which the generations of his former students express. Max was not only an important mediator for the many foreign students at the University of Chicago Law School, but he also transformed the teaching of foreign law to American students into a disciplined enterprise of high quality and seriousness. This was accomplished in the specialized courses of the Foreign Law Program as well as by the comparative perspective he provided in such "regular" courses as Conflicts.

One of the qualities which endeared Max to students and colleagues was his intellectual curiosity. Conversations with Max were never one-way. Max's eagerness to learn from the student usually surpassed the student's eagerness to learn from Max. His attitude was one of live and let live. He was friendly to the extent of being most reluctant to say anything critical of personal acquaintances. As Andreas Heldrich, of the University of Munich, recently wrote, "When he did express some cautious skepticism concerning a colleague, we knew that that unfortunate fellow had no redeeming feature whatsoever."

Max's scholarly curiosity and appetite for life, shared, supported, and gently watched over by Lilly Rheinstein, brought him to travel all over the world. Once asked by Ken Dam what he would have done had he not become a professor, he said: "Oh, I would have been a travel agent." Max filled the somewhat empty and sterile notion of a world citizen with color and richness. He could do so easily, because he had the one quality which I suspect is indispensable for bridging cultures: Max was a patriot, or to use a German expression, "ein Lokalpatriot." The two places where Max had his moorings were Munich, his home town, and Chicago, the city which had become his refuge from the Nazis. Most of his adult years were spent at the University of Chicago. In the best of its traditions, he was a member of the university community, not just the Law School. Merely by discovering every cultural event in town and not permitting it to take place without their participation, Max and Lilly contributed to making Chicago one of the great cultural centers of the world.

To Munich the Rheinsteins returned every summer—the "Royal Bavarian Capital" where he grew up during the last decades of 750 years of Wittelsbach rule. Looking back in a vignette entitled Royal Bavarian, Max wrote about his years spent in "Royal Bavarian" schools: "Judging from what life required in later years of change, uncertainty, demands and troubles, that schooling cannot have been bad. . . . [W]e learned to think, logically, autonomously and critically. We became conscious of the Great Tradition, acquired a sense of history and with that, perhaps a degree of conservatism, but conservatism of the liberal, Royal Bavarian kind. . . ." In part, Max's humanism, zest for life, and his openness to the world reflected the vitality of his home town at the beginning of the century.

Weber's "Science as a Vocation" concludes with two famous sentences: "We shall set to work and meet the 'demands of the day,' as men as well as professionally. This, however, is plain and simple, if each finds and obeys the daimon who holds the fibers of his life." Max met the demands and found his daimon.

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Gerhard Casper is Dean of the Law School and William B. Graham Professor of Law. This article first appeared in the University of Chicago Law Review, volume 45, number 3 (1978), and is reprinted with permission.

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Karl N. Llewellyn

by Allison Dunham

I first encountered Karl Llewellyn when I was a first-year student at Columbia Law School in 1936. In his contracts class I "volunteered" the opinion, contrary to what I thought was his, that when a farmer replied to a telephonic price quotation given by a produce house with the statement "I will bring the produce in today," he did not intend to commit himself to sell to that produce house when he arrived in town. This opinion was based on my employment experience in a farm produce house in South Dakota and was contrary to some of the
doctrinal notes in the offer and acceptance section of our first-year course book in contracts. This was my first participation in class discussion and my first significant confrontation with one of the leading exponents of legal realism.

Almost my last recollection of Llewellyn is his written reaction and comment on a fictitious examination paper I slipped into the collection of examination papers from his course in legal reasoning: "He knows his Llewellyn but has not read the materials."

The first incident described above made a lasting impact on me in seeking the legal significance of almost any commercial practice. I am told that the incident was probably one reason why Llewellyn selected me to be the reporter for what became Article 9 of the Uniform Commercial Code (UCC) on Secured Transactions, reporter alone for a few months while I completed my teaching at Indiana University Law School and then reporter with the late Grant Gilmore, the co-creator of Article 9 of UCC, while I was at Columbia and Grant was at Yale.

The result described in the last incident was obvious, since by that time I had been exposed to Llewellyn as a student at Columbia Law School, as a member of the board of the Columbia Law Review, as a co-reporter for committees of the National Conference of Uniform State Laws and the American Law Institute, and as a colleague first at Columbia Law School and then at Chicago, a span of almost 20 years interrupted only by World War II. He was one of my mentors. Except for The Bramble Bush, I have not read any of his jurisprudential writings. Somehow my preoccupation with land law in the area of public law meant that after Article 9 was completed we went our separate ways. But even after a hiatus, many episodes from my return to commercial law indicate the impact he had on my legal behavior.

