Love Those Law Reviews

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This letter, which is genuine, has made the rounds in Illinois but deserves a wider audience. The editors have added the reference notes.

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Dear Messrs. Dripps and Coghlan:

I have just finished perusing approximately my 42nd *University of Illinois Law Review* (assuming four a year since 1974). As these volumes have become less and less useful, in a peculiar way they have become more interesting.

The first paragraph in the first article alerted me that a bold new day in legal writing had arrived in the cornbelt. I do not think for a moment you could have forgotten, but since my wife, Gerri, reads my correspondence, I repeat that first paragraph:

> "Third parties" confound the commercial law, in terms of both its contract and tort elements. [Footnote omitted.] The neat consensual (contract)/nonconsensual (tort) continuum devolves into a tension delimited by policies and, often, conjured by power. [Footnote omitted.] In a unique way, the resolution of third-party problems implicates contextual equities, not merely the immanent

> justice of the instant controversy. [Footnote omitted.] Apply that perspective to this generic hypothetical: [Hypothetical omitted.][1]

I include this quotation with a sense of personal achievement, knowing that it will never again be cited for any purpose.

I first thought to wonder at the quality of editorship that allowed a paragraph like this to appear in, much less lead, the article. Surely, I thought, there was some way of beginning the essay that would not have involved this meaningless stream of words and ended with an invitation to "apply" that meaninglessness to an otherwise perfectly clear hypothetical. I wondered whether it would have been considered impolite to discuss with Professor Alces the fact that his opening paragraph made no sense at all and was likely to irritate both the casual reader and those with a specialized interest in the suretyship field.

My confusion was compounded by the fact that the opening paragraph was followed by a relatively comprehensible legal argument. Normally, the function of an essay's opening paragraph, legal or otherwise, is to draw the reader into the article, not to scare the reader witless. On the other hand, perhaps that is the perfect function for an opening paragraph — like the lawyer who kicked the young witness to a will so that the witness would always remember that day. I know I will remember this opening paragraph long after I have forgotten that the article was even about suretyship.

After pondering the matter further, I also realized that if the first paragraph were more intelligible, the professor would not have had an opportunity to footnote each of the first three sentences. This would have made it difficult for the professor to reach his goal of 134 footnotes.

Armed with this insight and a new confidence, I turned to the second article, this one written by Richard S. Markovits (who I feel will one day be famous) on the subject of legal economics.

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[1] Peter A. Alces, *An Essay on Independence, Interdependence, and the Suretyship Principle*, 1993 U. ILL. L. REV. 447, 447-48.

The introductory paragraph of that article certainly achieved its primary goal of putting off any lover of written clarity, but Professor Markovits is apparently more devious than Professor Alces. This sentence appears in the second paragraph:

> First, the Kaldor-Hicks approach is incorrect because it incorrectly measures: (a) a choice's winners' (equivalent-dollar) gains by the number of dollars they would have to lose (pay) after the choice was made to be left as well off as they would have been had the choice been rejected, rather than by the number of dollars that they would have to be given (in a neutral way) to be left as well off as the choice would make them; and relatedly (b) a choice's victims' (equivalent-dollar) loss by the number of dollars they would have to receive to be left as well off after the choice was made as they would have been had it been rejected, rather than by the number of dollars they would have had to lose (in a neutral way) to be left as badly off as the choice would leave them.[2]

The next sentence looked remarkably the same, but on close inspection turned out to have 50 fewer words. Though it would be fun to quote that sentence, in the interest of maintaining a civil relationship with my secretary, I have refrained. I did, however, read the sentence to Gerri, who called me while I was dictating this. Even though she does not do the grocery shopping, she told me she had composed a mental grocery list while listening. I could not legally say this if it were not true.

