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Brainerd Currie

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BY PHILIP B. KURLAND*

A *Nachruf*, to use Mr. Justice Frankfurter's expression, is ordinarily an exercise in futility, except when one is observing the biblical mandate to praise famous men. For other subjects, it is only when it can no longer make any difference to the only person to whom it could make a difference that we permit ourselves such public expressions of affection and admiration.

Like most great law teachers, Brainerd Currie does not qualify as a famous man. His name will be absent from history books, however frequently it will be found in law books. For, in the law, except for the truly seminal thinkers of whom there have been very few indeed, it has been the men of action rather than the men of thought who have laid claim to history's notice. Oliver Wendell Holmes, Jr. understood this when he abandoned the chair for the bench. Moreover, the novel ideas of one generation, if they are not wholly rejected, tend to become the commonplace ones of the next. For all the techniques of public relations that have come to be a commonplace of university life, a professor of law remains essentially a cloistered figure, a private rather than a public person. However much Brainerd Currie has diverted the stream of law—and the importance of his work in conflict of laws and civil and admiralty procedure is not to be gainsaid—his essential role was that of the teacher.

As he understood it, the teaching process does not call for the creation of disciples. The success of a law teacher is better measured by his contributions toward the emergence of independent minds, an independence that results as often in the rejection of the teacher's postulates as in their acceptance. At the very least, it requires an instillation of skepticism, of doubt, of testing the very fundamentals that the teacher may long since have accepted for himself. The process is one of example rather than preachment. And this is the role that Brainerd Currie played so well, the role that commended him to his students and to his colleagues who were also his students.

Brainerd Currie was eminently qualified for the part, in large measure because he had a rare combination of attributes: he was both tough-minded and soft-spoken. There was no malice in the man and because he had an instinct for fairness he seldom if ever

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resorted to sarcasm—the classroom weapon of so many of us. His values were revealed in his review of Mrs. Rosenfield's book about her father, Morris R. Cohen: "It is easy to believe that Cohen was a great teacher—that he sought not to indoctrinate, but to encourage independent thinking; that he made a deep impression on his students, and was remembered by them chiefly for his kindness. . . . It is more difficult to believe in the cliché that such success is achieved in good part by what passes for withering sarcasm in the classroom."

This is not to suggest that Brainerd Currie did not frequently display a sharp and pungent wit. His prime targets, however, were pomposity and pedantry. His stay at the Center for Behavioral Science, for example, called forth some of his famous Gilbertian rhymes that heretofore have not been published. This effort need no longer remain hidden; time has dulled such personal sting as it might have contained. Like much of his nontechnical writing, it is more revealing of his wit than anything I could say about it and so I have appended it here.

There is a hint in this clever parody of his very real romance with the English language. Many were the verbal battles and small monetary wagers over the proper use of language and grammar. Fowler was, I think, his favorite author. The abuse of the word "shambles" by the most literate authors provided a frequent source of amusement. One of his unfulfilled ambitions was to catch an error of grammar in the *New Yorker's* London column, so that he might tell the editors that they had been caught with their Mollie Panter-Downes.

Language was fun; it was also a serious matter. I would venture that no author of an article in *Law and Contemporary Problems* ever wrote so well as he did under Brainerd Currie's editing. Certainly the first volume of *The Supreme Court Review*, because of his interest, is the best edited volume in the series. Nor were his changes limited to that of a copy editor. Substance as well as form was the subject of vigorous challenge. And many was the day when we each ended up on the side opposite that on which we had started.

If he could dish out helpful criticism, he was also able to take it. And the relative immaturity of the source did not blind him to the validity of the points made. I refer you to this not untypical com-

ment from a letter referring to his most junior colleague: “. . . over lunch one day I was telling him about a theory I had advanced in one of my articles, which he hadn’t read; on the basis of sheer analysis—not superior knowledge of the cases involved—he punctured my reasoning and turned out to be right. The consequence is that I will have to rewrite a whole section of the article . . .” His confessions of error were not limited to private viewings. Thus, in the *University of Chicago Law Review* in 1960, referring to an earlier article of his own published in the same journal, he wrote: “The article was not without merit; it was a conscientious analysis of the problems and of various proposed solutions. Indeed, there is only one reason for regretting the article or offering apologies for it: The conclusion reached was wrong—not just plain wrong, but fundamentally and impossibly wrong.”