Shortly after Llewellyn's death, some members of the University of Chicago Law School faculty attended a conference at the University of Stockholm involving the exportability of the UCC. The other participants were legal scholars from the six or seven Scandinavian universities. As we were taken into the city and then out again to Vallsberg where the conference was to be held, it was quite clear from the glaring billboards and from the department store windows that Swedish "consumption" of consumer durable goods and other consumer goods was at a high level, and without being able to read Swedish I knew from my knowledge of business practices in the United States that the law of consumer credit "must be" sophisticated and advanced.

Imagine my surprise, then, when we were told by our Swedish academic colleagues that the only way Swedish retailers could obtain working capital was by placing second, third, and even sixth mortgages on their store buildings. This was because, we were told, the theory of property law did not permit separation of ownership of moveable property from possession. The Llewellyn-trained academics knew this was not so; secured credit in inventory or accounts receivable or both had to be permitted if the visible signs of high-level consumption had any meaning.

Fortunately for us, a major Swedish Bank with a large international department was host to the visitors at a formal dinner in the banking facility. After dinner it suddenly occurred to me that my colleagues from the University of Chicago had at the time I observed so monopolized our hosts that each of us had cornered a representative of the bank and engaged him in earnest conversation.

The next morning, when we assembled for breakfast, we looked at each other and almost simultaneously said "they can," meaning that in practice what was being done was to recognize security interests in movables and intangibles even though legal theory about possession and dominium dictated the opposite. I think Llewellyn would have been proud of our skill in reasoning from observable facts to probable cause of the legal result. When anthropologists doubt the validity of The Cheyenne Way as a description of Indian law, I doubt the doubters because I know of his amazing ability to sense the essence of a situation from a few almost random instances. He was right more often than he was wrong.

My return to commercial law after an absence of almost 30 years makes me again aware of his influence on me, this time in narrow-issue thinking and, I hope, in imaginative use of precedents. Although my present colleagues assert that contractual rules about privity of contract deny the possibility of any third party being entitled to enforce a contract to which he is not a party, I do not believe this is so, and I ask them about the precedent-making significance of a long list of statutes enabling third parties to enforce contracts between others. As a student of Llewellyn, I smile (since I am a guest) at the explanation given: statute law is not part of the common law, and the
practices there disclosed are apparently aberrations, even though I have yet to discover a significant commonly occurring situation of fact in which the so-called privity rule prevents enforcement by a stranger to the contract.

_Agar v. Orda_, 264 N.Y. 248, 190 N.E. 479 (1934), which he hammered into us as the "right" approach in sales law, if followed, would significantly reduce the need for statutes. I wonder whether Llewellyn would surrender in 1983 to the demand for a specific statute to solve every particular problem that the common law had not solved but could solve?

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Allison Dunham is counsel for the Institute of Law Research and Reform at the University of Alberta. He taught at the Law School from 1951 to 1979 and is the Arnold I. Shure Professor Emeritus.

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**Brainerd Currie**

by Herma Hill Kay

The task given to the authors of these tributes to great Chicago law professors—that of capturing the essence of a scholarly career in 2,000 words—is a challenging one. In Brainerd Currie's case, it is not made less difficult by the relative brevity of his career. In contrast to Judith Wax's description of her long-postponed work as a writer, entitled _Starting in the Middle_, Brainerd Currie's work as a scholar ended in the middle, cut short by his untimely death at the age of 53. Yet such was the measure of his creative intellect that in the 30 short years between his first law teaching job at Mercer in 1935 and his death in 1965 while holding the William R. Perkins Professorship at Duke,

Brainerd Currie had changed the direction of the law in one field—conflict of laws;¹ had left his mark on significant developments in two others—civil procedure² and admiralty³; and had documented the early efforts to recognize another—legal education⁴—along more functional lines. Under these circumstances, selection is necessary. I have chosen to give prominence to Currie's work in the conflict of laws, both because I think that his contributions there are fundamental ones with enduring impact, and because most of this work was done during the eight years (1953-61) that he spent at Chicago.

Currie announced his governmental interest analysis for choice-of-law problems in 1958.⁵ Conceived during what must have been an extraordinary period of scholarly productivity that commenced with his year of fellowship at the Center for Advanced Study in the Behavioral Sciences at Palo Alto in 1957, the theory appeared in four major articles⁶ published in 1958, followed by three⁷ in 1959, four more (three with co-authors)⁸ in 1960, two (including

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¹Currie's major writings in the conflicts field are collected in his Selected Essays on the Conflict of Laws (1963).


⁴E.g., Currie, _The Materials of Law Study_, 3 J. Leg. Ed. 331 (1951); 8 id. 1 (1955).

⁵The following account of Currie's work is drawn from Kay, _Theory into Practice: Choice of Law in the Courts_, 34 Mercer L. Rev. 521, 538-40 (1983). It is used here with the permission of the Mercer Law Review.

