

Ex Ante

DILATATIO AD ABSURDUM

IN A MASSIVE publishing coup, Harvard Law School professors Louis Kaplow and Steven Shavell have released their work titled “Fairness Versus Welfare” as a 428-page, 1047-footnote article in the February 2001 issue of the *Harvard Law Review*, and sold to the Harvard University Press the right to reprint the article and sell it as a book.

The *Review* and the Press share the view that their respective unorthodox decisions to publish and republish *Fairness Versus Welfare* are well justified by what they see as the importance of Kaplow’s and Shavell’s work. According to *Review* President Matthew Hellman, “we always look at the quality of the manuscript when it comes in and we take whatever we think should fit in the pages. ... We are very happy to have published it because we thought it was an excellent manuscript.” The Press expects interest in the book among philosophers and public policy experts to be strong enough to make the book edition a success even if not many lawyers and law libraries choose to purchase *Fairness* in both law review and book formats.

The sheer scale of *Fairness*-as-article will generate at least some interest, and it is worth pausing a moment in wonder, as we might when confronted with any candidate for the *Guinness Book of World Records*. The *Fairness*

article is unprecedentedly huge, especially for a journal that announces in its submissions policy that it is, “particularly interested in articles under 100 double-spaced pages (including footnotes).” *Fairness* crowded out perhaps ten such submissions. It is twice as long as any article the *Green Bag* has found in a leading law journal, almost 300 pages longer than any article previously published in the *Review*, and longer than any of the first five volumes of the *Review*.

Almost as striking is the Press’s decision to reprint *Fairness*. It republished a law review article as a book in 1995, but on a smaller scale: *Is NAFTA Constitutional?* was just 129 pages long and had only about 500 footnotes. The Press describes the *Fairness* deal as routine, although it could cite as precedent only the NAFTA book and the republication of a 162-page *Developments in the Law* in 1989. There may well be other examples out there somewhere, but an informal *Green Bag* survey of academic presses and law librarians did not turn up any.

Which is not to say that the *Fairness* deal is a bad thing. Practically from the beginning, the symbiosis between law reviews and book publishers has been close. It is accepted practice for scholars to publish articles in law reviews and then include all or part of several of those shorter works (usually refined in response to post-publication criticism and new developments) in books and treatises.

The arrangement has worked fairly well for a discipline with (a) little in the way of pre-publication peer review other than turns on the seminar circuit and faculty presentations over subs and chips, and (b) limited representation by law specialists in academic publishing. Perhaps *Fairness* represents a full convergence, but with the loss of informal post-publication peer review.

If so, what does it mean? Starting now, will it be possible to write your book, turn it over to a law review for citecheck and clean-up, and then publish the same thing twice, once for free to the legal world and once for a few dollars in royalties to the rest? (It also would save the cost of ordering reprints.) On the other hand, if journals start insisting on publishing whole books rather than just a chapter or two, some of the many law professors who can do without the help (and annoyance) of a journal staff when dealing with pesky little problems of authority, accuracy, and consistency may decide to cut out the middleman and go straight to the academic presses. If this catches on, it will be the end of law reviews as we know them. But on yet another hand, several press editors and librarians have reminded the *Green Bag* that over the years a not insignificant number of legal scholars have exhibited a peculiarly intense interest in publishing the same work as many times as possible, and there are no signs of any evolution of social norms in that regard.

In all likelihood, little will come of *Fairness*-as-article – except, of course, for whatever impact its substance may have. Its record length as a law review article will likely stand for as long as Fidel Castro’s record-setting, 269-minute speech at the United Nations in September 1960, and for the same reason: Remember what Fidel said?

Louis Kaplow & Steven Shavell, *Fairness Versus Welfare*, 114 HARV. L. REV. 961 (2001); Bruce Ackerman & David Golove, *Is NAFTA Constitutional?*, 108 HARV. L. REV. 799 (1995);

Developments in the Law, 102 HARV. L. REV. 1508 (1989); www.guinnessworldrecords.com.

THE VOTE EARLY ☪ OFTEN

THE CONVERGENCE of law reviews and books is taking a different form in Chicago. This summer the *University of Chicago Law Review* will publish a nine-article symposium issue on the 2000 election controversy. The University of Chicago Press will publish unrevised versions of those articles in book form in the fall (as *The Vote*), supplemented by two additional articles, an introduction, and an afterword. In mid-April, however, the Press will offer a preview version of *The Vote* in draft form on its website – before the *Review*’s symposium issue hits the newsstands. Two articles in the preview edition (one from the left and one from the right) will be accessible for free and visitors who preorder a copy of the print edition of the book will receive a password to access the rest.

Richard A. Epstein & Cass R. Sunstein, eds., *THE VOTE*, thevotebook.com.

APRIL SHOWERS ☪

BILLABLE HOURS

HERE IS WHY 21st century telecommuting won’t live up even to 19th century standards:

For a great many years past, Mr. Webster had a regular law office in the city of Boston, and supplied with a valuable library of five or six thousand volumes, which was, however, for the most part, in the keeping of a law partner. In alluding to this fact on one occasion, he informed the writer that it was with the utmost difficulty that he could ever bring himself to attend to any legal business when sojourning at either of his country residences. “It not infrequently happens,” said he, “that people come to me just as I am about to leave Boston for Marshfield, with the request that I shall attend to their suits. I decline the