In Memory of Malcolm P. Sharp (1897–1980)

Malcolm P. Sharp, a faculty member of the Law School for over thirty years and Professor Emeritus since 1965, died on August 12, 1980 at the age of 83.

When Mr. Sharp first came to the Law School in 1933 as a Visiting Associate Professor, he taught courses in Commercial Law and Trade Regulation; in 1937, he began to teach Contracts, a course for which he became well known. Mr. Sharp was made an Associate Professor in 1935 and a full Professor in 1940.

Harry Kalven, Jr., former Law School Professor, once wrote about Malcolm Sharp that "His personal style [was] marked by many things—courage, charm, kindliness, wit, love of paradox, but the most distinctive quality . . . [was] the pure youthful play of his intellectual curiosity."

In honor of Malcolm Sharp and in celebration of those many qualities, we reprint excerpts from tributes to him originally published in the Winter, 1966 issue of The University of Chicago Law Review on the occasion of Mr. Sharp's retirement from the Law School.

—The Editor.

Malcolm Sharp's biography is not without interest. He had his years as a Wall Street lawyer practicing with Lowenthal, Zold and with Root, Clark, Buckner, and Ballantine after his graduation from Harvard Law School; in his time he has taught Greek and economics as well as law, and during World War I he taught flying; he was with Alexander Meiklejohn during the fiery years of the Experimental College at Wisconsin; he worked on the steel code for the NRA during the Depression and on contract renegotiation during World War II; he was a counsel for the defense on the appeal in the hated Rosenberg case; he was president of the National Lawyers Guild during the years of its battle with the Attorney General's List; and for thirty years he was a member of the faculty of law at the University of Chicago.

But this is a case where the biography cannot catch the quality of the man. His thirty years at Chicago perplexed, delighted, and enriched a full generation of students and left their indelible mark on the traditions of the school. He has always been incurably, indefatigably, enthusiastically, lovingly, a teacher. He is fond of quoting a teacher of his to the effect that a man who would not teach without pay for the sheer fun of it does not belong in teaching. It is a right story for him to tell.

Harry Kalven, Jr.*

Most rewarding of all my associations with Malcolm were the sometimes dizzying explorations of ideas which accompanied our exploration of mountain trails. I learned on one occasion the secret of his capacity to follow trails of both kinds. We had carefully mapped out an unfamiliar hike and had followed our plan perhaps less carefully as we discussed equitable liens—or was it Admiral Mahan or the mystery of responsible freedom? In the afternoon we were surprised to find ourselves in the same spot where we had been an hour or two earlier. I was somewhat dismayed, but Malcolm strode ahead explaining, "It's always good to keep a flexible sense of objective."

To all of his colleagues Malcolm Sharp has presented the disturbing and heartening example of a man determined to find an integral pattern for his

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*Harry Kalven, Jr., was the Harry A. Bigelow Professor of Law at the Law School until his death in 1974.
knowledge and concerns and activities. He has end­lessly sought in philosophy and history and eco­nomics and psychology. He has discarded nothing which experience has brought him, drawing peren­nially on accretions from his brush with corporate practice in New York, his steeping in Greek culture at Meiklejohn’s Experimental College, his aston­ishing venture in Thomist prelegal education with Mortimer Adler, his battles on the NRA steel code—even from his study of the common law forms of action. Sometimes he sketched the connec­tions with darting allusions which we found difficult to follow. But with Malcolm operating in our midst, we could never be quite complacent with frag­mented patterns and limited concerns.

Wilber G. Katz†

In spite of Malcolm’s love of paradox, he is never superficial, and his paradoxes actually spring from the paradox inherent in his whole point of view—a point of view which I have never encountered on the part of anyone else. Malcolm Sharp is not assignable to any familiar category and does not lend himself to any known label. He cannot be called a radical or a liberal or a conservative or a middle-of-the-roader. The paradox of his position is that he wants to combine uncompromising vigilance for American civil rights with an almost unshakable confidence in the workings of American business. Both these tendencies have carried him to lengths which must appear outrageous or fantastic to the people who, in dealing with political, social and eco­nomic matters, insist upon two mutually hostile camps, to one or other of which everybody must belong.

He loves nothing, in fact, so much as a legal case for which nothing or little can be hoped. He always has several files full of these, which he will nurse along, like pets, for years, for he will never abandon a stand once he thinks he has been justified in making it. On the other side, the pro-business side, he is also unyieldingly logical. Though he worked for a time with the administration in the days of the New Deal, he now disapproves of social security and, so far as I can see, of any of the government subsidies by means of which Franklin Roosevelt oiled the stalled machinery of the great Depression and thus, for his successors in the presidency, set a precedent

†Wilber Katz, Dean of the Law School from 1939-1950 and a faculty member from 1930-1961, died in 1979.
for further measures of the same kind. Malcolm is impervious, in this connection, to humanitarian arguments because he is able to produce counter-arguments to demonstrate that these measures do not really help. His sympathy with the sufferings of human beings has made him a hater of war, but here, too, his line is quite unorthodox, and, it seems even to me, rather eccentric. In trying to detach his judgments from the beneficial professions of political claptrap, liberal as well as partisan, to estimate strictly from the point of view of its actual or probable results any step of our foreign policy, he was led to the conclusion that Eisenhower had exercised sound statesmanship in this department whereas Kennedy had been rather dangerous.

*Edmund Wilson *

Sharp taught contract to first year law students at Chicago; I had been one of his students in 1947. I had anticipated that a course in contract would be as dull as dishwater. I had not reckoned with Malcolm Sharp. Who among those who studied under him will ever forget the exquisite subtlety with which he probed the old problems of offer and acceptance, consideration, and mutual mistake? Sharp did not view the law of contract as a sterile set of black letter propositions. The life of the law to him is not logic; it is psychology, economics, semantics, history, and philosophy; the life of the law is the bustle of the marketplace and the need for fair, commonsense accommodations. Sharp’s students were exposed to the workings of a highly cultivated mind, sensitive, precise and provocative.

What led Malcolm Sharp to become involved—without compensation it should be noted—in a great cause célèbre for two of the most despised defendants [Julius and Ethel Rosenberg] in our history? Several years after the case was over, Sharp offered an explanation in his book Was Justice Done?. “What moved me,” he wrote, “apart from a growing fear of serious injustice in a capital case of peculiar public concern, was a sense of the relationship of the case to public policy, both domestic and foreign. A calm estimate of spy scares seems to me a part of a calm estimate of foreign quarrels, the resolution of which might help us to preserve our liberties, promote prosperity, save taxes, and keep the peace.” To this somewhat impersonal account, I would add that, in my view, Sharp was moved by a sense of compassion for individuals confronting great odds and the overwhelming power of the state. This same compassion—the same largeness of spirit and the same respect for the underdog—had led Malcolm Sharp to fight in the 1940’s for the admission of Negro students into the law school at the University of Oklahoma and later to champion the right of one of his students, George Anastaplo, to refuse to state whether he was a member of the Communist Party as a precondition to admission to the bar. The Populist tradition of respect for dissenters and mavericks is rooted deep in Sharp.

†Abe Krash

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