

## Looking Backward

Hard cases make bad law, and since 2002 the exposure of some ugly criminal cases has stirred legislators in several states to contemplate dreadful legal innovations. However far removed these crimes may appear from regular mainstream American life, the legal principles involved threaten to wreak havoc in the coming decades.

As all the world knows, the Roman Catholic Church has for some years faced a problem from clergy sexual abuse. In some cases, adult priests had sex with teenage boys and young adults, while others—true pedophiles—focused their attention on small children. For the sake of argument, let us concede that perhaps three or four percent of priests over the past 60 years were involved in some such misconduct. How should we as a society respond to this? In most cases, the statute of limitations has long expired on such acts of molestation, and that restriction has infuriated media and legislators. In 2002, the state of California passed what is known as a lookback law in an effort to remedy the perceived wrong. For a period of one year, a so-called civil window, victims could launch civil lawsuits in cases that would otherwise have expired, however long ago the abuse occurred. Delaware followed with a two-year window, and, as in California, the new opportunity provoked a torrent of suits.

From one perspective, such windows are a wonderful idea. Imagine, for instance, a hypothetical pedophile priest who was ordained in 1955 and who spent the next 25 years molesting literally hundreds of children, before retiring comfortably. Is it not simple justice that he, finally, should face the consequences of his acts? And, by the same token, so should those Church authorities who winked at his acts, subjecting him to trivial or inconsequential forms of discipline, while ignoring the needs of victims.

But the reality is not nearly that simple. Yes, I can point to cases of monstrous serial pedophiles, but they are wildly atypical in the records of clerical sexual misconduct. In the vast majority of cases, sexual misbehavior was nothing so flagrant, and the evidence for it is often slim to nonexistent. How on earth can anyone defend a case concerning an alleged incident of sexual impropriety that occurred in 1970? Over time, memories fade, witnesses die or become hard to trace, evidence become scarcer, and the odds of conducting a fair trial decline precipitously. The dangers of exhuming ancient allegations in a civil case are all the greater because plaintiffs have such an overwhelming financial interest in establishing their claims.

Also, we may today know that sexual abuse is an extraordinarily dangerous form of victimization, but earlier generations did not share that opinion. Professional and expert opinions about the severity and frequency of sexual abuse have fluctuated dramatically over time, and concern reached an historic low between 1955 and 1975, the exact time that many of the alleged acts of abuse occurred. Of course, diocesan authorities reacted to such cases then with much less urgency than they would in 2009. Lookback laws thus demand that institutions be judged according to the standards and attitudes prevailing today, but for actions that occurred 30 or 50 years in the past. Apples are to be judged as to how far they live up to the criteria of oranges.

This critique goes far beyond the specific problem of child-abuse cases. In other matters, too, the seriousness that a given society places on a partic-



ular act may change swiftly and radically. An act that a society regards as fairly minor at one time may 30 years later come to be seen as so appalling as to be unforgivable, and *vice versa*. Over time, indeed, some kinds of conduct move entirely outside the scope of criminal law. In the 1950's and 60's, consensual adult homosexual behavior constituted a very serious crime in most jurisdictions, although attitudes were radically transformed in later years. But even when acts have remained criminal, the stigma that attached to them has changed to an amazing degree: Just think of the attitudes prevailing toward drug use in the 1970's compared with today's.

Can any of us say with confidence how the laws and mores of our society will change between now and 2040? I may today be a law-abiding person, observing laws and social standards as best I understand them; but unknown to me, I may be engaging in behaviors that, in the retrospect of 30 years, could come to seem irresponsible or cruel, and deserving of stern sanctions. Will future courts be trying people on charges that, in 2009, they campaigned against "gay marriage" or denied the reality of global warming? By no sane or reasonable standard should I be judged by the standards of a future generation. Lookback laws represent a looming catastrophe for the U.S. legal system. ☞

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by Scott P. Richert

## The End of Manufacturing

The unemployment rate in Illinois broke double-digits in May to hit a seasonally adjusted 10.1 percent, a 26-year high. Of course, double-digit unemployment rates are nothing new here in Rockford; we have been above ten percent for the better part (so to speak) of a year now, hitting a high of 13.5 percent in March before gaining a little ground in April, then slipping back to 13.4 percent in May. And the last time Illinois' unemployment rate was this high, Rockford's was roughly double.

