1979

Tribute: Wilber G. Katz

Edward Hirsch Levi

The University of Chicago Law Review

VOLUME 46 NUMBER 4 SUMMER 1979

Wilber G. Katz

It is fitting that *The University of Chicago Law Review* dedicate this issue to the memory of Wilber Griffith Katz, who died on May 17, 1979. In an unofficial but most meaningful way, he was, along with Ernst Puttkammer, the mentor of the *Review*. He prodded it into being, and into the challenge it became for those who worked on it. In many ways, some undoubtedly unknown to it, the *Law Review* continues to manifest his influence. But in this respect the *Review* is not alone. His efforts are reflected in the changing nature of legal education, in the widened and deepened conception by the Bar of its duties, and in the improvement of legal institutions. Those of us who were among his immediate students and colleagues at the University of Chicago, and, I am sure, at the University of Wisconsin, cherish the relationship each of us had with Wilber—a relationship each of us held as his own. But many, in fact, shared such a relationship with him.

Wilber Katz joined the faculty of the University of Chicago Law School in 1930. He had received his A.B. degree in 1923 from the University of Wisconsin, his LL.D. from Harvard in 1926. He then practiced in New York for two years with the firm of Root, Clark, Buckner & Ballantine. For years after he left, members of the New York Bar who knew of him would ask incredulously: "Why did he leave?" Returning to Harvard for a year of graduate study, he earned his doctor's degree in law in 1930. At Harvard he worked with Professor Felix Frankfurter; together they edited a casebook on federal jurisdiction and procedure.[1] I do not doubt that it was Professor

[1] F. FRANKFURTER & W. KATZ, CASES AND OTHER AUTHORITIES ON FEDERAL JURISDICTION AND PROCEDURE (1931).

Frankfurter, among others, who brought Wilber Katz to the attention of the new president of the University of Chicago, Robert Hutchins.

Wilber Katz and Charles O. Gregory were the first appointments made to the law faculty under the aegis of the new president. The appointments had special significance. Hutchins, impressed with the intellectual history of the University, was engaged in an ebullient revitalization program reminiscent of the early days of William Rainey Harper. Hutchins had many suggestions and ideas for all parts of the University, received with varying degrees of enthusiasm and attention. So far as the Law School was concerned, Hutchins was fresh from his experiences as the dean of Yale Law School. There he had participated in an effort to broaden legal studies to include social science disciplines and factual investigations, and to bring such studies and the resulting curriculum closer to the requirements of modern society. Hutchins planned to have William O. Douglas, then an assistant professor at Yale, join the law faculty at the University of Chicago, and with Katz and Gregory, further develop this kind of approach—an interdisciplinary emphasis on the problems to be solved and the social and economic effects of the law's rules, through case law or legislation. Douglas accepted appointment to the law faculty. The 1932 program of the Law School shows the planned collaboration between Douglas and Katz. Katz was to teach Business I, entitled "Losses";[2] Douglas and Katz were to teach together Business II, entitled "Management,"[3] and Business III, entitled "Finance"; Douglas was to teach Business IV, entitled "Reorganization."[4] Gregory was to have the responsibility in the related area of torts—the general rules for the allocation of risk and the reservation of protected areas in the society. He was also to develop a new course in the emerging field of labor law. Even though Douglas changed his mind and stayed at Yale, the planned collaboration made its mark: the program, in essence, went ahead. The program challenged the instructors to look more deeply into basic issues than a study of legal techniques would provide.

The area in which Katz assumed responsibility in his early teaching was a vital one. The effects of the Depression had made this clear. Reorganization, for example, was a field of intense social and private interest, with new legislation, old theories evolved out

[2] Previously, it would have been two separate courses: one in partnership and another in agency.

[3] Previously, this would have been limited to corporation law.

