 'total substitution' theory of Probate Code section 257."  

The unfortunate result of this case is that the court has said that at least in some inheritance tax situations the adoptive father of a child will not be recognized by the law as his father. The court accepted the Controller's argument that father or mother means natural father or mother. In its treatment of the adoptive parent-child relationship the Goulart court not only refused to apply the total substitution doctrine of Probate Code section 257, but it also disregarded the parental substitution effects of Civil Code sections 228 and 229. Under these statutes the cases have held for more than fifty years that the adoption creates a legal parent-child relationship which supersedes the natural blood relationship.

_Estate of Zook_ and _Estate of Goulart_ present unusual fact situations, both in the character of the adoption (stepparent adoption in _Zook_, adult adoption in _Goulart_) and in the relationship of the transferor and transferee involved (testamentary disposition by a biological ancestor to an adoptee in _Zook_, testamentary disposition by an adoptee to a biological collateral in _Goulart_). In the majority of adoptions, however, a very young child is placed in the adoptive parent's home, after little contact with his biological parents and less association with his biological relatives. The relatives of the child's adoptive family are generally the only kindred he knows. This child clearly deserves to be treated the same as a natural child in his adoptive family And this the statutes should provide.

is designed to prevent wholesale use of the adoption statutes by persons interested in gaining a tax advantage for the distribution of an estate. This protection for the state is not necessary where the adopted adult is a transferor, and the court's use of it has no statutory basis.

40 242 A.C.A. at 952, 51 Cal. Rptr. at 810.
42 242 A.C.A. at 951-52, 51 Cal. Rptr. at 809-10.
43 CAL. CIV. CODE § 228 provides: "A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation."

CAL. CIV. CODE § 229 provides: "Effect on former relations of child. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it."

44 Estate of Jobson, 164 Cal. 312, 128 Pac. 938 (1912).
45 See tenBroek, _California's Adoption Law and Programs_, 6 Hastings L.J. 261, 274 (1955).
STATUTORY TREATMENT OF ADOPTION

Civil Code sections 228 and 229 completely substitute adoptive parents for natural parents. But the Civil Code stops there. It grants the rights and imposes the duties of the legal relationship of parent and child but makes no further contribution to the adoptee's integration into the adoptive family.

The Health and Safety Code provides for amendments to the child's birth record after the adoption. The child is given a new birth certificate identical to those registered for the birth of a child of biological parents, completed without reference to the adoption. This new certificate is substituted for the original and the original is available only on an order from the court. Although these code provisions do not establish any legal relationship for the child they are definitely consonant with complete transplantation of the child into the adoptive family. They clearly are designed to protect the adopted child, and they give him a status in the records exactly equal to that of a biological child.

The adopted child receives his most complete transplantation under Probate Code section 257 which gives the adoptee the same status as a natural child for purposes of intestate succession within his adoptive family. This right of succession is a reciprocal one, operating equally to allow his adoptive collaterals to succeed to his estate. When the legislature granted the adoptee the right to share in the intestate estates of his adoptive family it also prohibited him from succeeding to the estate of any biological relative who died intestate. These relatives are also prevented from claiming any inheritance if the adopted child dies intestate. This creation of rights in the adoptive family and negation of rights in the natural family puts the adoptee on a completely equal basis with the natural children in his adoptive family. The statute operates to completely transplant the adopted child into the adoptive family, but only in the area of intestate succession and those situations analogous to it.

