Max Rheinstein (1899–1977)

Mary Ann Glendon* and Malcolm P. Sharp**

I first met Max Rheinstein when he came to Chicago in 1935, after teaching at Columbia and Harvard. Even if one’s German were perfect, it would be difficult to perceive fully the extraordinary range of studies and writings of his German period. Fortunately, Konrad Duden describes Max’s contributions during this period. Duden wrote, “He was and is unbelievably generous toward the Germans who expelled him. Before and after the end of the war he fought with all his might against equating Germans with Nazis and for a reasonable peace. One cannot read what he said and wrote at that time without being moved.”† Max’s efforts contributed to softening asperities due to the War of 1939 and to seeing in perspective the vicissitudes of denazification. He seems to have foreseen at an early time the cooperation of the present American and German governments.

My association with Max was closest in the courses we taught in the comparative law of contracts. I was impatient with the slow growth of American law—in particular with respect to form and consideration and with respect to mistake and related matters.

Max did not indulge this impatience of mine. He pointed out that German law was by my tests “behind” ours in the treatment of mistake. And he joined me in amusement at the course of the so-called reasoning which had led the German law to one happy result: A gratuitous promise of an option was said to be a gratuitous grant and “like” an effective gift.

Max also taught the comparative law of torts—in which we seem to be even more in need of wisdom—and at times he taught courses in general comparative law. Of course, it was in the

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field of comparative family law that he made his
greatest contribution in his later years.

Max's voracious appetite for new experiences
and travel was remarkable. It is this, probably
more than anything else, which I shall remember
most vividly about him. It contributed to making
his and his wife Lilly's lives happy and full.

**...**

Malcolm Sharp has asked me to supplement
these recollections of his with some words
about the influence of Max Rheinstein on Max
Rheinstein, and about Max Rheinstein's work in
his later years. In fact, to discuss either of these
subjects involves speaking of the other. The
years since Max's nominal retirement from the
Law School in 1968 were as active as those that
preceded it. He published two more books, a
steady stream of articles, and taught and lectured
frequently here as well as in Italy, The Nether-
lands, and the Federal Republic of Germany.
Nearly all of this was a continuation of his
lifelong preoccupation with matters in which
Max Weber had awakened his interest in 1919-20
and which are now commonly grouped under the
heading of legal sociology. This is particularly
true of the 1972 book *Marriage Stability, Divorce
and the Law*; of the 1969 lecture on *Rechts-
honoratioren,* and his 1974 essay *The Family
and the Law,* which introduces the Family
Law volume of the International Encyclopedia of
Comparative Law.

Max Rheinstein was one of the students in a
course given by Max Weber at the University of
Munich during the last year of Weber's life. In
this course, General Economic Theory, Weber
presented the distillation of his life's research
and thought. Rheinstein was then a 21-year-old
law student, a World War I veteran who had
served at the Italian front ("It collapsed when I
arrived"), and a part-time librarian in Ernst
Rabel's comparative law institute. Weber made
such a deep impression on him that, years later,
Rheinstein described as a "labor of love" the
prodigious work he did in translating, editing and
explaining Weber's *Law in Economy and Soci-
ety.*

It is said that Weber himself apparently
thought that the sociology of law, together with
his presentation of the basic forms of domination,
and his political writings, was the most original
part of his great unfinished systematic treatise,
*Economy and Society.* What Rheinstein did for
his old teacher, however, went far beyond mak-
ing this important work available in English. The
complexity and subtlety of Weber's thought, as is
well known, have caused his work to be fre-
quently misunderstood, oversimplified or ig-
nored. The difficulties of substance have been
compounded by the impenetrability (even for
Germans) of Weber's writing style.

Max Rheinstein and Edward Shils, working to-
gether on the translation, rendered the sociology
of law more understandable by including transla-
tions of other related parts of *Economy and Soci-
ety.* They devised English equivalents for Ger-
man words that were artificially coined by
Weber. Rheinstein's remarkable footnotes and
annotations explained those frequent passages
where Weber's remarks (in the manner of Mal-
colm Sharp) were as cryptic as they were heavy
with meaning. These notes, a delight to read in
themselves, take the reader through Hohfeldian
analysis, courtly love, the lost civilization of the
Khazars, the disrepute of Roman Law Studies
under National Socialism as a "product of the
Jewish mind," the Albigensian and Waldensian
heresies, and so on. Rheinstein checked Weber's
sources, and furnished missing references for
Hindu, Chinese, Jewish, Islamic, and primitive
legal systems, as well as for Roman, English, and
medieval European law, and the laws of Ger-
many, America, and France. He explained tech-
nical terms from each of these systems, and in-
dicated where later research or new discoveries
had altered the views of the generation of schol-
ars whose works had been used by Weber.