Obviously the invitation from the editors to participate in this symposium has called forth from me only maudlin meanderings by way of reminiscence rather than appraisal. But more fundamental appraisal is beyond me. Evaluation of his work will be made by those more competent to praise and appraise. His efforts in conflict of laws are already the subject of a doctoral dissertation at the University of Cologne. Nor can I offer an adequate appraisal of the man. We shared many things that are essential to a prized professional collaboration, and I profited enormously. We joined forces in writing briefs for the Supreme Court: the successful ones were largely his doing. We even tried to write an article together, but were compelled to publish separate pieces on the same subject because neither of us was willing to impose unacceptable ideas on the other. We shared, too, common friends and uncommon enemies, and common interests in and out of the law. But there was something deep within him that I never got to know. For his was essentially a lonely spirit. I am reminded that in his book review, to which I have already alluded, he selected for comment a sentence from a Holmes letter to Cohen: “The other dissenters thought I went too far and *I flocked alone*.” The emphasis was Currie’s and he referred to it as “a magnificent book title.” If he had ever been moved to write autobiography, as he was moved from time to time to indulge in other engaging if extraordinary pastimes, like making a violin or writing a murder mystery, I am sure that it would have been titled: “*I Flocked Alone*.” It would have been an appropriate title.

The Behavioral Scientist

I am the very model of a modern intellectual;
 I know the ruddy answers though I'm rather ineffectual.
 I'm more sophisticated, son, than people clad in denim are:
 When I have nothing much to say, I say it in a seminar.
 I have a little paper on some matters psychological;
 The highest court knows less than I of subjects pedagogical;
 I know which books are best to read, which symphonies are better.

Ah!

I'm very well informed upon aesthetics and et cetera.
 I know a thing or two about the sciences behavioral—
 To which to foster, fellows stout, you sacrificed and gave your all.
 I know about relations, both platonical and sexual—
 In short, I am the model of a modern intellectual.

I'll tackle any snafu with a model mathematical;
 Tough legal problems vanish when I use my method graphical;
 My judgment is impeccable on matters architectural;
 I'm very adamant about most things that are conjectural;
 At regulating conflicts I am pretty near infallible;
 On values my opinions are reportedly invaluable;
 Quite modestly, I see myself an elegantly mentored man—
 The jealous critics call me a complacently self-Centered man.
 I ken the social sciences and eke the poor humanities;
 My imprimatur sanctifies the veriest inanities;
 I understand philosophy, pragmatic and conceptual—
 You see, I am the model of a modern intellectual.

I flatter me that I know free-dom *from* responsibility—
 My fellowship maintains me in respectable gentility;
 My coffee-steeped opinions have remarkable felicity;
 My knowledge is distinguished for its very catholicity.
 I'm right on top of inside dope on Little Rock and satellites,
 On horseshoe pitching, Dead Sea scrolls, and even western cattle
 rights,
 On how to tune a motor and on how to make a Chevy sing—
 I think I ought to organize a seminar on EVERYTHING.
 My friends are IBM machines, my methods are statistical;
 My just reflections on myself are somewhat narcissistical;

And though my lucubrations may be mostly ineffectual,
I am the very model of a modern intellectual.

—Not-G.†

BY ROGER J. TRAYNOR*

IT WAS only last year that I was reviewing Brainerd Currie's *Selected Essays on The Conflict of Laws* for the *Duke Law Journal*, and memories of happy encounters with their gentle author were surging through the reading of his original and profound and constructive work. Now as I write of Brainerd Currie, whose life began in Georgia in 1912 and came to a close in North Carolina in 1965, it seems impossible to dispel sadness in coming to terms with the harsh loss of such a friend. Yet one hears his soft-spoken words, no less real because they are imagined, and they alleviate the hurt of loss with their sweet raillery: I expect better of my friends than that they should mourn me, for mourning is no way to celebrate a fine friendship.

Fine, in all its radiant meaning, is the word for all the aspects of Brainerd Currie's life. The *Selected Essays* and comparable works on civil procedure and on admiralty evince the finest scholarship. The scholar had the fineness of temperament requisite for a deeply happy life with family and friends. There was gentleness in his outlook, even in his quizzical, ironic insights, an extraordinary combination of *finesse* and *gentillesse*. There survived in the man the quality of a gifted child who perceives things all too clearly, free of sophistic gloss, and does not misuse his advantage.

There was a merry streak, too, in Brainerd Currie. He would find cause for laughter, surveying this writing-table strewn with his own writings, at the jostling of his disparate creations. There is a translation of his American-born language, *Note Sui Metodi E Gli Scopi Del Diritto Internazionale Privato*.¹ It overlaps his version of *gli scopi* of Rose of Aberlone, the majestic cow whose unexpected

† All poetry may be divided into two categories: (1) That written by W. S. Gilbert (G), and (2) All other (Not-G).

* Chief Justice, Supreme Court of California. In this tribute to our friend, Madeline Traynor has joined with me to convey the riches of his friendship as well as of his work.

¹ Estratto da "Diritto Internazionale," Anno XIV, n.4, 335, 345 (1960) (Istituto Per Gli Studi Di Politica Internazionale, Milano).