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## Law Review Correspondence: The View from Way Down under the Manuscripts

Dale Carpenter

*Southern Methodist University, Dedman School of Law*

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# LAW REVIEW CORRESPONDENCE: THE VIEW FROM WAY DOWN UNDER THE MANUSCRIPTS

*Dale Carpenter\**

*A steady storm of correspondences!  
A night flowing with birds, a ragged moon,  
And in broad day the midnight come again!<sup>1</sup>*

## PROFESSIONAL

**Y**OU have before you the specter of correspondence about correspondence. It is perhaps an inauspicious beginning to a new section of the *Connecticut Law Review* that promises to be a lively contribution to legal academic debate.

Before we quibble over the details, allow us a moment of self-congratulation. Almost two years ago, *The University of Chicago Law Review* inaugurated a section of the journal devoted to printing short, cogent responses to pieces we publish. The correspondence section is still an experiment, but we are happy with the results so far. We concede that requiring authors actually to limit the length of their submissions is a small act of subversion in the grand scheme. But we are delighted the *Connecticut Law Review* will be a fellow traveler.

## LITURGY

We added the correspondence section in part because we shared the growing view that there is an important place in legal literature for argumentative brevity. Authors with something less than 95k to say about a given article, essay, or book review would now have a forum.

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\* B.A. 1989, Yale University; J.D. Candidate 1992, The University of Chicago Law School; Editor-in-Chief, 1991-92, *The University of Chicago Law Review*.

1. Theodore Roethke, "In a Dark Time," 1b, st.3 (1964). Of course, I appropriate Roethke's beautiful passage for my own self-indulgent purposes. I doubt Roethke had the time or inclination to ponder the fate of law reviews.

The discourse among legal scholars and practitioners could flourish without the slightest impact on our printing bill or pristine forests. Frankly, we also looked forward to editing more manageably-sized texts. Finally, and to be honest, with the spare time thus created, we thought we would have more time for the important things in life—like preparing for class.

We embarked on our crusade, confident that it would attract serious scholars with serious purposes. And we have not been disappointed. We published correspondence on subjects as important as public choice<sup>2</sup> and the Free Exercise Clause.<sup>3</sup> None of it shattered the earth, perhaps, but a few denizens of Hyde Park read it with interest.

Then in June 1990 we received Professor Jensen's submission, paraphrased in the first section of his commentary above,<sup>4</sup> for the correspondence section. In his initial letter to us, Professor Jensen asked, ominously, where "correspondence" fit in the publishing hierarchy, where he should place the thing on his resume if we published it, and whether we had "intentionally created an easier route" to publication in the *Law Review*.<sup>5</sup> Now he devotes several pages to a withering critique of a student editor's letter.<sup>6</sup> Since he apparently shares our basic view that correspondence can safely be added to a law review, we wondered why he bothered. We thought: maybe it's a slow summer in Cleveland. Then we realized the Indians were still in the pennant race when he wrote.<sup>7</sup>

### HOMILY

Though correspondence may develop into an important genre in legal writing, it cannot replace the longer, more sustained efforts to which it responds. The two sections can certainly co-exist in wondrous symbiosis. Articles should be, and are, edited to avoid redundancy, and

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2. Daniel Shaviro & Herbert Hovenkamp, *Correspondence*, 57 U. CHI. L. REV. 834, 840 (1990) ("Exchange on Public Choice").

3. William P. Marshall & Michael W. McConnell, *Correspondence*, 58 U. CHI. L. REV. 308, 329 (1991) ("On Free Exercise Revisionism").

4. Erik M. Jensen, *Law Review Correspondence: Better Read Than Dead?*, 24 CONN. L. REV. 159 (1991).

5. Correspondence from Erik M. Jensen, Professor of Law, Case Western Reserve University School of Law, to the articles editors, *The University of Chicago Law Review* (June 1, 1990) (on file with the *Connecticut Law Review*).

