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LAW REVIEW – A DEPARTMENT OF VISCERAL REACTIONS

BY EDGAR R. CASPER*

THE broad view which regards law as an agency of social control, touching all aspects of social life, is undoubtedly quite popular today. And yet, current contributions to our numerous law reviews are in the main unresponsive to the challenge inherent in this broad-based approach.

The inertia of tradition is surely not an adequate explanation.

In the case of student contributions, where the primary purpose may be said to be the education of student writers rather than the edification of readers, one plausible defense of the traditional format is that the student must learn to walk before he can run; disciplinarian insistence on adequate exhibitions of case analysis and synthesis is a pedagogical device calculated to ensure a sound foundation for grander endeavors.

Even if this is conceded,¹ where, in the articles department do we find the grander endeavors? By and large contributions are restricted to the handling of problems susceptible to law library research. Much of this work is needed and well done. But what of legal problems focusing on aspects of life where the law library does not provide the necessary data? Thorough research in these areas often requires not only a physical departure from the law library but a dependence on other disciplines.

While the momentum given to this type of research by the "foundations" is not to be neglected, it is clear that the large investment in man-power, time and money required for thorough going projects will limit these for some time to come.

However, to the extent that there is interest in problems refractory to the purely legal source type research, could and should it not be reflected in our law reviews in a number of ways, short of the completed project report?

Surely there is a place for reports on small pilot studies carried out in connection with seminars or otherwise.

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¹ Which it is not, without reservation: why should the neophyte's eager stab at a problem in a law review, without pretensions of encyclopedic knowledge, be less stimulating than equivalent oral effusions are considered to be in the classroom? Might not selected offerings of this sort be more conducive to student-reader (and lawyer?) thinking and research, than some current student contributions wearing the authoritative look?

Perhaps there are not as many projects of this sort going on as I hope there are, and perhaps interest in these problems is not as widespread as verbal allegiance to a broad view of law. Indeed I seem to have detected in some lawyers and even some law teachers a reluctance to emerge intellectually from the confines of traditional legal functioning, apparently based either on the fear of leaving the shelter of a field in which they can claim some expertise, or even a suspicion that tinkering with other disciplines would mar the pristine purity and prestige of the legal profession.

On the other hand, I am convinced that there is considerable interest and even enthusiasm which should be, but is not, reflected in our law reviews. My guess is that actual and potential contributors, and perhaps law review editors, assume that every contribution must result from a considerable specific investment of time and energy; it must represent technical competence in application. For most of us the only technical competence that can be thus applied is the library research kind, and many ideas which result when we react, on the basis of our general training and experience to some event in our environment, are shelved with a sigh and a mental "I wish I had time to follow this up."

How many ideas vibrant with the promise of development have thus died of cerebral solitary confinement?

My suggestion is a simple one. Our law reviews, always in need for publishable material, should encourage the submission of short drafts which claim to be nothing more than visceral reactions and starting points for further thinking and research.

Law professors, young and older, when solicited for contributions, traditional articles *or* something such as is here suggested, surely could not so easily refuse on the ground "no time", where an hour or two would be sufficient to record some recent cerebral high-jinks.

Naturally, law review editors would publish only such vignettes as they consider interesting, but my feeling is that they would often be glad to publish one, two, or three of such musings instead of some "article" which would otherwise have to be incorporated, *faute de mieux*.

At the risk of endangering a suggestion acceptable in abstracto, I shall refer briefly to my own latest experience which might provide the basis for a contribution of the type suggested.

While sipping my second cup of coffee at breakfast, I picked up a magazine (not listed in the index to legal periodicals) and read an article about

recent uses of motivation research in advertising. I immediately recalled a recent seminar discussion about the extent to which the anti-trust laws are based on the assumption of the rational Economic Man and the factual basis for such an assumption. The alleged findings of the Motivation Researchers certainly negated the existence of the Economic Consumer much more drastically than the expression of collective experience by the seminar group.

Next occurred the question whether certain uses of Motivation Research could be assailed under existing laws or whether regulatory legislation would be desirable. Should M R-based "association advertising" be applauded as an ingenious sales promotion device highly suitable to an expanding economy, or should it be condemned as Orwellian manipulation of human beings by inducing sales, not because the product is wanted, but because its name, packaging, or what have you provides a substitute gratification of a real need. Even if not undesirable in principle, is M R such a powerful sales device that it should be functionally available to all sellers or none?

I toyed with it for a while and then sighed, with a mental "I wish I had time to follow this up." The scheduled business of the day took over—until now. Perhaps this display of interest coupled with ignorance may prompt someone who knows a lot more about all this to give us the benefit of his work and knowledge. Perhaps someone as ignorant—and interested—as I, can follow through right now. And perhaps these musings should and will remain barren except to prompt someone to recount his, which may be fruitful and multiplied.