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THE ZAPP COMPLEX

The text for today's sermon comes from a lecture by Morris Zapp, the inimitable literature professor created by David Lodge in his novels, *Changing Places*[1] and *Small World*.[2] (If you haven't read them, stop everything right now and go get copies; they're terrific.) At one point, the editors of this journal considered adding a regular "Law and Literature" feature by Professor Zapp. Apart from some apprehension about the copyright laws, the scheme foundered because we were unable to compose an essay that would do justice to the great Zapp.

Fortunately, Lodge is gifted with greater imagination. In *Small World*, he supplies a complete lecture by Zapp. The scene is a particularly depressing professional meeting at an abysmal provincial college in England at which Zapp has been invited to speak, an invitation he has accepted largely because England is on the way to his next conference in Milan. This conference in England sets the scene for the entire book, which paradoxically takes place mostly in other countries. The "small world" to which the title refers is not provincial England, but rather the cozy world of international academic conferences, in which the same intimate group of academics meets again and again.

Zapp's lecture is mostly a prolonged and fairly graphic comparison between literary criticism and watching a striptease—a comparison received with some distaste by his audience—but the paragraph of interest to us comes earlier. Zapp, we are told, delivered the lecture while "striding up and down the platform with his notes in one hand and a fat cigar in the other." Elsewhere in the book, we learn of his wretched taste in sports jackets. Meanwhile, the professor chairing the meeting "assumed an aspect of glazed impassivity, but by imperceptible angles the corners of his mouth turned down at more and more acute angles and his spectacles slid further and further down his nose . . . ." Despite his poor reception at the conference in Rummidge, England, Zapp will peddle the same speech all over Europe and then at the MLA convention in New York.

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1. D. LODGE, CHANGING PLACES (1979). CHANGING PLACES takes place during the heart of the student uprisings of the sixties, and also in the heyday of trans-Atlanticism.
2. D. LODGE, SMALL WORLD: AN ACADEMIC ROMANCE (1984).

Enough wind-up. *Small World* is so inspired that we will end up quoting the whole thing, landing ourselves in *real* copyright trouble. (It's tempting at least to tell you about Zapp's ex-wife, Desiree, the feminist novelist, or about Robin Dempsey and the computer program that nearly talked him into suicide, but you just will have to get the book yourself.) Here is the part of the lecture that relates to today's sermon:

> I used to be a Jane Austen man. I think I can say in all modesty I was *the* Jane Austen man. I wrote five books on Jane Austen, every one of which was trying to establish what her novels meant—and, naturally, to prove that no one had properly understood what they meant before. Then I began a commentary on the works of Jane Austen, the aim of which was to be utterly exhaustive, to examine the novel from every conceivable angle—historical, biographical, rhetorical, mythical, structural, Freudian, Jungian, Marxist, existentialist, Christian, allegorical, ethical, phenomenological, archetypal, you name it. So that when each commentary was written, there would be *nothing further to say* about the novel in question.

Ultimately, however, Zapp came to reject this entire project.[3]

What should interest law professors is not Zapp's later evaluation of his project, but the project itself. The Zappian quest for the definitive reaches its apogee in the modern law review article: 196 pages with 557 footnotes, recounting all of the judicial doctrine, all previous scholarship, all prior theories, propounding a new approach and then applying it in excruciating detail to every possible hypothetical. Though often bemoaned, this style remains dominant in contemporary legal scholarship.

The Zapp complex sheds light on otherwise inexplicable aspects of legal scholarship. Consider a recent 187-page article in the Michigan Law Review about the dormant commerce clause,[4] probably the dullest subject in constitutional law. The author is said by one of our colleagues (who is himself unusually sagacious) to be about the smartest law professor in America. Why, then, has he unleashed this monstrosity upon the world? Someone that smart certainly must realize that no one outside of the city limits of Ann Arbor will ever read the article from beginning to end. But of course that's not the point. No one needs to read the article at all. Even without reading it, everyone knows that this is the definitive work on the dormant commerce clause. After such a brilliant mind has devoted such minute attention to such a narrow topic, what could possibly be left to be said?

3. He began to realize that eliminating all of the mystery in favor of a definitive work would (to use Zapp's own metaphor) be equivalent to replacing a striptease with a gynecological examination. Perhaps that is a part of Zapp's thesis that the law school world may not be ready for.

4. Regan, *The Supreme Court and State Protectionism: Making Sense of the Dormant Commerce Clause*, 87 MICH. L. REV. 1091 (1986).

The quest for the definitive explains much about legal scholarship. On the surface, it seems irrational for each of ten articles on a subject to begin by recounting the entire previous history of the subject, propound a new approach (which none of the other articles finds valid), and then devote many pages to working out the minute details of an approach that realistically will never be applied by anyone except the author. The motive, however, is now clear: it is the desire to be definitive.[5]

Each author, like Zapp, dreams of writing the last word on the subject: the work on the first amendment, or equal protection, or judicial review that says it all, so that no one will ever have to read anything else again. In the future, all that will remain is for courts (and perhaps some academic proteges) to apply the approach faithfully. Someday, each author dreams, the pundits in the Harvard faculty commons will mention the subject matter as a former source of controversy "but of course old Jones cleared all that up in '88, not much left to say about [free speech or judicial review or whatever it is]." (Old Jones, of course, is by now the holder of a distinguished chair at Yale or someplace, having written his way out of Whatsamatta U. with the same definitive article.) It is this dream that explains the length, footnoting, and pedanticism of the typical law review article.

And yet, it's all quite futile. Each definitive article takes its place on the shelf beside its definitive predecessors. Each will be cited and shrugged aside in the early footnotes of its definitive successors, while being largely ignored by the courts. Because of this craving for the definitive, each is choked with excessive footnotes and turgid prose, with pages and pages of tedious review of what everyone in the field knows anyway. Each will be guilty of indictable Crimes Against the English Language, an offense soon to be recognized by international law. And none will accomplish anything of importance except to adorn the resume of the author with yet another prestigious citation (certainly not a goal to scoff at).

What is wrong with this venture is not just the horrible style it promotes, but its very purpose in ending discussion. Don't we all know in our hearts how boring our jobs would be if we did have the ultimate theories of judicial review, free speech, etc., at our finger tips? And how presumptuous of us it is to think that we can solve problems of this order for all time. Does anyone really envision our

5. To be fair, there is one sub-category of articles that have a different explanation: tenure pieces. These suffer from the same vices, but the explanation is simply a desire to impress the tenured faculty with the author's industry, so that even if they don't find the thesis very clever they will still admire the thoroughness of the research.

descendants a century from now faithfully applying the free speech test announced in last month's law review article?

Saying the last word is, ultimately, an attempt to silence the audience. Instead of lecturing our colleagues, perhaps we should be talking these issues over with them.

We might begin to think of scholarly works, not as crystallized monuments to truth, but rather as steps in what Richard Rorty calls the "continuing conversation of mankind." When we're very lucky, we can clarify an issue or settle some small dispute, making a permanent contribution to the discussion, but to think that we can ever have the last word is the worst of all scholarly delusions.

All of which takes us rather far from Morris Zapp and his travails. It would be an affront to the Zappian spirit to pretend that his presence in this essay is anything less than frivolous. Admittedly, the same point could have been made without referring to Zapp, but in that event, however, the purchase price of the book would not have been tax deductible[6] and this essay would have lost its title. No one would have appreciated those points better than the immortal Zapp himself.

D.A.F.

6. Subject to the two percent floor in § 67(a) of the Internal Revenue Code (as amended in 1986).