Rheinstein's annotated translation itself ren-
dered a monumental service to sociology in gen-
eral, and legal sociology in particular. But he did
more. In one of his finest essays, a 48-page In-
troduction to Weber's thought, Rheinstein in his
own lucid, systematic, and concise style, so dif-
ferent from Weber's, set forth an authoritative

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explanation of Weber's sociology. This remarkable essay makes Weber's thought seem (like Immanuel Kant's) beautifully clear but hidden in sentences where every proposition is narrowed by a qualifying proposition, which in turn is repeatedly qualified, and where (still in the same sentence) the main proposition is combined with its set of qualifiers and subqualifiers. Weber wrote in this fashion partly because of his intolerance for overgeneralization and partly because, as his widow put it, "He was entirely unconcerned with the form in which he presented his wealth of ideas. So many things came to him out of that storehouse of his mind, once the mass was in motion, that many times they could not be readily forced into a lucid sentence structure." 6

As his students know, Rheinstein was like Weber in his obsession with keeping generalizations tailored close to the facts. But Rheinstein went into Weber's storehouse of ideas and put the wares in order. Only someone with Rheinstein's peculiar gifts, his universality of knowledge, his ability to see through to the essentials, and his awesome command of languages could have attempted such a task.

The value of Rheinstein's work in making Weber as understandable as he can be made without losing any of the refinement of his thought is known among sociologists. However, Rheinstein succeeded so well in making the rough places plain that his Introduction to Weber often has been mistaken for "common knowledge" by lawyers.

So, one aspect of the Rheinstein-Weber connection is that, through Rheinstein, Weber has continued to teach legal sociology. Another is that Rheinstein continued to learn from Weber and to make his own contributions to legal sociology. The influence of Weber on the young Max Rheinstein entered into happy combination with the influence of a quite different sort of genius, Ernst Rabel, whose Assistant he became in 1922.

Unlike many European legal scholars of his generation, Rabel was intensely concerned with the relevance of law to practical problems and their solution. Through Rabel, Rheinstein was exposed to the methods which came in Germany to be called Jurisprudence of Interests, and in the United States sociological jurisprudence. The fusion of the interest Weber inspired in the complex reciprocal interaction of law and society, with Rabel's insistence on ascertaining social reality and the practical effects of laws, released a sustained flow of creative ideas which did not cease until death came to Max Rheinstein on July 9, 1977.

Rheinstein saw that comparative law was a fruitful source of insight for sociology because it directs attention toward the extent to which law is a function of a particular society and facilitates recognition of the social problems to which law is addressed. All of his "family law" work of the past 10 years was the work of Rheinstein the legal sociologist and comparatist, as well as the work of Rheinstein the private law scholar intensely concerned with "How does it work in practice?" and "What do people really do?" His knowledge of, and meticulous labors in, many different areas of substantive law (in particular, obligations, succession, private international law) gave depth and credibility to his sociological and comparative work. Conversely, his comparative, historical, and sociological perspective enriched all of his studies of positive law. The very qualities Rheinstein attributed to Weber are the qualities one came to associate with Rheinstein: "universality of knowledge together with the gift of penetrating analysis, ... objectivity, ... passion for accurate formulation, and ... genius for recognizing the essentials, and the relations between seemingly remote phenomena. ..." 7

Reinforced no doubt by his experiences in Germany and Italy in the early 1930s, Max always refused to be drawn into trends or fashions of the moment. In fact, he was ever ready to point out that the apparently new was often merely the reappearance of an old or recurring phenomenon in altered guise.

It is his resistance to intellectual fads (which he saw and identified for what they were) and his refusal to be drawn into the methodological controversies of the moment that give Rheinstein's written work a lasting freshness. In this connection, it is very gratifying to be able to report three recent events which will result in making some of his work more accessible. Of the greatest importance is that two of Max's former students, Reimer von Borries and Hans Leser, have edited collections of papers from the nearly 350 items in
the Rheinstein bibliography. Von Borries has brought many of the comparative law writings into a unified "Introduction to Comparative Law." Leser has assembled an 800-page volume of *The Rheinstein Papers*, in four great divisions: Legal Theory and Sociology, Comparative Law, Conflicts of Law, and Family Law. Finally, the Louisiana Center for Civil Law Studies is preparing a translation of Rheinstein’s early book on Anglo-American contract law, still a standard work in Germany. Thanks to Leser and von Borries, writings scattered in various publications and languages now will have a wider audience than would have been possible otherwise.

All who knew Max here at the Law School will recognize that no mere recital of his accomplishments and gifts, larger-than-life though they were, captures or does justice to this extraordinary man. That encyclopedic knowledge, made wisdom by his humanity and sense of history, was, through his boundless generosity, always at the disposal of colleagues and students. His legendary working capacity was equaled by his capacity to enjoy the good things in life. He loved mountains, hearty food, German beer, chamber music, opera, and, above all, people. His energy and courage prevailed over the severe bodily afflictions that beset him, two or three at a time, for the past twenty years. He filled the categories of Christian and Jew, American and German, but they did not contain him. His universal spirit transcended these classifications. Surely, for those who knew him, it is his charity above all that will be remembered, stored up, treasured, and, perhaps, even imitated. It may be that Max’s life has permitted us a glimpse into the fugitive reality behind the words of the apostle Paul that prophecy, tongues and knowledge will pass away, but Love never ends. He was always there, behind the open door in the sixth-floor office, a figure of order, certainty, and permanence. In some way, for those whose lives he touched, this wise and gentle man will always be there.

NOTES

6. Quoted by Bendix, id. at xxii.
7. Rheinstein, *supra* n. 4 at xxxii.
Max Rheinstein with colleagues John Langbein and Gerhard Casper