

Our Man from Wall Street

Harry Kalven, Jr.

He was of the stuff from which legends are made. I have often heard Charlie Gregory, as he does so gracefully and warmly in these pages, reminisce about his Yale Law School classmate. The student who sat in the front row, scowling at everything said, his arms obdurately folded as he conspicuously declined ever to take a note and who as legend must have it went on to lead his class. I recall an especially festive Law Review dinner at Chicago some years ago at which Robert Hutchins, Karl Llewellyn and Roscoe Steffen, each of whom had been a teacher at Yale during "the Crosskey period," took turns describing his formidableness as a student. They spoke with what can only be called a sense of awe which the years had not dimmed in them.

The same admirable note of independence from minor amenities marked in some respects his style as a faculty member. I am confident he compiled one of the world's great records for unbroken non-attendance at faculty meetings, thus realizing the secret dream of faculties everywhere. And I suspect he never attended an annual meeting of the Association of American Law Schools.

In the early forties, under the stimulus of Wilber Katz, Edward Levi, Malcolm Sharp and others, the Law School engaged in a major rethinking of legal education and curriculum. It was a period of creativity, ferment, and excitement. And the proposal they all recall as the most original, daring, and radical was that of Bill Crosskey: namely, to reorganize the curriculum along severely functional lines by keying it to the legal problems of agriculture.

His career as a law teacher is happy evidence of how hard it may be to predict neatly where a teacher's interests will lie. I was a student here when he first joined the faculty. As we students understood it, the point of adding him to the faculty was clear. He had been law clerk to Chief Justice Taft and an admired associate of John W. Davis, with years of high-level Wall Street law practice. He was in his early forties when he came, a mature man apparently set in his ways. He was to

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develop courses in Federal Taxation and Public Utilities, to add a note of professionalism to a faculty which already had a strong theoretical bent. Yet even we students should have surmised that something was going awry with the plan when the course in Federal Income and Estate Taxation turned out to deal almost exclusively with constitutional issues.

By the time I had returned to law school as a faculty member in the mid-forties, he had developed his unique course in constitutional law which became one of the great intellectual experiences the school had to offer to its students. It proved that no simple formula can capture what makes teaching exciting and effective. At least in this instance the fact that the teacher had an explicit position held with vigor and commitment made the class one of high intellectual excitement. Each year the student response, as Abe Krash so vividly recalls for us, was the same: they came to scoff and stayed to admire.

As I reflect on him, he seems to me to have been one of law's angry men. The same insight into the imperfections, the lack of candor and the incoherence of much legal doctrine which sparked a whole philosophy for Karl Llewellyn, which provided Arnold and Frank with a rich field for satire and irony, which filled others such as Sturges with despair, and which moved Felix Frankfurter as a justice to deep introspection—that realist insight made Crosskey angry. He demanded of law more rationality than that and he was to spend his career finding it in the Constitution.

Here again the legend can only slightly exaggerate the fact. The story runs like this. After he had been on the faculty for a year or so, it was gently suggested to him that he ought to do a law review article or two. As his last task in Wall Street practice, he had done an extensive memorandum on the jurisdictional reach of the Securities Act. His mission then was to assist clients in how to stay beyond its reach. He remembered that he had run into some interesting puzzles about the boundaries of national power under the Commerce Clause which he thought he might go back to and maybe extract a twenty-five page article. He kept at these puzzles of the commerce clause but he never did get that article worked out. But two decades later he reported back with the two volumes of *Politics and the Constitution*. And with a thesis about plenary federal power that would have made it difficult indeed for any Wall Street clients to escape the reach of federal regulation.

His life style and career strike a useful note for contemporary law teaching. He was a non-conformist, an admirable eccentric, an original in a profession that does not suffer them gladly. He attempted nothing

less than a Copernican revolution in American constitutional law. However the future may come to read his contribution and vote on his thesis, his two-volume study is surely the single most dedicated, courageous, persistent feat of scholarship in law in our time.