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## Brothers in Law

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# Marquette Law Review

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## EDITORIAL

### BROTHERS IN LAW

Early in the annals of time the love of brothers became strained and the issue was raised as to whether one was his brother's keeper.

The burden of maintaining the point was thrown onto those who felt an injustice in the very asking of the question. The occasion therefore is still with us, and if we venture a solution we needs must cross on well defined ground. If a brother's requests are unjust, of course we must not keep him—we must rather prevent him from injuring others. But if his efforts are just, to so state the problem is to beg the question.

Wisconsin is entitled to a learned and able bar, and Wisconsin will and shall have it. But learning and ability is an individual matter and

there is no statutory enactment providing a monopoly for dispensing or acquiring it at any particular place. Rather there is a prescribed preparation designed to insure a minimum of ability and learning. If the latter qualifications are the aims of the legislature the means to secure them should be reviewed from time to time and revised to fulfill their purpose. Now the examination given by the Bar Examiners is a suitable test of one's learning and ability for some applicants seeking admission to the Bar, and all should be compelled to cross that bar. The examination method is a desirable test, and everyone should have himself measured thereby.<sup>1</sup>

Clear thinking avoids the danger of the idea that one school alone is above all others in the preparation of students for the Bar. It is written :

“Oh why should the spirit of mortal be proud.”

If one remembers the original legislative purpose of the Wisconsin Act, relative to admission to the bar, he will not err in this regard.

It is a fundamental principle of a government of laws, that the laws should be uniform in their application. And if one prepares himself in the profession of law in a prescribed manner, and to a prescribed extent, and not at a particular place, that person fulfills the reasonable expectations of the people he will thereafter serve.

Self interest always has been at the basis of the struggle for the perpetuation of vested interest, but a dispassionate consideration of experience and others should lead one to consider others equally with self: then there will be harmony in the relations of brothers. The interdependence of our complex life is too great to allow anyone to long believe that he can plunge on in head-long disregard of others without injury to his own interests. Ours is a co-operative existence, and self-interest dictates consideration of others equal to that of one self: the experience of the ages proves that to be fundamental. It is the Golden Rule.

The consideration of our brothers in the law, of the bills before the legislature relative to admission to the Bar, if well advised and mature, will, we believe, lead them to co-operate in securing those laws which will have regard for the protection of the people and the position of law students and their right to follow the profession of law, as a whole, and which are in complete harmony with the spirit of our constitution.

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<sup>1</sup> Article by Professor Carl Zollmann in Vol. 11, No. 2, MARQUETTE LAW REVIEW, on the Diploma Privilege in Wisconsin.

## ADMINISTRATIVE CONTROL OF INSURANCE IN WISCONSIN

We recommend to our readers a very able article on the subject above stated, which was written by Samuel Becker, of the College of Law, Tulane University. It appears in the April, 1927, issue of the *Wisconsin Law Review*.

## A REAL SERVICE TO WISCONSIN LAWYERS

The Wisconsin Bar Association has undertaken to issue a circular letter for its members which summarizes the important legislation pending before the Legislature and the status of the bills covered. This has been found to be of real value to the lawyers of Wisconsin. It is saving them much time and effort. The one thousand odd measures pending before the Legislature are too voluminous to be studied separately. The service the Association is providing is informing the lawyers of the important changes in the law that are pending and which must be studied and watched. The fullest appreciation of this valuable service has been expressed by members of the Bar.

PROPOSED ANTI-TRUST LAW CHANGES—AN INVITATION TO THE LAW  
REVIEWS

The functions of the leading Law Reviews is not alone to present the past and present law, but also to take an initiative in adapting our legislation to our changing business and social needs. The efforts of John H. Wigmore in his article "Domicile, Double Allegiance, and World Citizenship" in the April, 1927, issue of the *Illinois Law Review* are in admirable fulfillment of that purpose.

Another question which we believe should receive a thorough discussion before the Bar of the nation is that of changes to our Federal Commerce and Trade Laws regulating monopolies in the field of foreign and domestic commerce, so as to allow American business men to maintain and expand their present markets against foreign competition.