As evidenced by the Zook and Goulart decisions, the Revenue and

46 Estate of Jobson, 164 Cal. 312, 128 Pac. 938 (1912).
47 CAL. HEALTH & SAFETY CODE § 10432.
48 CAL. HEALTH & SAFETY CODE § 10433.
49 CAL. HEALTH & SAFETY CODE § 10434.
50 CAL. HEALTH & SAFETY CODE § 10439.
51 The courts have considered the antilapse, CAL. PROB. CODE § 92, and pretermitted heir, CAL. PROB. CODE § 90, situations as analogous to intestate succession and have applied Probate Code § 257 to give the adopted child the same status, in these areas, as a biological child of the adoptive parents. Estate of Goulart, 222 Cal. App. 2d 808, 35 Cal. Rptr. 465 (1963) (antilapse); Estate of Carey, 214 Cal. App. 2d 39, 29 Cal. Rptr. 98 (1963) (pretermitted heir); Estate of Dilleshunt, 175 Cal. App. 2d 464, 346 P.2d 245 (1959) (pretermitted heir).
Taxation Code\textsuperscript{52} contains provisions inconsistent with the Civil and Probate Code sections discussed above. These provisions are limited in their recognition of the adoptee’s integration into his adoptive family. Because this recognition, or lack of it, varies from one section to the next they are also internally inconsistent. Section 13307, subdivisions (b) and (e), extends the class A status to adoptive descendants when taking as lineal issue of the decedent. Sections 13308 and 13309 literally extend class B or C status to adopted relatives only where they are descendants of decedent’s brother or sister (class B) or where they are descendants of a brother or sister of decedent’s mother or father (class C). Although succeeding to property as an heir at law under Probate Code section 257, an adoptee not expressly covered by sections 13308-13309 could be classified as a stranger while his adoptive brother, succeeding to a share in the same estate, would be a class B or C transferee.

The State Controller has indicated some areas of conflict which could arise due to this inconsistency and the holding in Estate of Zook.\textsuperscript{53} While adoptive brothers and sisters of an intestate decedent could be classified as strangers,\textsuperscript{54} both adopted and biological children of a natural brother or sister of decedent would be class B transferees.\textsuperscript{55} Also, an adopted brother of decedent’s father would be a “stranger”\textsuperscript{56} but both the adopted and natural children of the natural brother or sister of decedent’s father would be class C transferees.\textsuperscript{57} Another possibility is that adopted children can have class A status

\textsuperscript{52} CAL. REV. & TAX. CODE §§ 13307-10, 15110-13.
\textsuperscript{53} Respondent’s Petition for a Rehearing, p. 8, Estate of Zook, 62 Cal. 2d 492, 42 Cal. Rptr. 597, 399 P.2d 53 (1965). “All of the prior inheritance tax cases involving the problem of classification of relatives in case of adoption have involved bequests rather than intestacy; have held that the inheritance tax law must be construed in pari materia with the laws of succession; and have used words of relationship in their statutory rather than their common law sense.” Respondent’s Bnref pp. 23-24, Estate of Zook, supra, citing: Estate of Winchester, 140 Cal. 468, 74 Pac. 10 (1903); Estate of Rowell, 132 Cal. App. 2d 421, 282 P.2d 163 (1955); Estate of Morris, 56 Cal. App. 2d 715, 133 P.2d 452 (1943).
\textsuperscript{54} Suppose A is adopted by parents who have two biological children, B and C. If C dies intestate, A and B could succeed to equal shares of C’s estate. Under the Goulart holding, A could be taxed as a class D transferee while B is a class B transferee.\textsuperscript{55} Suppose D dies intestate survived by N, a natural child of D’s brother, and M, an adopted child of the same brother. Both N and M are class B transferees. Although M can be a class D transferee of his adoptive sibling, he is a class B transferee of his adoptive uncle.\textsuperscript{56} Suppose D dies intestate survived by brothers of his father; A, an adopted brother, and B, a natural brother. They share equally in D’s estate but A can be taxed as a “stranger” while B is a class C transferee.\textsuperscript{57} Suppose D dies intestate survived by children of his father’s brother; A, an adopted child and B, a natural child. These two transferees have class C status, although again they could be class D transferees of one another.
when taking from both biological and adoptive ancestors,\textsuperscript{58} while in ascending and collateral lines only blood relations would be given the favorable classifications.\textsuperscript{59} In whatever manner the classifications are specifically applied, following the holdings in Estate of Zook and Estate of Goulart, it is apparent that the area of inheritance taxation is one in which a biological and an adoptive child in the same family can be treated unequally by the law.

The Goulart and Zook cases, so unusual in their fact situations, make this inequality apparent. Do these unique situations require special handling? Should all those adopted out of families they have known be treated differently than the more usual infant adoptee? A consistent application of policy directed toward the creation of a familial relationship giving the adopted child the same status as a biological child would result in a just handling in the unique as well as the usual case. Support of this policy by statutory enactments consistent with its objectives would guarantee the application of the doctrine of complete transplantation.

