
Max Rheinstein (1899–1977)

Mary Ann Glendon and Malcolm P. Sharp***

I first met Max Rheinstein when he came to Chicago in 1935, after teaching at Columbia and Harvard. Even if one's German were perfect, it would be difficult to perceive fully the extraordinary range of studies and writings of his German period. Fortunately, Konrad Duden describes Max's contributions during this period.

Duden wrote, "He was and is unbelievably generous toward the Germans who expelled him. Before and after the end of the war he fought with all his might against equating Germans with Nazis and for a reasonable peace. One cannot read what he said and wrote at that time without being moved."† Max's efforts contributed to softening asperities due to the War of 1939 and to

seeing in perspective the vicissitudes of denazification. He seems to have foreseen at an early time the cooperation of the present American and German governments.

My association with Max was closest in the courses we taught in the comparative law of contracts. I was impatient with the slow growth of American law—in particular with respect to form and consideration and with respect to mistake and related matters.

Max did not indulge this impatience of mine. He pointed out that German law was by my tests "behind" ours in the treatment of mistake. And he joined me in amusement at the course of the so-called reasoning which had led the German law to one happy result: A gratuitous promise of an option was said to be a gratuitous grant and "like" an effective gift.

Max also taught the comparative law of torts—in which we seem to be even more in need of wisdom—and at times he taught courses in general comparative law. Of course, it was in the

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field of comparative family law that he made his greatest contribution in his later years.

Max's voracious appetite for new experiences and travel was remarkable. It is this, probably more than anything else, which I shall remember most vividly about him. It contributed to making his and his wife Lilly's lives happy and full.

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Malcolm Sharp has asked me to supplement these recollections of his with some words about the influence of Max Weber on Max Rheinstein, and about Max Rheinstein's work in his later years. In fact, to discuss either of these subjects involves speaking of the other. The years since Max's nominal retirement from the Law School in 1968 were as active as those that preceded it. He published two more books,¹ a steady stream of articles, and taught and lectured frequently here as well as in Italy, The Netherlands, and the Federal Republic of Germany. Nearly all of this was a continuation of his lifelong preoccupation with matters in which Max Weber had awakened his interest in 1919–20 and which are now commonly grouped under the heading of legal sociology. This is particularly true of the 1972 book *Marriage Stability, Divorce and the Law*; of the 1969 lecture on *Rechtshonoratioren*,² and his 1974 essay *The Family and the Law*, which introduces the Family Law volume of the International Encyclopedia of Comparative Law.³

Max Rheinstein was one of the students in a course given by Max Weber at the University of Munich during the last year of Weber's life. In this course, General Economic Theory, Weber presented the distillation of his life's research and thought. Rheinstein was then a 21-year-old law student, a World War I veteran who had served at the Italian front ("It collapsed when I arrived"), and a part-time librarian in Ernst Rabel's comparative law institute. Weber made such a deep impression on him that, years later, Rheinstein described as a "labor of love" the

prodigious work he did in translating, editing and explaining Weber's *Law in Economy and Society*.⁴

It is said that Weber himself apparently thought that the sociology of law, together with his presentation of the basic forms of domination, and his political writings, was the most original part of his great unfinished systematic treatise, *Economy and Society*.⁵ What Rheinstein did for his old teacher, however, went far beyond making this important work available in English. The complexity and subtlety of Weber's thought, as is well known, have caused his work to be frequently misunderstood, oversimplified or ignored. The difficulties of substance have been compounded by the impenetrability (even for Germans) of Weber's writing style.

Max Rheinstein and Edward Shils, working together on the translation, rendered the sociology of law more understandable by including translations of other related parts of *Economy and Society*. They devised English equivalents for German words that were artificially coined by Weber. Rheinstein's remarkable footnotes and annotations explained those frequent passages where Weber's remarks (in the manner of Malcolm Sharp) were as cryptic as they were heavy with meaning. These notes, a delight to read in themselves, take the reader through Hohfeldian analysis, courtly love, the lost civilization of the Khazars, the disrepute of Roman Law Studies under National Socialism as a "product of the Jewish mind," the Albigensian and Waldensian heresies, and so on. Rheinstein checked Weber's sources, and furnished missing references for Hindu, Chinese, Jewish, Islamic, and primitive legal systems, as well as for Roman, English, and medieval European law, and the laws of Germany, America, and France. He explained technical terms from each of these systems, and indicated where later research or new discoveries had altered the views of the generation of scholars whose works had been used by Weber.