[4] Business III and IV were expansions of the sequence into new areas of concern.

of different conditions, and day-to-day circumstances that required new techniques. He later described with characteristic dubiety the classroom effects:

> I attempted to reproduce for my class the problems with which I was struggling downtown [practicing law part-time with the Chicago firm of Bell, Boyd and Marshall]. Section 77B was still in its infancy and we were still puzzling about the application to reorganizations of the Securities Act of 1933. The state courts were in doubt as to the duties of indenture trustees and as to their own power to pass upon reorganization plans. I proceeded to swamp my students with unreported decisions and opinions of counsel, with deposit agreements, plans of reorganization and letters of solicitation, with practical techniques for dealing with the recalcitrant minority and the strike-suit lawyer. I think they enjoyed the course. It gave them the exhilarating illusion of dealing with real and current problems. They felt they were learning something which they could really use as soon as they got out of school. But I have little doubt today that I was cheating them. When they came to the Bar the following year, the critical problems of reorganization practice were quite different. They had, of course, learned something. In my zeal for presenting the latest "dope," I had, to be sure, given them some insight into the persistent problems in the field—the problem of protective committees and conflicts of interest, of the place of indenture trustees, and of criteria for determining the fairness of reorganization plans. But how much more valuable would my course have been if I had omitted many of the questions of temporary practical importance and developed the place of the subject in the economics of corporate enterprise.[5]

Katz was unfair to himself in his evaluation. But he was fair in stating his abiding concerns as a teacher. He sought the long-run implications, and the knowledge that other disciplines might usefully bring to bear—understood in theoretical form and in application. He wanted to simplify to get at the root of a problem. This was the main reason, I think, that he was so interested in making available to his students the tool of accounting. Each course, indeed each class hour, was architectonic—no mean achievement in planning or execution when the educational method was Socratic discussion. Of course, this didn't always work; it couldn't with the spontaneity of

[5] Katz, *What Changes Are Practical in Legal Education?*, 27 A.B.A.J. 759, 762 (1941).

give and take. But when it did not, he made up for it. He was conscientious about the subject matter and the success of the communication. His classes were fun; he shared his enthusiasm, and to a large extent he shared his doubts. Moreover, to Wilber, teaching was not just a classroom affair. He created a one-to-one relationship with his students. He challenged them individually to confront central questions of law and justice. It is not an overstatement to say he changed their lives.

The faculty he had joined, and to which new members were being added, took seriously the challenge to broaden legal studies. There were many similar discussions going on throughout the University. The group was able, diverse, and, in retrospect, more appreciative and tolerant of each other than might have been expected. What took place were not just curriculum discussions; rather, various ventures were tried. Wilber Katz recalled in his *Memories of an Ex-Dean*:[6] "Some of us enlisted for study of economics under the gentle tutelage of Henry Simons, and also for reading of Aristotle and Plato and St. Thomas under a less gentle tutor, Mortimer Adler."[7] There was a great deal of sustained consultation with colleagues in other areas, and joint work across and within departmental and professional school lines, in seminars, institutes, and courses. Out of all this churning, a special faculty committee for a new curriculum was eventually appointed. Katz was chairman of the committee. The committee came forward with a "New Plan," which was adopted and put into effect progressively between 1937 and 1939.

The New Plan projected a change for most of the basic law courses. It required year-long sequences with comprehensive examinations. It merged many previously isolated units to form the basic curriculum, provided for seven areas of specialization, and required tutorial work for students in the first year and individual research in industry studies in the last. Increased importance was given to procedure, criminal law and its administration, jurisprudence, legal history, and law and economic organization—the last including trade regulations, labor law, and bankruptcy and reorganization. The program added to the law curriculum instruction in economic theory, finance, accounting, and psychology. A course in Ethics—which Katz described as one in moral and political philosophy—was added, and provision was made for a closer fusion between

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[6] Katz, *Memories of an Ex-Dean*, 3 U. CHI. ALUMNI J. 21 (1977).

[7] *Id.*

political theory and constitutional law. The program assumed collaboration in teaching with colleagues and appointments to the law faculty of scholars of other disciplines from other parts of the University.[8] The program had two models—a four-year and a three-year curriculum. This made for future difficulties in the administration of the program, but initially the combination was helpful. The New Plan was not intended to be final, nor was it presented as earth-shaking. That would have been quite contrary to Wilber Katz's realism, his sense of style and taste. He wrote simply: "There is, of course, nothing new in the recognition of a close relation between law and the study of society."[9] And he added: "We propose to consider a little more consciously whether anything worth while can be said as to the ends which law should serve."[10]