The paramount consideration in an adoption proceeding is the welfare of the child, and complete transplantation must operate to complement, not to contravene, this objective. Civil Code section 227 requires that the court examine all parties to the adoption to determine whether "the interest of the child will be promoted by the adoption" before awarding the adopting parents the custody of the child. The California Supreme Court recognized this principle in Estate of Santos,\textsuperscript{60} stating: "The main purpose of adoption statutes is the promotion of the welfare of children."

This concern for the welfare of the child must take precedence over other matters in the regulation of adoptive relationships.\textsuperscript{61}

\textbf{THE POLICY OF COMPLETE TRANSPLANTATION}

Professor Richard R. B. Powell, in his treatise on real property, recommends that American jurisdictions subscribe to the doctrine of complete transplantation, for the purposes of intestate succession, stating that "since 1846, the trend as to inheritance has been to transplant the adopted child from a set of relations to his natural parents and

\begin{itemize}
  \item The Zook court recognized this possibility. See note 35 supra and accompanying text.
  \item The Revenue and Taxation Code has no special provision to cover a situation such as Goulart, where the adoptee is a transferor. The Goulart court decided that a literal interpretation of the Code results in a favorable classification for biological collaterals or ancestors and not for adoptive collaterals or ancestors.
  \item 185 Cal. 127, 195 Pac. 1055 (1921).
  \item Id. at 130, 195 Pac. at 1057.
  \item In adult adoptions the public interest must be considered as well. Cal. Civ. Code § 227 (p).
\end{itemize}
kindred into a new set of relations to his adoptive parents and kindred, which eliminates the relationship flowing from the child’s birth.”

Justice (now Chief Justice) Traynor, in his dissent in Estate of Calhoun, advocated the need for transplanting the adopted child into the adoptive family, stating that “the objective of adoption is the ‘consummation of the closest conceivable counterpart of the relationship of parent and child,’ in which the child becomes a member ‘to all intents and purposes of the family of the foster parents’ . . .” The legislature’s response to this dissent was the amendment to Probate Code section 257, providing for complete transplantation in intestate succession.

As noted above, the present Probate Code section 257 prevents the adopted child from succeeding to the estates of his biological relatives. The majority of American states have not seen fit to sever this inheritance right. California denies this succession in an apparent contradiction of the requirement that the child’s welfare must be promoted by the adoption. But the right of succession in the estates of biological relatives is terminated in return for the statutory right of succession in the estates of adoptive relatives. The possible loss is compensated for by the statutory gain. This better rule gives the adopted child the same succession rights as his adoptive siblings. His welfare does not require, nor should he be entitled to, the advantage of succession rights in both families.

The decision in Estate of Zook granted class A tax advantages to an adopted child, taking under his natural grandmother’s will, as though the child had never been adopted. This, without doubt, gives the adoptee preferential treatment, allowing him the most favorable exemption under the wills of both adoptive and biological ancestors. Those related in the same degree to the testatrix left in the natural line, i.e., the other grandchildren named in the will, cannot claim a favorable tax status when taking from anyone outside the family relationship. Also, the biological children in the adoptee’s new family receive a beneficial classification only when taking from their biological family. Is it necessary for “justice” that the adoptee receive this preference? Would it be unjust to give the adopted child favorable tax status only within his adoptive family, as is the situation for his adoptive brothers and sisters?

The loss of the favorable tax classification when receiving property

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63 6 Powell, Real Property § 1004 (1958).
65 Id. at 392, 282 P.2d at 889.
66 “An adopted child does not succeed to the estate of a natural parent nor does such adopted child succeed to the estate of a relative of the natural parent.”
67 6 Powell, Real Property § 1006 n.53 (1958).
from the estate of a biological relative is more than compensated for by the advantages gained as a result of the adoption. As stated by the New Hampshire Supreme Court: "The new status is a better one than the former. The [adoption] statute is intended to help to give the child as good a chance as children in general have, it was not its plan to give him a better one."68 Granting an adopted child preferential treatment, the Zook court suggested that to do otherwise would "thwart the expression of ... [affection]."69 But the tax statutes were not enacted to bar expressions of affection. The favorable classifications are not assigned on the basis of the amount of affection expressed. Rather, they are based on the legal familial relationships existing between a decedent and his transferees.70 Granting class A status is not a prerequisite to showing affection and regard for a transferee. And, furthermore, classification as a "stranger" in no way thwarts an expression of affection.

