

KARL N. LLEWELLYN

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KARL LLEWELLYN's greatest memorial stands in the insights he has brought to our jurisprudence. Surely that memorial will stand as long as our heritage endures.

I can do no more than recall some of the qualities that I saw in almost a quarter of a century's work together, chiefly on the Uniform Commercial Code—no small memorial by itself.

We who worked on the Code were a varied group of judges, lawyers, public officials and professors. Karl was our Chief Reporter. It was an inadequate title to describe one who could and did reveal to the judges the grand manner of decision, to the lawyers the realism of the law, to the public officials what they must do to better the law and to the professors the fallacies in their favorite concepts.

Some of us knew what we were trying to accomplish, some knew why, and others knew how. Karl always seemed to know all three and long before anyone else.

He was not yet thirty, with barely two years of practice and less than two years of teaching experience, when he spoke out boldly about the law's need to recognize and give effect to new business practices as they arise, to permit to those practices a more realistic flexibility and "to do both of these things with an earnest view to the economic function, and not to the legal incrustations, of the institution concerned. . . ." This was in 1923, more than 20 years before the initial draft of the Commercial Code. If there has since been a better statement of what the Code sought to accomplish, I have not seen it.

Karl Llewellyn truly loved commercial law, and he knew it with all of its doctrines, practices, subtleties and refinements. But he had a first love which commanded a first loyalty—jurisprudence. And it was the Llewellyn jurisprudence that commercial law needed. When he arrived on the scene, our Sales Act and Negotiable Instruments Law were still modeled on English statutes of a generation earlier. Commercial law was riddled with concepts which no longer functioned and with technicalities which fought commercial practice.

Llewellyn had the philosopher's sweep, a realist's interest in fact and in the meaning of people to law and of law to people, and an idealist's zeal for bettering the law.¹ He could see the whole concept at work, see the facts behind it and see where they didn't mesh.

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¹ Karl would have said a *realist's* interest is bettering the law, for the "ought" in law was as much a part of his realist's faith as the "is." He took on Pound, Morris Cohen, Jerome Frank, Kantorowicz and nearly every other jurisprude to prove it. I rather think that Karl emerged from the tussle with his credo firmly planted in realistic jurisprudence.

He was the first to speak out convincingly against that static concept in commercial law known as Title, a concept which he devastatingly characterized as "rigid adherence to the notion of ownership as an indivisible rather mystical something, which must be found in some one person." He showed us how to travel—on horseback if you will—through title to contract and a bit beyond. In doing so, he salvaged commercial law from the semi-chaos toward which it was headed.

He dissected section 69 of the old Sales Act, showing that it had neither sense, nor principle, nor good historical foundation. He reconstructed Warranty and again made it an effective tool for the men who operate it and upon whom it operates. So throughout the work on the Commercial Code we relied on Llewellyn not only to show us where the existing tools failed to function, but to fashion tools that would function.

The genius of Karl Llewellyn was not confined to the philosopher's role. He was a superb craftsman and draftsman who could do as well as teach. The National Conference of Commissioners on Uniform State Laws, of which Karl was a member since 1926, included draftsmen of no mean talent of their own. Yet drafting took on new dimensions as Karl, who held the draftsman's to be a noble art, fused craftsmanship with jurisprudence. As a craftsman he taught us: "Drafting which fails to manipulate doctrine is bad drafting. Why else *draft*?" But as a philosopher he warned: "Drafting which too greatly manipulates doctrine, is even technically bad drafting. Why else *courts*?"

But beyond the philosopher, beyond the draftsman, was the spirit of the man. It was a spirit pure and infectious, which could make enthusiasts out of cynics, win devotees to the grand tradition, convert the prosaic into the esthetic, and impart grace to know-how and life to law.

Is it any wonder that those of us who worked by his side, more often sat at his feet?