



The Raymond Scholars (left to right): Boris Auerbach, East Orange, New Jersey, Lee Vickman, Chicago, and Jack D. Beem, Chicago, all graduates of the College of the University of Chicago.

MAX RHEINSTEIN *Europe—1953*

An invitation to Sweden and the assignment to the team sent to Frankfurt under the Chicago-Frankfurt Exchange Project gave me the opportunity during the spring of 1953 again to engage in practical comparative law in Europe.

The invitation to conduct at the three Swedish universities seminars on "Methods of Legal Thought in America" was extended to me in the early weeks of the year. The seminars should not only have as their subject matter the topic indicated but also were to constitute demonstrations of American teaching methods. Materials were thus prepared here to be mimeographed in Sweden and to be distributed in advance among the participants. The Swedish universities organized two sets of meetings, each to consist of two sessions of two hours, one to be held for the universities of Upsala and Stockholm in central Sweden, and the other at the University of Lund in southern Sweden. The sessions were held in April. Both series were attended by faculty members and postgraduate students of the universities in question, and lively discussions were had at the sessions themselves as well as at the parties by which they were followed.

The work at Frankfurt was conducted within the framework of the Chicago-Frankfurt exchange project. The team which was sent to Frankfurt for the summer semester of 1953 consisted of Professor Everett Hughes, chairman of the Department of Sociology, and myself as senior members, and three junior members: Eugene Litwak, associate director of the University of Chicago Family Research Center, and Samuel Stoljar and Gerhard Müller, research assistants at the University of Chicago Comparative Law Research Center.

Both Professor Hughes and I participated in the regular teaching activities of the Johann Wolfgang Goethe Universität. Professor Hughes offered a course on the

"Sociology of the Professions," while I taught the course on "Private International Law," which met four times a week and for which about a hundred and eighty students registered.

Under the agreement made between the two universities, joint research projects are to be undertaken by the visiting teams together with the local faculties. For the summer semester of 1953 it was decided to choose as the joint research project a topic that for some time had been on the agenda of the University of Chicago Comparative Law Research Center, viz., that of the relationship between legal regulation and family stability. This problem may be defined as follows:

In our civilization we regard it as desirable that the family constitute a stable group. Marriage is concluded for life, and a premature termination of the marriage relationship is regarded as an evil. The norms of religion, ethics, and the mores are all aiming at family stability and at discouraging abandonment, separation,

or bigamy. These social pressures are sought to be reinforced by the coercive measures of the legal order such as the use of compulsory state power to enforce family duties of support. Coercion by means of law is not directly usable, however, to compel married parties to live together and even less to live together happily. Only indirectly can coercion through the machinery of the law be used to



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induce married parties to stay together. Among these indirect ways a conspicuous place seems to be occupied by that set of legal norms which, under pain of punishment, prohibit a married person from entering upon a new marriage without having first obtained the dissolution of his prior marriage by a decree of divorce, and then limit the possibility of obtaining such a decree to those more or less narrowly defined situations which are enumerated in the divorce act as "grounds for divorce." To what extent, if any, are such laws effective? More concretely, it may be asked to what extent, if any, has family stability been increased or decreased by changing the divorce law in the direction of greater strictness or ease? The desire for a reform of the present divorce laws is widespread in America, but how effective would a proposed reform law be to achieve the desired end of preserving or increasing family stability? Perhaps some of the proposals now current might do more harm than good. Certainly no reform should be attempted while we are groping in the dark about its probable effects.

However, attempts to find an answer to the problem are confronted with difficulties. It is, first of all, neces-

sary to define the concepts of family stability and family breakdown. It is, second, necessary to obtain statistical data as to the factual incidence of family breakdown. Statistics of divorce rates are of little significance in this respect. Even in a country like Italy, where no divorce exists at all and where the divorce rate is consequently zero, some people abandon their spouses, or have mistresses or lovers, or agree upon separation. How can such facts be ascertained? Finally, if we know the facts and their changes in time or differences in place, how can they be correlated with changes or differences in the divorce law? If we should find, for instance, that in legally conservative Italy the incidence of actual family breakdown is greater than in Sweden with its liberal divorce law, can we conclude that the difference in the facts of life is caused by the difference in the laws? Such a conclusion would be premature. The difference of the laws may have some influence, but there are other factors, such as religion, social traditions, economic circumstances, etc. Can the factor "law" be separated from all the others and, if so, how?

This is the complex of problems with which we have concerned ourselves for some time in the University of Chicago Comparative Law Research Center. The decision of the Chicago-Frankfurt Committee to place these problems upon the agenda of the exchange program provided a welcome opportunity to attack them in the most effective of the methods of comparative law, viz., that of international and interprofessional co-operation.

