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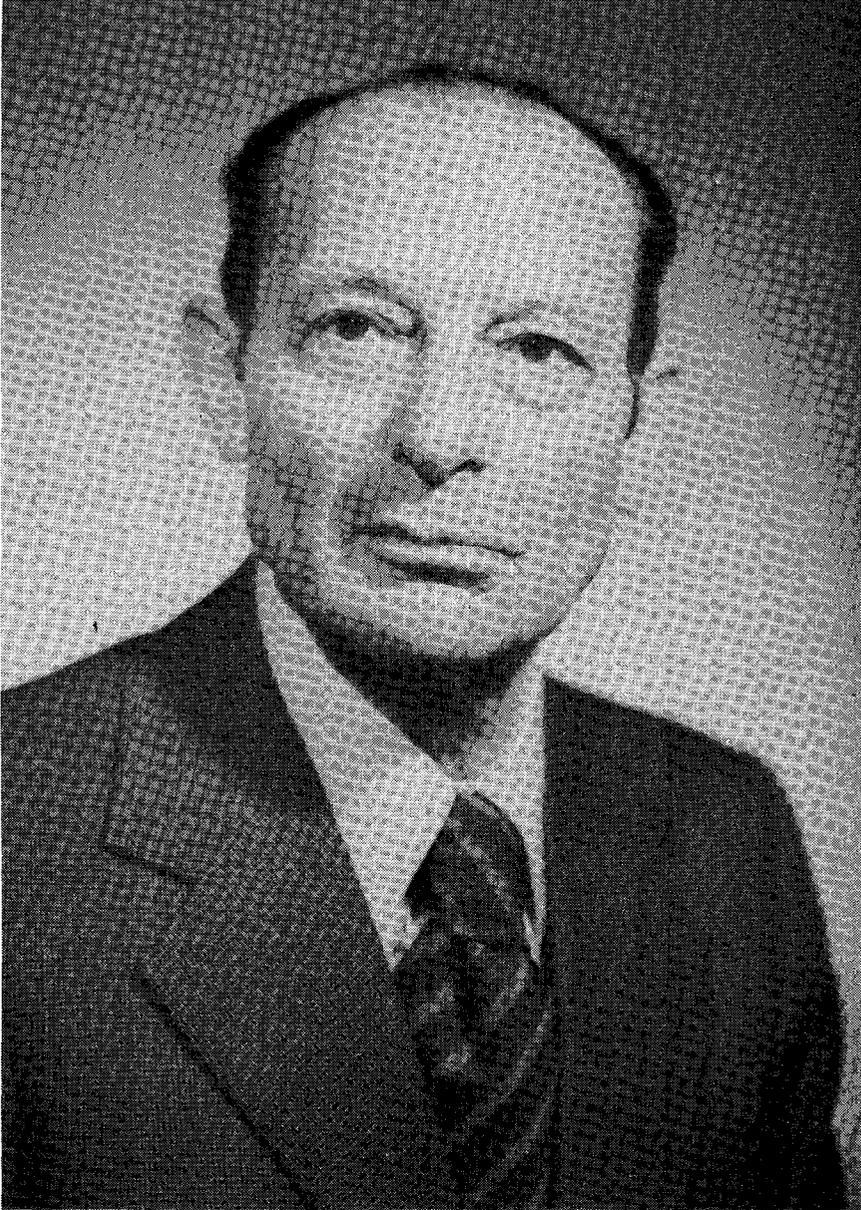
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A Tribute to Adolf Homburger

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Adolf Homburger
1905-1978

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A Tribute To Adolf Homburger

Today we reach a point that Professor Adolf Homburger had anticipated with enthusiasm, the publication of the first issue of *Pace Law Review*. It is with both affection and respect that we dedicate this inaugural issue to him.

