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# Posthumous Piffle

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# COMMENT

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## POSTHUMOUS PIFFLE

Counselled, as I have been from birth, to speak only well of the dead I am reluctant to criticise one now fortunately dead, but unfortunately still articulate through the publication of posthumous writings.

In the February issue of the University of Chicago Law Review appeared an allegedly posthumous article written by Diogenes Jonathan Swift Teufelsdröckh, entitled, "Jurisprudence, the Crown of Civilization—Being Also the Principles of Writing Jurisprudence Made Clear to Neophytes."<sup>1</sup> In a style, excusable because of the post-mortem character of the writing, the author attempts to simplify the writing of jurisprudential articles, and to reduce their composition to an easy formula. Positing in himself a mastery of jurisprudence and the writing thereof the author dons the cloak of the traitor to his guild, and with the air of one about to "sell the signals", he expands his theme.

The following summation of the article is advisable, not because of any intent to make more widespread the ideas contained therein, but simply to render unnecessary a perusal of the article in the original.

In instructing embryonic authors of jurisprudential articles Teufelsdröckh first laments the dearth of basic principles common to jurisprudence, and considers jurisprudence a "Sahara of Ideas" and indeed it must have appeared so to him, who doubtless viewed a mirage when he so incompletely described the jurisprudential storehouse of ideas. Such storehouse, to him, contains only three ideas: that either Justice and/or Law prevails, should prevail, or must prevail. The

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<sup>1</sup> 5 U. OF CHI. L. REV. 171.

fallacies evident in this classification, and the restricted concept of Law and Justice that is predicated need no comment, so evident are the errors. Errors, less evident, more insidious and of greater potential harm are made the subject of this comment.

Suggested for the amelioration of the scarcity of basic ideas available for discussion by "jurisprudes" are many panaceas. Teufelsdröckh first suggests a system of subinfeudation of ideas, whereby the subinfeudee does no original thinking but merely swears allegiance to his feudal lord who permits the use of his ideas in return for homage tendered at frequent intervals.

The first suggestion admittedly does not make it possible for all aspiring "jurisprudes" to make a living, so instead of a "share-the-work plan", Teufelsdröckh counsels outright inflation of the currency whereby "pseudas" are created and issued upon the bank of fundamental ideas, to be considered as of equal value with the basic ideas stored in the jurisprudential vaults.

In furtherance of his suggested inflation and forgery of the currency Teufelsdröckh recommends that the neophyte be taught the principle of translation, whereby the young author may publish an old idea, such as, "Justice Under Law" as his own under the title "Distinction Under Principle", or "Good Life Under Legal Institutions."

In addition to the willingness on the part of the masters to underwrite a "pseuda" factory of the neophyte Teufelsdröckh cautions the masters to teach the youngsters sound principles of production and marketing. The twin principles of production are said to be the "Principle of Partiality" and the "Principle of the Whole". Under the first principle of production the neophyte, instead of saying an elephant is like a wall, says an elephant *is* a wall, thereby precluding inquiry into actual elephants. The second principle of production is explained to be a ruse whereby a Hole is taken and prefixed

with a "W", thus making a Whole, which upon examination reveals only a hole. Such is a useful trick adopted by the so-called realists who have indeed built upon a vacuum—thought by some to be mental.

As fundamental principles of marketing Teufelsdröckh suggests the principles of anonymous non-citation, or in lieu thereof citation by the double-dozen, which precludes possible verification. These may effectively be assisted by the principles of unavailable authority, and non-joinder of issue.

That issue should never be drawn is a phobia of the "Chamberlain-like" Teufelsdröckh. This he stresses lest panic come upon the inevitable discovery of the inflation and forgery that has been perpetrated, for, to join issue once is to invite inquiry, and threaten the soundness of the currency, therefore, shadow-boxing with self-created straw men is all that remains for the neophyte.

Throughout the article the reader is impressed with the fear Teufelsdröckh has of the panic wherein the real nature of his forged currency would become known. In spite of this fear, however, he counsels unlimited forgery and inflation—nowhere does he suggest one definite protector, one norm, or one factor of stability to be relied upon in the event of the inevitable panic.

As a justification for his ideas Teufelsdröckh poses the question, "who loses?" To this constantly recurring question might be asked, "Who gains from this extension of half-truths?" Certainly even in the case of his suggestion that old ideas be sent forth under new names, the resultant confusion would more than outweigh the alleged gain from the popularization of the idea.

The plans advocated by Teufelsdröckh are obviously a fraud upon the neophyte, who, failing to appreciate its fraudulent character, might be led to believe that Teufelsdröckh,

indeed, was a Master, instead of one devoid of a single jurisprudential idea and therefore forced to forge his own paper.

Much of that currently written in the field of jurisprudence is doubtless in accordance with the views suggested by Teufelsdröckh, but who is unable to detect its forged character? Who, for instance, even among the uninitiate fails to see the so-called realist as Teufelsdröckh pictures him—possessed of nothing, trying strenuously to crawl out of the “hole” that threatens to engulf him?

Teufelsdröckh’s memory would have been better served if he had taken stock of the jurisprudential storehouse of ideas, and developed one of the thoughts found in the true inventory of such storehouse, such as the readily establishable proposition that, “Truth is Immutable.” Rather than that he chose to erect his monument upon a lesson in forgery.

“Boring from within”, afraid of defeat in open conflict, Teufelsdröckh counsels his cohorts from the grave to refrain from any definite encounter. In this admonition perhaps he was mindful of his own defeats in such encounters, or remembered the positive rout of Felix S. Cohen by Walter B. Kennedy,<sup>2</sup> when the former was so rash as to descend to level of tangibles (logically reserved for realists worthy of the name). Cohen badly beaten has once more fled to higher levels, to the extent of even seeking such stratosphere over distant lands.<sup>3</sup>

I fear that Teufelsdröckh was properly surnamed, but I regret the violence done the truth-seeker Diogenes. The devil never counsels a statement of truth, half-truths are his fare, in this respect the posthumous writing of Teufelsdröckh properly makes permanent his surname, “Devil’s Dirt.”

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<sup>2</sup> Kennedy, *Functional Nonsense and the Transcendental Approach*, 5 *FORDHAM L. REV.* 272; and *More Functional Nonsense—A Reply to Felix S. Cohen*, 6 *FORDHAM L. REV.* 75.

<sup>3</sup> Cohen, *Problems of a Functional Jurisprudence*, 1 *MODERN L. REV.* 5.

Convinced that the most vitriolic attacks by pen are made under pretended jest, and thereby protected by the cry of "no sense of humor," I have stirred the bones of the "jurisprude" Teufelsdröckh, who has said that the gold in the jurisprudential vaults needs no polishing. I fail to see that Teufelsdröckh has any gold in his vault. Is he not protecting false golds, and likewise protecting false Gods?

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