Wilber Katz was appointed dean of the Law School in 1939 upon the retirement of Dean Bigelow. It was a deanship, as Katz wrote, that spanned "pre-war, war-time, and post-war years."[11] He continued as dean until 1950. In 1939, he found that he had to be concerned as dean with declining enrollment: "Students entering both programs . . . [the four-year and the three-year] totalled 75."[12] He found that many liberal arts colleges were hostile to the University of Chicago because they resented Chicago's college plan which began at the third year of high school. During the war years, of course, enrollment fell drastically; the Law School lost most of its building to the Air Force meteorology program. It also lost many of its faculty members. Malcolm Sharp, if I recall correctly, went off to train air pilots. Wilber Katz spent a considerable part of his time in the Renegotiation Section of the Chicago Ordnance District. Sheldon Tefft was acting dean for two years. Then in 1945 the students started coming back, bright and numerous, and understandably very anxious to get through the Law School in a hurry. The set requirements of each program, and the interrelationships between the two programs, flooded the dean's office each day with petitions for variances. As 1950 approached, the dean found that the financial problems of the School had become more pressing. The Law School building was inadequate; there was inadequate space for books, helped only by the fact that there were insufficient funds with which to buy books. Aside from the G.I. benefits, there was very little

[8] This is what happened, as any intellectual history of the Law School will show.

[9] Katz, *A Four-Year Program for Legal Education*, 4 U. CHI. L. REV. 527, 528 (1937).

[10] *Id.* at 531.

[11] Katz, *Memories of an Ex-Dean*, *supra* note 6, at 21-22.

[12] *Id.* at 22.

money for scholarships and fellowships. The financial situation was a reflection of the problem of the University as a whole. Katz did not enjoy such budget sessions as he had with Hutchins, even though Hutchins fascinated and tantalized him. Katz enjoyed even less the working budget sessions he was forced to have with other officers of the administration who did not fascinate him.

Dean Katz was a central figure in maintaining the strength of the faculty and the spirit of the institution. Ruth and Wilber Katz as a team helped keep fresh the bonds of affection within the faculty and with the students. To the faculty group that had worked together in fashioning the New Plan, splendid new appointments were added after the war. For one of these new appointees—Roscoe Steffen—Wilber stripped himself of the honor of the John P. Wilson Professorship and conferred it on the new appointee. It is true that many of the requirements of the New Plan were abandoned. The four-year program was given up. But the essential direction of the plan continued. Wilber Katz in his quiet way provided unique intellectual leadership. A part of that leadership was the appreciation he held for the work of others. Another part was his unquestioned ability as a scholar and as a teacher. A third part was that as an administrator he would never make a decision, one could be sure, for a meretricious reason.

Nor had he neglected his duties as a member of the Bar. A few examples out of many come to mind. In 1940, during the start of the war-time period, he took it upon himself, in a courageous and carefully worked out address given before the Indiana State Bar Association, to warn against the symptoms of national hysteria already appearing, with their impact on civil liberties. Characteristically, after reminding the Bar of the safeguards in the Constitution as interpreted by the Supreme Court, he took occasion to recall the case of *Meyer v. Nebraska*,[13] in which the Supreme Court had held unconstitutional a law forbidding the teaching of foreign languages in grammar schools. He compared it with the *Gobitis*[14] decision, which had just come down that term, and in which the Court, speaking through Mr. Justice Frankfurter, permitted a regulation requiring daily flag salute by students in public schools to stand. Carefully, he explained why he would have dissented in both cases. It was a sober exploration of the issues—an exploration of the meaning of freedom and loyalty in the context of a discussion of the purpose of government. His many-leveled talk included an appeal

[13] 262 U.S. 390 (1923).

[14] Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940).

to the Bar to support the work of the Committee on the Bill of Rights of the American Bar Association.