Establishing a new law school requires courage, dedication, patience, and skill. Pace University School of Law had been in existence for only one year when Professor Homburger, already widely recognized for his contributions to the law and legal education, accepted the challenge and joined Pace's faculty. His tenure with us ended a year later with his death in July, 1978. His influence, his accomplishments, and his inspiration, however, far exceeded what might have been expected during this short period and greatly shaped the future of Pace University School of Law.

Professor Homburger was born in Vienna, Austria, in 1905. After receiving his civil law degree in 1929, he clerked and then practiced law in Vienna until 1939 when he fled the Nazis. He came to the United States, received his common law degree from the University of Buffalo Law School in 1941, and settled into private practice in Buffalo. His skill as a practitioner, as well as his ability to communicate the intricacies and subtleties of the law, made Professor Homburger an excellent candidate for a teaching position. In 1949, he joined the faculty of the University of Buffalo Law School as a lecturer, while continuing in private practice. He joined the Buffalo faculty as a professor in 1963 and continued in that position until he came to Pace in 1977.

To further express his creative and analytic abilities, as well as to make a positive contribution to the law, Professor Homburger served on the Committee to Advise and Consult with the Judicial Conference of the State of New York on the Civil Practice Law and Rules. As Advisory Committee Chairman, he effectuated his belief that the courts should be accessi-

ble to all those who need legal protection or redress. Through his efforts, numerous remedial additions and amendments, including a class action statute,¹ were made to New York's Civil Practice Law and Rules. Professor Homburger was frequently a witness before state and federal legislative committees, especially concerning his area of expertise, class actions. Professor Homburger also made significant contributions in the areas of long-arm jurisdiction, comparative legislation, and provisional remedies.

Professor Homburger's background, which included both the civil and the common law, provided him with unique insights into legal problems. His writings, in which he posited solutions to many of these problems, established him as an eminent legal scholar. At age 72, with all of these accomplishments already to his credit, Professor Homburger came to Pace University School of Law.

While Professor Homburger was an eminent scholar whose advice was regularly sought by the bench, bar, and academia, it seemed to us, his students, that he derived his greatest satisfaction from teaching. His ability to impart knowledge to students was a rare gift. Patient, understanding, and thorough, he always illuminated theoretical concepts with examples of practical applications.

Adolf Homburger, however, was more than teacher, advisor, and scholar. He was, in every sense of the word, a Renaissance man. He brought to Pace not only his legal talents but also his passion for classical music and his skill as a violinist. He was as comfortable with a Vivaldi concerto as he was with the New York long-arm statute.

During his brief tenure at Pace, Professor Homburger impressed on us his humanity, his decency, his droll wit, and his artistic and scholarly skills. He exemplified the ideals he attempted to impart: commitment and character, spirit and patience, warmth and modesty, devotion to careful scholarship. To the extent that we succeed in emulating him, to that extent will we be better lawyers and human beings.

Board of Editors
1979-1980

1. N. Y. CIV. PRAC. LAW §§ 901-909 (McKinney 1979).

HERBERT PETERFREUND*

Adolf Homburger and I first met in the spring of 1966 when I joined the Committee to Advise and Consult with the Judicial Conference of the State of New York on the Civil Practice Law and Rules. Thereafter, and for the next twelve years, we saw each other regularly at the monthly meetings of the Advisory Committee and we frequently exchanged views on the telephone. We became firm friends, not only because of our mutual interest in civil procedure (we each taught New York Practice), but also because of my admiration and affection for the man himself. Professor Homburger was, in every sense of the word, "a pro"—and I admire a true professional.

As Chairman of the Advisory Committee, Adolf conducted the monthly meetings with enthusiasm and understanding. He always did his homework and was prepared for discussions on any problem. If he did not fully comprehend or appreciate the practical consequences of a particular proposal, he would turn to the practicing attorneys on the Advisory Committee for guidance. No chairman of a committee could have conducted meetings with more patience or tolerance for diversity.