There is another reason why an adopted child should be granted the favorable tax classifications only within his adoptive family. The power of taxation is essential to the state's economic and political stability.71 And the revenue collected is applied for the benefit of the general public.72 A just compromise between the conflicting claims

69 Cal. 2d at 495, 42 Cal. Rptr. at 600, 399 P.2d at 56.
70 The relationships enumerated by Revenue and Taxation Code §§ 13307 and 15110 as criteria for class A status normally involve substantial feelings of mutual affection. Bonds of affection generally do decrease, as does the tax exemption, as one moves away from the decedent toward the kindred separated in greater degrees. (Cal. Prob. Code §§ 252-53 explain degrees of consanguinity. A child is related in the first degree to his parent, siblings are related in the second degree, uncle and nephew in the third degree, first cousins in the fourth degree and so on.) The tax classifications therefore parallel the normal degrees of affection shared by kindred. But this does not mean they are intended to operate in any manner relative to the quantity of affection felt by the transferor for the recipient of his bounty. Somewhere among the lines recognized for favorable tax rates and exemptions there is a point where affection felt for persons not kindred of the transferor exceeds the affection felt for those who are his kindred. It is not unusual for a person to feel more affection for a friend than for a sibling, and it would be unusual for a decedent to have numbered no friend closer to him in affection than a cousin. Although parallel at some levels to the quantity of affection shared, the inheritance tax classifications clearly recognize familial relationship only. See Estate of Radovich, 48 Cal. 2d 116, 308 P.2d 14 (1957).
72 Revenue collected through inheritance and gift taxes for the fiscal year ending June 30, 1966, has been estimated to be $121,500,000. This compares with state personal income taxes, collected during the same period, of an estimated $435,300,000. California Economic Development Agency, California Statistical Abstract 198 (1965).
73 See People ex rel Attorney General v. Naglee, 1 Cal. 232 (1850).
of the taxpayer and the taxing authority requires that the power to tax be exercised fairly and rationally. There is nothing manifestly fair or rational about granting an adopted child favorable classifications in two families.

PROPOSED STATUTORY AMENDMENTS

Chester Vernier, in his treatise on American family laws states that:

"[T]he problem of inheritance is of such importance as to call for an express pronouncement by the legislatures. In the jurisdictions that do deal with the problem the statutes are sketchy, insufficient, and unsatisfactory. Some factual situations are covered, but others are completely ignored, and the courts are left to struggle with the incomplete efforts of the legislatures."  

The Zook and Goulart cases are clear examples of the courts struggling with the incomplete efforts of the California legislature.

Amendments to the Civil Code and the Revenue and Taxation Code, 75 codifying the doctrine of complete transplantation, are needed to extend the legislature's enactments in this field. These changes would solidify the adoptee's status as a legitimate child of the adoptive family by treating adopted children and biological children as equals under the law.

Civil Code amendments are needed to adopt complete transplantation in place of the present Civil Code policy of parental substitution. These amendments, to sections 228 and 229, would terminate the legal relationships of the adoptee and his biological relatives and encourage his complete participation in his adoptive family by giving him legal rights and duties in that family.

Amendments to the Revenue and Taxation Code are needed to provide for a complete correlation of the inheritance tax classifications with Probate Code section 257. These amendments would recognize the adoptee's full rights of inheritance in the estates of his adoptive relatives, and their reciprocal rights in his estate. An addition to section 13307 of the Revenue and Taxation Code would extend the class A status to an adoptive ancestor. Additions to sections 13308 and 13309 would extend class B or C transferee status to all adoptive collaterals. Section 13310 should be changed, to preclude a repeat of the Zook holding, by restricting all transfers between an adoptee and his biological relatives to class D status.