Another example of Wilber Katz's service to the Bar was his representation in 1945, by appointment of the United States Supreme Court, of two prisoners. They sought a review by the Court of the judgment of the Illinois Supreme Court denying them leave to file petitions for habeas corpus. The Court dismissed the writs of certiorari,[15] but went out of its way to state that in view of the apparent condition of Illinois law, such a dismissal was not to be taken as meaning that a federal district court might not entertain an original petition.[16] The case—*White v. Ragen*—was part of what Justice Rutledge, joined by Justices Douglas and Murphy, two years later called the Illinois "merry-go-round,"[17] a "procedural labyrinth . . . made up entirely of blind alleys, each of which is useful only as a means of convincing the federal courts that the state road which the petitioner has taken [is] the wrong one."[18] Wilber Katz made it his business to help straighten out the law in Illinois (as he had in numerous other matters) to provide a viable postconviction remedy. *The University of Chicago Law Review* in the winter of 1948 carried his unusual letter of castigation of the role of the Attorney General of Illinois in the perpetuation of this merry-go-round.[19] This necessary improvement of the law took persistence and time.

It was clear sometime before 1950 that Wilber was anxious to leave the deanship. He had given much of himself to these administrative duties and responsibilities, and he no longer had the enthusiasm for them that his best work reflected. Moreover, in a special way, his intellectual life had been trained by and had responded to the program that over the last twenty years he had fashioned for himself and for others. He had grown in it. Central to that program, as he saw it years before, was the effort to study standards for individual and group conduct. This was what he came to see as the essence of the law. And I believe it is also correct to say that he had come to realize, as Justice Holmes had before him, that the nature of this search for truth and understanding—for this is what it was—had as its ultimate consummation and test the application of

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[15] White v. Ragen, 324 U.S. 760 (1945) (per curiam).

[16] *Id.* at 765.

[17] Marino v. Ragen, 332 U.S. 561, 570 (1947) (Rutledge, J., joined by Douglas, J. and Murphy, J., concurring).

[18] *Id.* at 567 (Rutledge, J., joined by Douglas, J. and Murphy, J., concurring).

[19] Katz, *An Open Letter to the Attorney General of Illinois,* 15 U. CHI. L. REV. 251 (1948).

this knowledge and faith to himself.[20] He very much wanted the time to think, and write and teach.

He continued his teaching and his writing,[21] lively and perceptive. In 1955, he was the Knapp Visiting Professor of Law at Wisconsin. In 1962, Ruth and Wilber left the University of Chicago, and he became an active professor at the University of Wisconsin Law School. In 1963, he gave the Julius Rosenthal Foundation Lectures at Northwestern University on Religion and American Constitutions. Wilber retired from full-time services at the University of Wisconsin in 1970, but continued to teach beyond that date.[22]

During his lifetime, Wilber was always the mentor and guide of the University of Chicago Law School. We should continue to think of him that way.

Edward H. Levi†

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[20] The consummation . . . comes when he applies this knowledge to himself. He may put it in the theological form of justification by faith or in the philosophical one of the continuity of the universe. I care not very much for the form if in some way he has learned that he cannot set himself over against the universe as a rival god, to criticize it, or to shake his fist at the skies, but that his meaning is its meaning, his only worth is as a part of it, as a humble instrument of the universal power. It seems to me that this is the key to intellectual salvation, as the key to happiness is to accept a like faith in one's heart, and to be not merely a necessary but a willing instrument in working out the inscrutable end.

O.W. HOLMES, *Brown University—Commencement 1897*, in COLLECTED LEGAL PAPERS 164, 166 (1920).

[21] *See, e.g.*, Katz, *Freedom of Religion and State Neutrality*, 20 U. CHI. L. REV. 426 (1953); Katz, *Law, Psychiatry, and Free Will*, 22 U. CHI. L. REV. 397 (1955); Katz, *Natural Law and Human Nature*, 1 CATH. LAW. 70 (1955); Katz, *The Philosophy of Midcentury Corporation Statutes*, 23 L. & CONTEMP. PROB. 177 (1958); Blum & Katz, *Depreciation and Enterprise Valuation*, 32 U. CHI. L. REV. 236 (1965); Katz, *Radiations from Church Tax Exemption*, 1970 SUP. CT. REV. 93.

[22] For an extraordinarily sensitive portrayal of Wilber Katz, written by Harry Kalven, Jr. upon Katz's retirement from teaching, see Kalven, *Wilber G. Katz—The Gentle Exemplar*, 1972 WIS. L. REV. 954.

† Glen A. Lloyd Distinguished Service Professor, The University of Chicago.