Stumbling on to page 493, I came across a paragraph that begins with "In brief." At this point, I had to stop and admire the author's daring in the face of rampant consumer-fraud legislation and the possibility of triple damages. In my own attempt to make brief what follows the "In brief," I will liberally excerpt from the 120 or so words of that sentence. One could argue that I am unfairly taking the words out of context, but I think if you take

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[2] Richard S. Markovits, [To the reader: forget the title for now], 1993 U. ILL. L. REV. 485, 486.

the time to compare the following excerpt to the original, you will see that I have admirably captured the sprit of the thing:

> Four-stage procedure . . . equivalent-dollar gains . . . stipulate and define operationally . . . average equivalent-dollar gain and loss the relevant choice generates (given those facts) . . . weighted equivalent-dollar gains . . . .[3]

At this point, the author obviously had second thoughts about the wisdom of his wholesale attack on the brevity principle and stated: "Of course, one might argue that the procedure just described is unnecessarily circuitous." Frankly, I thought it was just perfectly circuitous.

Moving ahead (or perhaps deeper) to page 497, I found a two-page paragraph that begins with "Clearly." Further explanation is probably unnecessary.

In more primitive cultures, accidentally hitting upon a "clear" point would be a sign to stop-end or perhaps even cease/desist. Twelve pages later, however, the author is still plugging away in Section II.D.2., entitled "The General Liberal-Egalitarian Argument Against Counting Equivalent-Dollar Gains and Losses that Relate to Distributive Preferences of All Types," wherein I learned that:

> From some value-perspectives, there may be legitimate objections to external preferences of a specific character, but I do not think that such preferences (for example, external preferences in favor of handicapped individuals) are generically objectionable from a liberal or egalitarian perspective.[4]

And my favorite snippet ten pages on:

> This is the liberal principle that all creatures that have the neurological equipment to take their lives morally seriously must be accorded equal respect and that equal concern must be shown

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[3] *Id.* at 493.

[4] *Id.* at 510.

> for their being put in a position in which they can actualize their potential to take their lives morally seriously (a position in which they can consider what they value and can develop and live according to a life-plan that is consistent with their values).[5]

I assume that these "creatures" possessing the neurological prerequisites for taking their lives "morally seriously," along with the "full-rights-bearing creatures" that appear in the next subsection, are in fact "human beings"; but perhaps it is the author's intention to leave the way open should it be determined that mink might also qualify.

I join heartily in Professor Markovits's conclusion: "I hope . . . this paper might improve the way in which private and government choices are actually evaluated."

Despite what may be perceived as criticism of Professor Markovits's essay, I think it is only fair to point out that he does appear to have very strong research skills. For instance, in support of his contention that "most law-and-economics allocative-efficiency analyses are based on false theorems of this kind," he cites Richard S. Markovits (1975); Richard S. Markovits (1993); and Richard S. Markovits (1993).

I know that I will be accused of sifting through the essay, picking out the good parts and making it seem much better than it is. I invite the interested reader, however, to peruse each and every one of the 49 pages and 47 footnotes of equivalent-dollar pages and decide for his full-rights-bearing creature self.

In almost conclusion, I would like to note that the title of Professor Markovits's article is:

> A Constructive Critique of the Traditional Definition and Use of the Concept of "The Effect of a Choice on Allocative (Economic) Efficiency": Why the Kaldor-Hicks Test, the Coase Theorem, and Virtually All Law-and-Economics Welfare Arguments Are Wrong† [superscript in original].

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[5] *Id.* at 519-20 (footnotes omitted).

This is a bold use of the sadly underutilized Cohn-Head gambit; that is, a footnoted title substantially longer than the opening sentence.

You can imagine my disappointment in turning to the third and last article, "Pragmatism in Critical Theory." This article, by Richard Warner, proceeds unambitiously from clear and concise sentence to clear and concise sentence, making comprehensible points and defining its terms as it goes. As the ultimate indignity, Professor Warner actually *cited a case*. I know this is a relatively minor quibble and it was only one instance, but it completely spoiled the effect.

Keep up the good work.

Yours truly,

John F. Bramfeld