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Foreward

Campbell Thornal

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LEGISLATION

INTRODUCTION

The University of Florida Law Review takes pleasure in presenting the new Legislative Section to its readers. The new section will be composed entirely of student work with primary emphasis on proposing statutory solutions to significant legal problems and suggesting improvements in existing legislation. Our aim is to expand the traditional boundaries of proper law review material so that we may participate more fully in the law formation process.

The entire staff of the University of Florida Law Review wishes to express sincere appreciation to Mr. Chief Justice Campbell Thornal for graciously providing the following Foreword to the new section.

FOREWORD

CAMPBELL THORNAL*

Chief Justice of the Florida Supreme Court

Scholarly publications, including the law reviews, have made major contributions to the development of decisional law. Nearly twenty-five years ago Chief Justice Charles Evans Hughes referred to the legal periodicals as "the fourth estate" of the law. The impact of the studied analyses of court-made law is most often apparent when judicial initiative is exerted to adapt established concepts to new conditions.

Although never conclusive as precedents, the persuasive arguments of the law journal scholars have fruited in decisions expanding the law of warranty, products liability and criminal due process, and limiting governmental immunity. Such illustrations of the vitality of "the fourth estate" of the law could be extended substantially. They simply bring into focus the influence, and therefore the responsibility, of those who edit and publish the professional journals. Judges generally consider the law reviews to be legitimate commentaries on their own product — the judicial opinion. "New developments in the law are usually first discussed in legal periodicals and often only there. As a forum for the critical analysis of legal topics it is preeminent. It discusses the law as it was, as it is, as it is tending and as it ought to be — with a thoroughness rarely found elsewhere."¹

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1. PRICE & BITNER, *EFFECTIVE LEGAL RESEARCH* §201 (student rev. ed. 1962).

Logically, similar results are within the realm of attainment when existing legislative enactments are exposed to the same type of analytical approach. This should not be considered a presumptuous intrusion on the legislative domain. Rather, any constructive evaluation of current statutory law, with recommended improvements, is a re-affirmation of confidence in the legislative process as one of the basically essential aspects of lawmaking in a democratic society.

There is no disharmony between justifiable judicial creativity and the traditional responsibility of the legislature in accomplishing progressive change. *Stare decisis*, as a policy to achieve stability, is not inconsistent with judicial recognition of necessity for change in a rule of law initiated and preserved by the courts themselves.² Indeed, by the passage of time and significant changes in community relationships, a statute itself, once considered valid, can become subject to renewed judicial scrutiny in the application of constitutional standards.³

However, the historic separation of judicial and legislative power suggests extreme caution when the courts are confronted by a statutory barrier to a felt necessity for change. When the legislature has provided a statutory standard within constitutional bounds, the courts are privileged to do no more than politely suggest a need for further legislative action. It is in such a situation that a studious extra-governmental analysis of existing legislation, in the light of experience and current needs, could make a major contribution to the lawmaking process. Professor Clark's article on probation is illustrative of several such efforts which have already appeared among the pages of this Law Review.⁴

Of course, it is not necessary to await the development of such a problem in the course of a litigated case. The need for legislative action can be anticipated. By adding a category devoted to considerations of legislation in selected areas, the law review brings to the legislative process the same thorough, impersonal analysis that it has contributed to decisional law. To this end the law college might well function as an assisting research arm to supplement, without overlapping, the work of official bodies such as the Legislative Council and its Legislative Reference Bureau. These agencies have already efficiently demonstrated the wisdom of thorough research in diagnosing needed statutory changes and improvements. Their very

2. *Hargrove v. Town of Cocoa Beach*, 96 So. 2d 130 (Fla. 1957); Comment, 11 U. FLA. L. REV. 121 (1958); see also Comment, 18 U. FLA. L. REV. (1965).

3. *Georgia, So. & Fla. Ry. v. Seven-Up Bottling Co. of Southeast Ga., Inc.*, 175 So. 2d 39 (Fla. 1965); Comment, 18 U. FLA. L. REV. 166 (1965).

4. Clark, *Probation in the Criminal Courts of Florida*, 14 U. FLA. L. REV. 23 (1961).

existence suggests legislative approval of careful analysis and study as a sound approach to an effective exercise of the legislative function.

The orthodox law review format of leading articles, comments, case notes and book reviews ordinarily would not accomplish the desired results in the area of legislation. Admittedly, these categories are beamed to the decisional process. To this end their impact has been conceded. An entirely separate department devoted to a selected subject of legislation could be of inestimable value to legislators, legislative committees, and organizations interested in the particular subject.

This approach, of course, comes far short of a ministry of law or a continuing law reform commission. In a limited sense, however, it could perform a similar function to the extent of the study areas selected. It might well demonstrate the acceptability of the more comprehensive facility of a permanent revision commission.

An essential to the success of the legislative section of the law review will be an impersonal, realistic, nonpolitical evaluation of the problems under consideration. The politico-legislative aspect of law-making is primarily the prerogative of the legislature itself. It must be conceded that, generally, the element of popular sentiment for or against any particular proposal will remain the catalyst which will undoubtedly enter into ultimate legislative acceptance or rejection.

One should not overlook the importance to the student editors which such an effort offers. An acquaintance with the legislative process is only slightly less important to the present day lawyer than is acquaintance with the judicial process. One can actually envision the possibility of the researchers being called to appear before legislative committees in support of their recommendations, should they reach the status of bills introduced. This could be an added educational experience as well as a distinct public service.

In accepting this new area of scholarly endeavor, the editors and staff of the University of Florida Law Review are demonstrating notable vision and ambition for progress. It can be a public service to be sure. It can be a significant challenge to new generations of law students. It can be a constant reminder that the real glory of the law is not only its current authority but also its capacity for growth in meeting the demands of the society which it serves.