Rheinstein's annotated translation itself rendered a monumental service to sociology in general, and legal sociology in particular. But he did more. In one of his finest essays, a 48-page Introduction to Weber's thought, Rheinstein in his own lucid, systematic, and concise style, so different from Weber's, set forth an authoritative

† K. Duden, "Max Rheinstein: Leben und Werk," I *Ius Privatum Gentium: Festschrift für Max Rheinstein* 1 (E. von Caemmerer, S. Mentschikoff, and K. Zweigert, eds., 1969).

explanation of Weber's sociology. This remarkable essay makes Weber's thought seem (like Immanuel Kant's) beautifully clear but hidden in sentences where every proposition is narrowed by a qualifying proposition, which in turn is repeatedly qualified, and where (still in the same sentence) the main proposition is combined with its set of qualifiers and subqualifiers. Weber wrote in this fashion partly because of his intolerance for overgeneralization and partly because, as his widow put it, "He was entirely unconcerned with the form in which he presented his wealth of ideas. So many things came to him out of that storehouse of his mind, once the mass was in motion, that many times they could not be readily forced into a lucid sentence structure."⁶

As his students know, Rheinsteins was like Weber in his obsession with keeping generalizations tailored close to the facts. But Rheinsteins went into Weber's storehouse of ideas and put the wares in order. Only someone with Rheinsteins's peculiar gifts, his universality of knowledge, his ability to see through to the essentials, and his awesome command of languages could have attempted such a task.

The value of Rheinsteins's work in making Weber as understandable as he can be made without losing any of the refinement of his thought is known among sociologists. However, Rheinsteins succeeded so well in making the rough places plain that his Introduction to Weber often has been mistaken for "common knowledge" by lawyers.

So, one aspect of the Rheinsteins-Weber connection is that, through Rheinsteins, Weber has continued to teach legal sociology. Another is that Rheinsteins continued to learn from Weber and to make his own contributions to legal sociology. The influence of Weber on the young Max Rheinsteins entered into happy combination with the influence of a quite different sort of genius, Ernst Rabel, whose *Assistant* he became in 1922.

Unlike many European legal scholars of his generation, Rabel was intensely concerned with the relevance of law to practical problems and their solution. Through Rabel, Rheinsteins was exposed to the methods which came in Germany to be called Jurisprudence of Interests, and in the United States sociological jurisprudence. The fu-

sion of the interest Weber inspired in the complex reciprocal interaction of law and society, with Rabel's insistence on ascertaining social reality and the practical effects of laws, released a sustained flow of creative ideas which did not cease until death came to Max Rheinsteins on July 9, 1977.

Rheinsteins saw that comparative law was a fruitful source of insight for sociology because it directs attention toward the extent to which law is a function of a particular society and facilitates recognition of the social problems to which law is addressed. All of his "family law" work of the past 10 years was the work of Rheinsteins the legal sociologist and comparatist, as well as the work of Rheinsteins the private law scholar intensely concerned with "How does it work in practice?" and "What do people really do?" His knowledge of, and meticulous labors in, many different areas of substantive law (in particular, obligations, succession, private international law) gave depth and credibility to his sociological and comparative work. Conversely, his comparative, historical, and sociological perspective enriched all of his studies of positive law. The very qualities Rheinsteins attributed to Weber are the qualities one came to associate with Rheinsteins: "universality of knowledge together with the gift of penetrating analysis, . . . objectivity, . . . passion for accurate formulation, and . . . genius for recognizing the essentials, and the relations between seemingly remote phenomena. . . ."⁷

Reinforced no doubt by his experiences in Germany and Italy in the early 1930s, Max always refused to be drawn into trends or fashions of the moment. In fact, he was ever ready to point out that the apparently new was often merely the reappearance of an old or recurring phenomenon in altered guise.