These statutory amendments would give California a completely consistent approach to adoption. Under these statutes an adoption

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74 Vernier, American Family Laws § 262, at 411 (1936).
75 The proposed statutes are listed in the appendix to this comment.
would completely transplant the adopted child into the adopting family.

Due to the complete severance of rights with the natural family, the adoption may in some cases cause some hardship to the adoptee. This is particularly true where, as in the Zook case, the adopted child will be the transferee of a substantial bequest from a biological relative. This is a factor that can be considered in deciding whether the adoption will be in the best interests of the child. One situation where the hardship can be partially overcome exists where a testator leaves part of his estate to a class of kindred and indicates a desire for an adopted out biological descendant or collateral to share equally in the transfer. The testator can direct his executors to pay the inheritance taxes out of the estate before distribution. This will result in the distribution of equal shares to all members of the class.

CONCLUSION

The proposed statutory amendments, interpreted in relation to Probate Code section 257, establish and define a new status for the adopted child. His integration into the adoptive family is complete, placing him in a situation which is as nearly equivalent to the natural family as the law can establish. His legal status is equal to that of biological children in his adoptive family. This equality of treatment would be a definite contribution to the welfare of the child and would be in the public interest as well.

APPENDIX—PROPOSED STATUTORY AMENDMENTS

California Civil Code

§ 228. A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation. The adopted child's relationship to the adopting parent's kindred shall be the same as if it were the legitimate child of the adopting parents.

§ 229. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it. The kindred of the adopted child's parents are no longer legal kindred of the child.

76 The adult adoption is an obvious example. Under the amended statutes an adopted adult would be a class D transferee from both his adoptive and biological ancestors. The parties contemplating an adoption should be aware of this possible financial sacrifice and should consider it in deciding whether to go forward with the adoption.

77 Additions to the code sections are indicated by italics, and deletions are indicated by strikeouts.
California Revenue and Taxation Code

§ 13307 “Class A transferee” means any of the following:
(a) A transferee who is the husband, wife, lineal ancestor, or lineal issue of the decedent. This section shall include decedent’s lineal ancestor by adoption.
(b) A transferee whose relationship to the decedent is that of a child adopted by the decedent in conformity with the laws of this State, provided such child was under the age of 21 years at the time of such adoption.
(c) A transferee to whom the decedent for not less than 10 continuous years prior to the transfer stood in the mutually acknowledged relationship of a parent, if the relationship commenced on or before the transferee’s fifteenth birthday.
(d) A transferee who is the lineal issue of a child mentioned in subdivision (b) or (c).
(e) A transferee whose relationship to the decedent is that of a person adopted in conformity with the laws of this State by any lineal issue or child mentioned in this section; provided, such person was under the age of 21 years at the time of such adoption.

§ 13308. “Class B transferee” means any of the following:
(a) A transferee who is the brother, sister, or descendant of a brother or sister of the decedent.
(b) A transferee who is the wife or widow of a son, or the husband or widower of a daughter, of the decedent. This section shall be construed to include, but shall not be limited to, adoptive or adopted kindred of the transferor who, by reason of an adoption in conformity with the laws of this State, fulfill a stated relationship. For the purposes of this section “descendant” includes, although it is not limited to, a child-adopted or acknowledged in conformity with the laws of this State.

§ 13309. “Class C transferee” means any of the following:
(a) A transferee who is the brother or sister of the father or mother of the decedent.
(b) A transferee who is the descendant of a brother or sister of the father or mother of the decedent. This section shall be construed to include, but shall not be limited to, adoptive or adopted kindred of the transferor who, by reason of an adoption in conformity with the laws of this State, fulfill a stated relationship. For the purposes of this section “descendant” includes, although it is not limited to, a child-adopted or acknowledged in conformity with the laws of this State.

§ 13310. “Class D transferee” means any transferee who is not a Class A, B, or C transferee.

Persons adopted out of their biological family are class D transferees when taking property as a transferee of a biological relative. Biological relatives of a transferor who has been adopted out of his biological family are class D transferees when taking property in his estate.

78 The amendments necessary to change §§ 13307-10 have been indicated. Parallel amendments are necessary to change §§ 15110-13, defining donee classifications.