As has been the case for the past decade, if not the past three-and-a-half decades, manufacturing has been the hardest hit. It has been several months since manufacturing fell to less than ten percent of the U.S. economy, and while a properly managed implosion of a building sends out minimal shock waves, the implosion of the U.S. auto industry has been anything but properly managed. While NAFTA and outsourcing gave the Big Three incentives to reduce their reliance on domestic parts suppliers, many small manufacturers throughout the Midwest still receive business from the domestic auto industry, and many others depend on business from those who do.

In other words, 2009 is going to be a painful year for Midwestern cities like Rockford whose economies are still heavily dependent on manufacturing. Yet Bob Trojan, president of Rockford Linear Actuation and board member of the Rockford Area Chamber of Commerce, thinks the worst may be over. On his Manufacturing 2.0 blog on the website of the *Rockford Register Star*, Bob argues that the economy is pulling out of recession, in large part because of a turnaround in manufacturing, and predicts that economic statistics will prove him right within a few months.

Bob knows his business far better than I do as a mere observer, though I would not hesitate to take the bet if he were to offer one. But one of

Bob's reasons for believing that we have reached the recession's trough sparked some thoughts about the future of manufacturing. Bob sees an increase in spending on advertising, which, he notes, tends to track consumer spending. Of course, it can also stimulate consumer spending, or at least redirect it.

And one of the ways that advertising has successfully redirected consumer spending in the United States for several decades now is from saving to purchase a more expensive, higher-quality item in the future to buying a less expensive, lower-quality item that will satisfy one's desires *right now*. This move toward lower-cost but more frequent purchases has had economic effects that partly explain the current weaknesses in the U.S. economy—for instance, a lower (even negative) personal savings rate, which reduces the capital available for long-term investment, and a greater reliance on consumer credit, which helped fuel the housing bubble through second mortgages and home-equity lines.

Indeed, lower prices are a powerful means of encouraging impulse buying over savings, as the empire that Sam Walton built attests. But one cannot lower prices and maintain profit margins without lowering costs. Sometimes, economies of scale and new production processes allow a company to lower costs while maintaining quality; more often, the savings come from cutting corners and making a product that is “good enough.”

And so the cycle continues—and it is even presented as one of the glories of our “free-enterprise system.” Several years ago, a prominent paleolibertarian scoffed that those who would pay \$70 for an American-made blender that would last for decades over a \$10 Chinese-made blender were depriving themselves of the frequent advances in “blender technology.” The “planned obsolescence” (read: shod-



dy construction) of the cheaper product thus becomes a virtue.

But is this what manufacturing should be? One needn't dive into etymology and point out that *manufacturing*, at its root, is more akin to the English *handiwork* or *handicraft* than it is to modern mechanized mass production. Yet the decline in quality and the “consumer preference” for disposable goods cannot be blamed (at least not entirely) on the techniques of modern manufacturing. Those techniques may make it easier to produce shoddy products, but they do not make it inevitable. We do, by making the choice to satisfy our desires now, rather than to save for the future.

The first men whom Henry Ford paid five dollars per day put together automobiles that lasted far longer than anything made by Detroit today—or even by Toyota or Nissan or Honda. Rather than use their pay to “stimulate the economy,” many of them saved and paid cash for their homes, which they furnished with mass-produced yet high-quality furniture made in Rockford or in Grand Rapids, Michigan. That furniture commands high prices in antiques stores today.

If Bob Trojan is right and we have not seen the end of manufacturing in the United States, then we need to start asking ourselves a question that few have entertained: What is the end—that is, the purpose—of manufacturing? There is no future in competing with China on price. There may be one, however, in producing the kinds of goods that we can hand down to our children, and to our children's children. ◊