It is his resistance to intellectual fads (which he saw and identified for what they were) and his refusal to be drawn into the methodological controversies of the moment that give Rheinsteins's written work a lasting freshness. In this connection, it is very gratifying to be able to report three recent events which will result in making some of his work more accessible. Of the greatest importance is that two of Max's former students, Reimer von Borries and Hans Leser, have edited collections of papers from the nearly 350 items in

the Rheinsteins bibliography. Von Borries has brought many of the comparative law writings into a unified "Introduction to Comparative Law."⁸ Leser has assembled an 800-page volume of *The Rheinsteins Papers*, in four great divisions: Legal Theory and Sociology, Comparative Law, Conflicts of Law, and Family Law.⁹ Finally, the Louisiana Center for Civil Law Studies is preparing a translation of Rheinsteins early book on Anglo-American contract law, still a standard work in Germany.¹⁰ Thanks to Leser and von Borries, writings scattered in various publications and languages now will have a wider audience than would have been possible otherwise.

All who knew Max here at the Law School will recognize that no mere recital of his accomplishments and gifts, larger-than-life though they were, captures or does justice to this extraordinary man.¹¹ That encyclopedic knowledge, made wisdom by his humanity and sense of history, was, through his boundless generosity, always at the disposal of colleagues and students.

His legendary working capacity was equaled by his capacity to enjoy the good things in life. He loved mountains, hearty food, German beer, chamber music, opera, and, above all, people. His energy and courage prevailed over the severe bodily afflictions that beset him, two or three at a time, for the past twenty years. He filled the categories of Christian and Jew, American and German, but they did not contain him. His universal spirit transcended these classifications. Surely, for those who knew him, it is his charity above all that will be remembered, stored up, treasured, and, perhaps, even imitated. It may be that Max's life has permitted us a glimpse into the fugitive reality behind the words of the apostle Paul that prophecy, tongues and knowledge will pass away, but Love never ends. He was always there, behind the open door in the sixth-floor office, a figure of order, certainty, and permanence. In some way, for those whose lives he touched, this wise and gentle man will always be there.

NOTES

1. M. Rheinsteins, *Marriage Stability, Divorce and the Law* (1972); M. Rheinsteins and M. Glendon, *The Law of Decedents' Estates* (1971).
2. Rheinsteins, "Die Rechtshonoratioren und ihr Einfluss auf Charakter und Funktion der Rechtsordnungen," 34 *RabelsZ* 1 (1970). "Rechtshonoratioren" was a term coined by Weber to designate that group of "law notables" who, in a given social setting, enjoy such prestige and influence that they decisively determine the characteristic features of the legal order of their society. An English version of this lecture appeared as "Leader Groups in American Law," 38 *U. Chi. L. Rev.* 687 (1971).
3. Rheinsteins, "The Family and the Law," in IV *International Encyclopedia of Comparative Law* Ch. 1 (A. Chloros, ed., 1974).
4. Max Weber on Law in Economy and Society (M. Rheinsteins, ed., 1954).
5. R. Bendix, *Max Weber* xxiii-xxiv (1960).
6. Quoted by Bendix, id. at xxi.
7. Rheinsteins, *supra* n. 4 at xxxii.
8. M. Rheinsteins, *Einführung in die Rechtsvergleichung* (R. von Borries, ed., 1974).
9. M. Rheinsteins, *Gesammelte Aufsätze* (H. G. Leser, ed., to be published early 1978).
10. M. Rheinsteins, *Die Struktur des vertraglichen Schuldverhältnisses im anglo-amerikanischen Recht* (1932).
11. There are 297 items in the 1968 bibliography prepared by Adolf Sprudz. The work of the past nine years must bring the definitive bibliography close to 350 entries. Most of the many honorary degrees, visitorships, and titles that Max held are listed in Duden, "Max Rheinsteins: Leben und Werk," *Ius Privatum Gentium: Festschrift für Max Rheinsteins* 1 (E. von Caemmerer, S. Mentschikoff, and K. Zweigert, eds., 1969).



Max Rheinstein with colleagues John Langbein and Gerhard Casper