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CHARLES O. GREGORY—AN APPRECIATION FROM THE WINGS

*Richard A. Epstein**

TO an outsider it would seem as though there should be little overlap between Charles O. Gregory's academic career and my own. Charlie (even I called him that) entered the teaching profession in 1928 at Wisconsin, moved to the University of Chicago in 1930, left for the warmer climes of Virginia in 1949, and retired from teaching in 1967 to a busy and happy life in New Hampshire. I graduated from law school in June 1968, entered teaching that same fall at the University of Southern California, and moved to the University of Chicago in 1972. Charlie thus left Chicago some twenty-three years before I arrived, and retired from teaching one year before I entered the profession to which he dedicated his life.

So two generations separated us. But there was one connection between us: Harry Kalven, Jr. From 1945 to 1949 Charlie and Harry were colleagues at the University of Chicago, and their collaboration continued to flourish even after Charlie had gone to Virginia. The fruit of that collaboration was Gregory and Kalven, *Cases and Materials on Torts*, which first appeared in 1959, and was revised by its original authors in 1969. In 1973, one year after I arrived at Chicago, Harry raised with me the subject of a new edition of what he called WGCB, which he translated as the "world's greatest casebook." Harry had already been seriously ill with a heart attack and a stroke, and he was uneasy about undertaking the heavy work of preparing a new edition by himself. He knew that I had taught (and it was with manifest pleasure) from their casebook while at the University of Southern California. Having secured Charlie's blessing, he therefore asked me to help him with the third edition of the casebook. But just as Harry and I were in the very first stages of planning—it was in late October 1974—Kalven died suddenly and tragically while at his writing

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desk. The fledging junior editor had sole responsibility for revising a major casebook.

It was here that Charlie, whom I had never met, came to the rescue. The representatives of Little, Brown were rightly concerned that so valuable a teaching tool (and, for the sake of completeness, commercial property) was left in the hands of a relative neophyte just this side of thirty. They made some noises that perhaps the book could use a second, more experienced editor at the helm. That is how matters stood until they spoke to Charlie. He told them point-blank that any choice of Harry's was good enough for him, and should be good enough for them, too. A vote of confidence from the blue. Still uneasy, the people at Little, Brown asked Charlie to insert himself more "firmly" (I think that was the word they used) into the picture. Although Charlie was still in retirement, and in his early seventies, he graciously obliged. We met for the first (and only) time in Chicago in December 1974. We talked about the book, and then branched off onto other subjects, both great and small. When all was said and done, Charlie agreed to read and comment on all the revised chapters as I prepared them.

That understanding was the beginning of a good friendship and a wonderful working relationship. The chapters would go out, and in short order they would be returned by Charlie with some kind words of praise—or some subtle hint as to how the organization might be improved, a case might be better edited, or a textual note could be made somewhat clearer. And when he thought that I was getting a little too newfangled, he didn't mind saying so. When I included excerpts on the reciprocal nature of causation from Ronald Coase's famous article, *The Problem of Social Cost*,¹ Charlie allowed that it didn't make much sense to talk about the face getting in the way of the fist, or the fish interfering with the pollution.

¹ 3 J.L. & Econ. 1 (1960). As Professor Coase noted:

The question is commonly thought of as one in which *A* inflicts harm on *B* and what has to be decided is: how should we restrain *A*? But this is wrong. We are dealing with a problem of a reciprocal nature. To avoid the harm to *B* would inflict harm on *A*. The real question that has to be decided is: should *A* be allowed to harm *B* or should *B* be allowed to harm *A*? The problem is to avoid the more serious harm. [Consider] the case of a confectioner the noise and vibrations from whose machinery disturbed a doctor in his work. To avoid harming the doctor would inflict harm on the confectioner.

Id. at 2.

Thus he aligned himself with the ordinary language theorists of causation in the law of torts. And when he looked at the new developments in medical malpractice, he allowed that some of the results seemed passing strange to him. Throughout all nineteen chapters, Charlie was a source of constant encouragement and advice to me—and of constant reassurance to Little, Brown. The awkward transition of a casebook between generations was thus secured by a man who, I can testify, had justly won a reputation as a fine and impartial labor arbitrator.

For the fourth edition, Charlie wrote that he prepared to enjoy the glories of retirement, and to let me do the work alone. So I did, but somehow it wasn't quite as much fun without Charlie looking over my shoulder. Now that Charlie is gone, the slender reed that kept our two generations together has been broken. And think of it. Charlie and I came together in the twilight of his career and the beginning of mine. What must he have been like in the prime and vigor of his life! Could anyone not take kindly to a man who said of his grandchildren, "I wouldn't take a million dollars for any one of them, but I wouldn't pay a nickel for another"? Some questions just answer themselves.

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