6. Jensen, *supra* note 4, at 162-65.

7. *But see* Arthur Austin, *Commentary on Jensen's Commentary on Commentary*, 24 CONN. L. REV. 175, 176 n.5 (1991) (noting that the Indians' poor performance during the 1991 season was the source of continuing troubles for Professor Jensen).

to cut down the often lengthy background sections that add little or nothing to the field. Articles should be, and are, edited to minimize substantively or stylistically obtuse material that more likely confuses than enlightens readers. The answer to the problem of dross is self-restraint by authors and a more discerning eye from editors. But an article that keeps the dross in check can be a joy and a thing of beauty to behold forever. We think the ones we publish help advance the state of legal knowledge, which somebody told us is the point of this enterprise.

The "background" section in a good article may not only recapitulate events in the field<sup>8</sup> but also reconceptualize them, adding the author's own insights into developments relevant to the piece. One difference between a law review and a narrowly technical journal—one committed to a given "discipline" or "subdiscipline"—is that not all readers of a law review have the requisite background knowledge to understand an author's original contribution to the existing work in a subject area.<sup>9</sup> A thoughtful background section prepares the reader for the "nugget" the author hopes to add. A law review should be accessible to a general readership interested in law, not just the academic devotees of antitrust or estate taxation. Ours is not a trade journal.

#### EUCHARIST

We invite correspondence on articles, essays, and book reviews appearing in *The University of Chicago Law Review*. We ask that the correspondence be of moderate length. Beyond that, authors are on their own. We cannot print everything we receive for correspondence, and yes, we will edit that which we do publish. We dropped the suggested three- to six-page range on correspondence over a year ago.<sup>10</sup> The "suggestion" seemed to serve little purpose and, at any rate, was often disregarded. If a correspondence of 5000 words comes in, we certainly consider it. Rather than play word-count with authors, we invite correspondence of "moderate length," leaving us and the authors with some discretion. Although articles, essays, and book reviews frequently react to work published in other journals, we consider only correspon-

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8. Such as case law, new scholarship, and recent statutes.

9. Compare Jensen, *supra* note 4, at 164-65.

10. Compare the announcement in the Summer 1990 issue of *The University of Chicago Law Review* (inviting submissions of "approximately three to six pages double-spaced") with the announcement in the Fall 1990 issue (inviting submissions of "moderate length"). 57 U. CHI. L. REV., Summer 1990 & Fall 1990.

dence in response to pieces we have published. As editors, we are far more familiar with pieces we publish than with those published by other law reviews. We can more easily and more readily judge the quality of a submission for the correspondence section if we know the original piece inside and out. Our in-house requirement saves us the wasted time and increased likelihood of error inherent in selecting correspondence that responds to pieces published elsewhere. This frees us to publish more correspondence and to make the correspondence we do publish better. It is, gasp, the efficient choice.

Moreover, the *Law Review* is a quarterly journal. Correspondence typically reacts to pieces we published one or two issues earlier. Therefore, a reader need only check a couple of issues to see if there has been a response to an interesting article. We save the reader the trouble of checking the indexes to periodical literature for a response. The in-house requirement simply makes for a more routinized author-response system. Further, our readers do tend to keep past issues of the *Law Review* in their home or office libraries. For better or worse, an issue of a law review seems to have more permanence than an issue of a news magazine. Perhaps that's just because law reviews are heavy, don't have glitzy covers, and cost a lot more.

#### RECESSIONAL

The scholar who believes the academy accords too little respect to short, analytical pieces must know that concocting new sections in law reviews will avail her little. "Correspondence" and "commentary" sections will stir a few, but the real battle is for the hearts and minds of prolix academicians.

Correspondence has not caught on to the extent we might have expected. The "storm of correspondences" has not yet blocked the mid-day sun. But there is yet hope, if only future correspondence can turn our attention to substance and not to correspondence.