Our anti-trust legislation and decisions are evidence of a needful control against the evils of unrestrained business competition—in the past primarily internal. However, our increased foreign trade of late years, and especially the future with the return of the influence of national economic forces, is making us adjust our industry and production costs to a world basis. While our internal markets are protected by the tariff, nevertheless, every dollar taken from the consumer, which a different form of business organization would make unnecessary is a dollar wasted.

The strong tendency among our European competitors to form national and international trusts or "cartels" for whatever benefits in production, distribution and profits they bring in the increasing struggle for world markets seems to point in the direction of international competition instead of internal competition, requiring the organization of the major competitive industries on a similar national basis to present a unified front in domestic as well as foreign markets, for their best interests.

In view of this increasing problem, which Dr. Julius Klein, director of the Bureau of Foreign and Domestic Commerce, has lately declared is securing the increased attention of business men, the MARQUETTE LAW REVIEW believes the time is propitious for a discussion in the legal world as to the nature and extent of the changes it must contemplate if the national economic well-being requires a change in the anti-trust laws, and is to have them at the earliest moment commensurate with due consideration.

If the economic problem is admitted the question arises as to how the various statutes might be amended to provide industry with its necessary unified front. Of course, this suggestion implies a changed social point of view of the first magnitude, with innumerable ramifications. But if the changed times demand a changed procedure and point of view, the old must give, if only to the extent necessary in the minimum. Inaction does not change a present fact if there be a fact. Furthermore, the indifference of the public in the last struggle between the Federal Trade Commission and the administration and the courts indicates a changed public viewpoint.

The gist of the problem seems to be a shifting of competition to an international basis, which requires of each nation mindful of its self interest in this struggle, a national conception of competition based on the welfare of the nation as opposed to that of the separate internal competitive units and consumers. The issue, outside of the question of facts, would be as to the nature of changes possible in the anti-trust laws to meet international competition, but nevertheless avoiding the dangers that caused the development of this phase of the regulation of industry as much as possible.

The three forms of organization which have been developed to control the markets are:

1. In Britain, the firmly established, but loose federation of manufacturers. These were "created to represent the public interests and policy of an industry, to ensure some method of standard specifications and standard prices between firms, to exchange information regarding foreign competition and bring united action to bear at critical points in the competitive situation. Such a federation exerts

no financial, administrative, or technical control; its power is based on legal agreements between groups of firms and between such groups and the central body. On the whole where it has been genuinely effective, as in the electrical engineering industry, it has strengthened enormously the competitive power of the industry, and allowed it to maintain a firm grip both on the home and the export market." This has its counterpart in the legal American Trade Associations.

2. In Germany, at first, the vertical combine, i.e. one bringing together the various producers of the raw, semi-finished, finished products and the distributing agencies. This came into prominence during the inflation period of 1921 and 1922. "The vertical combine to be economically justified, must be fully active in all its members; the demand on the constituent firms must be constantly high enough to ensure efficiency in operation. This means that the firms in the final manufacturing stages must be in a position to absorb the greater part of the output of subsidiary firms; maintain, therefore, a strong competitive position through economies in production costs, intensive selling campaigns, and a distribution system which will avoid duplication and reach the market without delay. Such developments are associated exclusively with a rising demand and rising prices. As soon as the constituent firms, which, for example, have been operating at a 90 per cent capacity from an initial 65 per cent capacity find themselves forced to return to 65 per cent or even less, the weight of overhead expenditures makes their products excessively dear and forces the consuming firms out of the market. The consuming firms must either find their essential raw materials in the open market, which means the dissolution of the trust, expend their reserves on neutralizing the difference between the open market price and the combine price of raw materials until revival in demand takes place again, or, in the event of a prolonged depression, close down entirely. . . . It is difficult—well-nigh impossible—to discover now a true vertical combine in effective operation, and it is doubtful whether the vertical combine will ever be able to establish a position in modern industrial organization." The vertical Stinnes combine was one of the last to survive, but it is now dissolved.

