

# Communications

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To the Editor,

Christopher Tomlins managed to review my *Enterprise and American Law* in the last issue without developing and disputing or supporting a single one of its rather many ideas. He apparently liked the material on the *Slaughter-House Cases*, but does not think his readers care to know why. He apparently disagrees with some of the things in the section on labor law, but does not even tell us what they are. For something that is supposed to function as a book review, this does a major disservice to readers.

Like many, perhaps most, legal scholars who write books, I seek to publish individual chapters or sections as essays as I write them. There is much to be said for this practice, and nothing I know to be said against it. Tomlins objects to the practice, but provides no arguments against it. Publication of chapters (or groups of chapters) as they are written is important to me for at least two reasons. First, it patents my ideas. Books take a long time to write, and in the interval ideas must be protected. Every part of my book save the introduction was delivered as faculty seminars, conference talks or in speeches at other gatherings. The chapter on the *Slaughter-House Cases* was first delivered in 1979, twelve years before the book was published, and more than a dozen times thereafter. The best route to protection of one's ideas is to publish them as they are written. Indeed, I do not know of an effective alternative.

The second reason for pre-publication brings me to my purpose in writing this brief response. Publication as articles gives the author a chance to obtain criticisms from a wider variety of readers, both known and unknown to him. Tomlins suggests that *Enterprise* is based on unrevised earlier articles, but nothing could be further from the truth. Over the years I have received numerous criticisms and responded to many. Every page exhibits changes, ranging from the modest to the substantial. A few examples: in the *Slaughter-House* chapter I responded by adding sections on the Dunning School and the Gilded Age historiography of the *Slaughter-House Cases* and on the relationship between lobbying and the bribery question, none of which appeared in the

original article. The chapters on labor law contain new material on the relationship between “free labor” and neoclassical economic thought. Sometimes I changed my views since I published an article. For example, as a result of comments by others I considerably softened my initial criticism of Gabriel Kolko on railroad regulation, and I substantially rewrote the sections explaining the differences between classical and neoclassical theories of competition.

If Tomlins wishes to have a debate on the merits of publishing books in progress as articles or essays, he is welcome to start one; but he should select a different forum and he should be more candid about the facts.

**Herbert Hovenkamp**  
University of Iowa

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Mr. Tomlins responds:

The recycling debate Herbert Hovenkamp invites me to start has in fact been under way for some considerable time (for a recent update see “Inside Publishing: Grand Theft Auto,” *Lingua Franca*, September/October 1992, 18–20). Perhaps it has passed him by. Far from inappropriate, a book review seems to me one of the most suitable sites imaginable for contributions to that debate, not least because—as here—reviews furnish opportunities for public rejoinder and response.

Hovenkamp has decided that my review of his book means I object in principle to a practice of publishing as one goes. I do not, nor did my review state any such objection. I believe very strongly, however, that academic authors have a professional and ethical obligation to disclose to their audiences the full extent of their reliance on material they have previously published. Where candor was wanting in this matter was in the author’s preface.