A preliminary program for the Frankfurt phase of the study was worked out in advance by Professor Hughes; Professor Nelson Foote, director of the University of Chicago Family Study Center; Mr. Litwak; and myself. Pursuant to this program and in co-operation with Professor Max Horkheimer, rector of the University of Frankfurt and director of the Frankfurt Institute of Social Research (Institut für Sozialforschung), and with other members of the faculty of the University of Frankfurt and the Institute of Social Research, it was decided to organize four seminars as well as to set up a special research project.

The core of this set of investigations was constituted by the seminar on "The Family and the State." In it we tried to elaborate an analytical survey of the problems involved and methods for their solution. This seminar was conducted jointly by Professor Hughes, Professor Ernst Wolf of the Law Faculty of the University of Frankfurt, and myself. It was attended with considerable regularity by Professor Pollock, Doctor Osmer, and other members of the Institute of Social Research; Professor Spira and Dr. Meinecke of the English Department of the University; and Professor Helmut Coing of the Law Faculty. Professor Horkheimer was present as often as his heavy duties as rector of the university allowed him. The twenty-five students who participated



Herbert F. Jolowicz, Regius Professor of Civil Law at Oxford University, with Mrs. Jolowicz and students in front of Beecher Hall during their visit to The Law School. Professor Jolowicz spoke on October 16 on "The Construction of Statutes According to the Civil Law." He was introduced by Professor Max Rheinstein.

in the seminar came mostly from social science, but there were also representatives of social work, English studies, philosophy, medicine, and chemistry.

Helped by papers presented by members of the Chicago team and the students, the seminar discussions concerned themselves with basic methodological questions. The results are presently being worked over by Mr. Litwak, whose report will be available shortly.

The second seminar, entitled "Problems of the Law of Marriage and Divorce," was held in the Faculty of Law under the joint direction of Professor Ernst Wolf and myself. It was attended by some thirty students of the Faculty of Law. Three of the sessions were devoted to those problems which have become acute in Germany by the legislature's failure to implement the constitutional command of legal equality of the sexes. In this connection we dealt with the question of what changes, if any, were required by this constitutional provision to be made in the laws concerning marriage and marital property rights, and how these changes could be worked out by the courts in the absence of legislation. Parenthetically it may be observed that these seminar discussions resulted in the conclusion that in German marriage law the sexes are already treated as equal to such an extent that few changes would seem to be necessary.

At the other sessions of the seminar, student members presented papers dealing with the actuality of divorce practice in the courts, attorneys' offices, and marriage counseling agencies. Most of these papers were of high quality and full of valuable information.

The third seminar was conducted by Dr. Osmer of the Institute of Social Research for students of that Institute. In its preparation he was advised by Professor Hughes, Mr. Litwak, and myself. The aim of the seminar was to elaborate a questionnaire for a popular

opinion poll concerning opinions held by the public on causes of family breakdown, the law of divorce as it is, and the law as it is thought it should be. A carefully worked out questionnaire emerged from this seminar and will be used in future research.

The fourth seminar, which was conducted in the English Department by Dr. Meinecke, was concerned with the problem of the reflection of changing attitudes toward family breakdown and divorce in English and American literature of the twentieth century.

The special research project was undertaken by Mr. Stoljar and Mr. Müller as an investigation into the development of the law and practice of divorce in Germany since the Reformation. Once completed, this study will parallel those which have already been undertaken in the University of Chicago Comparative Law Research Center on France, England, Switzerland, and the Scandinavian countries. The study of Germany is in itself so extensive, however, that in the short time of one semester no more than certain parts could be completed by the investigators, whose time, as can be seen from this report, was occupied with other, heavy commitments. Their work will be continued during the present academic year in the University of Chicago Comparative Law Research Center by Mr. Hermann Kraus.

During the period of my stay in Germany I was invited by several universities to lecture on the problem of divorce in the United States of America. Such lectures were delivered at the universities of Göttingen, Marburg, Mainz, and Freiburg.

At the invitation of the Karl Schurz-Steuben Society I delivered at the annual meeting of its members an address on the topic, "Some Observations on Cultural Co-operation between the United States and Germany."

In July a two-day reunion was had at Bad Homburg with members of the German Referendar Group that attended the University of Chicago Law School in 1950. It was gratifying to observe the thankful affection with which the participants remember their stay in the United States and at our Law School and how deep an impression this stay has left with them.



Jean Allard '53, now a Research Associate on the Law and Behavioral Science Project, was one of the guest speakers at the Alumnae Breakfast during Reunion Week last June.