3. The horizontal trust, which came to be generally adopted in Germany after the trade recovery of 1925. A highly complex industry such as electrical engineering is believed not to be subject to this organization if only through the enormously complicated problems attached to centralization alone. The simple industries having few processes and standard types, as coal mining, iron and steel, artificial silk, automobiles, margarine, soap, paper, and electric cables manufacture, are believed to be adaptable to the horizontal trust. "The main characteristics of this form may be summarized as follows:

(a) Centralization of administrative, financial and technical control, in the absolute and not in the relative sense of the word.

(b) Concentration of production on most modern units and the steady elimination of subsidiary enterprises in favor of specialization.

(c) Close association between finance and production in the execution of contracts and the purchase of raw materials.

(d) More effective control over the purchase and supply of raw materials though the capacity of the trust to divert the requirements of an entire industry from existing suppliers, in the event of dispute, to other competitive suppliers."

After a summary of the advantages and disadvantages of this form of organization one English writer concluded:

"The trust, if it is to be permanently prosperous, must maintain a constant state of activity in the markets open to it, and this can only be done through a policy of economic prices. At the present moment the salvation of British industry depends on the introduction, as far as possible, of horizontal trustification; it is a natural and logical development, and cannot be very well resisted."

The immediate aim of the cartels that have been formed has been to maintain the established status quo of industrial supremacy along national lines and to secure for the cartel the benefits and advantages, as against newcomers, of its early start and efforts at development.

The experience of other countries points to the necessity for different legal provisions and restraints along classifications adapted to the nature of industries affected. Where our industries do not compete directly with foreign goods either at home or abroad there would seem to be no necessity for a change in the anti-trust laws except insofar as such industries are auxiliary to those which do, and thus affect their ultimate prices and the quantities sold. As the above analysis indicated, different major industries would find laws of general application useless or the public might find them dangerous. The necessities of a proper classification would be most vital to be effective.

In England the question has been whether a country profits by the stronger units of a group salvaging and carrying along uneconomic members which would be a detriment on a complete industrial inclusion, and whether the organizations contemplated and affected are legal.

In Germany the various governments have variously supported the different industrial organizations and in some instances have left questions of legality await the proofs of actual practicality.

The most vital question in the United States is how to assist exporting industries to meet competition in foreign fields and, at the same time, keep from them the means of frustrating the intent of such a change by

rigging the domestic market under the protection of the tariff and the removal of unfair trade practice and monopoly restraints.

This question is imbedded in the extent of the industry's active contact with foreign competition. Tariff protection tends to rob an industry of incentive to maintain the highest possible standards of efficiency in manufacture, because it protects it to a certain extent from the rigors of competition. Unless there were a partial removal of the tariff protection provided, this right of monopoly contemplated would tend to further weaken the efficiency of industry unless a national consciousness in industry made the better meeting of foreign competition both at home and abroad the aim and necessity of industry. If the necessities of competition insured efficiency that would be ideal. Industry's purpose to make profits and its opposition to change in business methods unless profits are endangered should be the key of how the present regulations should be amended, if at all, to assist our exporters and to secure our internal markets against foreign competition, and to protect our consumers and the public from the evils of monopoly in helping the manufacturers help themselves.

In future issues of the MARQUETTE LAW REVIEW further discussions on this question will be presented. We invite the other Law Reviews of the country to develop with us the question here suggested which seems to us to be very vital to our future prosperity.

H. WILLIAM IHRIG

<sup>o</sup> Manchester (Eng.), *Guardian Commercial*, September 28, 1926: "Large Scale Organization for Production" by Hugh Quigley. "A New Development in British Industry—Chemical Producers Form Gigantic Trust."

Manchester *Guard. Com.*, September 23, 1926: "The Place of the Cartel in International Trade—British Industry's Fight with Foreign Competition" by Sir Philip Dawson, M.P.

Manchester *Guard. Com. Annual Review*, January 27, 1927: "The Twilight of the Consumer" by T. E. Gregory, Professor of Banking, University of London. "Germany's Year of Progress."

*American Federationist*, February, 1926: "The Fight Against Monopoly" by Professor E. P. Schmidt, Marquette University.

*American Federationist*, November, 1926: "Restriction of Output" by Professor E. P. Schmidt, University of Wisconsin.