Adolf Homburger was much more than Chairman of the Advisory Committee. He was the guiding spirit and, indeed, the chief architect of numerous proposals which were later adopted by the Advisory Committee and steered by him through the Judicial Conference and, eventually, the legislature. Almost single-handedly, he drafted the class action statute¹ and the 1978 amendments to CPLR §§ 305,² 320,³ and 3012.⁴ These are only a few of the many contributions he made in an effort to preserve the CPLR as a modern, viable procedural code. More than once I recall remarking to a member of the Advisory Committee staff: "It will be a sad day when Adolf retires and leaves the Commit-

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1. N.Y. CIV. PRAC. LAW §§ 901-909 (McKinney 1979).

2. N.Y. CIV. PRAC. LAW § 305 (McKinney 1979) (summons, supplemental summons, notices, amendment).

3. N.Y. CIV. PRAC. LAW § 320 (McKinney 1979) (defendant's appearance).

4. N.Y. CIV. PRAC. LAW § 3012 (McKinney 1979) (service of pleadings and demand for complaint).

tee." That sad day came suddenly when Adolf died, just a few days after I had bade farewell to the Advisory Committee and had moved to California. No death in recent memory was more shocking to me.

Adolf Homburger was a brilliant scholar, a distinguished law teacher, and a warm human being. At several luncheons with Adolf and his lovely wife, Liselotte, I "discovered" that he was also a devoted husband and father. He was a dear friend, whose companionship on the Advisory Committee I cherished over many years. I shall continue to treasure the privilege of having been associated with him, as well as with the other members of that dedicated committee, whose uncompensated efforts are little known to, or appreciated by, the New York Bar. Most of all, I am, and always will be, grateful that Adolf Homburger passed my way.

HON. CHARLES D. BREITEL*

To my regret, most of my contacts with Adolf Homburger were in a professional context. I say "regret" because, in addition to his great intellectual stature, Professor Homburger possessed a most engaging personality, a warm character, and a basic modesty and humility. That modesty and humility were genuine and were not warranted by any evident shortcomings in his intellectual prowess, his prodigious capacity for work, or his justified indomitable conviction in the conclusions of law and principle that he reached so facily. I would have liked to have been able to spend more time with him over the years so that I could have known him better. I have never met a person, although there must be some exceptions, who did not like, indeed love, Professor Homburger.

He made an outstanding impact on the law by his Chairmanship of the Committee to Advise and Consult with the Judicial Conference of the State of New York on the Civil Practice Law and Rules. It was a delight to hear his reports on new proposals, earlier proposals that were still awaiting adoption, and stubborn problems involving civil procedure in the State of New York. His courtly manner and open-mindedness were consistently demonstrated in discussions and debates over the issues raised. Although he was always better informed than any other participant, he not only displayed a civilized etiquette in vigorous discussion, but also invariably remained open-minded throughout. With the courage and self-confidence that came from being sure-footed, he was ready, when persuaded, to make a concession or even to change his view and adopt that of another. This quality may not be unique to Adolf Homburger, but it is very rare.

His specific contributions in the field of class action law, as it developed both in the federal system and in this state, were highly significant. So, too, were his contributions in law reform concerning the enforcement of judgments and in the resolution of knotty problems, both practical and constitutional, in connec-

* Former Chief Judge, New York Court of Appeals; Of Counsel, Proskauer, Rose, Goetz & Mandelsohn.

tion with body attachments, discovery, civil arrest, and many other areas. In addition to his capacities as a scholar, he displayed surprising aptitude as a procedural reform "lobbyist" before legislative committees deliberating upon the fate of his proposals. However long his proposals were delayed, as sometimes happened, most of them were eventually adopted.

Beyond all of these extraordinary qualities and achievements, Adolf Homburger was a teacher of true talent, one of those gifted leaders in the noblest of professions who pass on to the young, and through them, to posterity, the essential increment in the process of civilization. His own contribution to this evolution was large, and, to that extent, like all great teachers, he achieved a bit of immortality.

As I read what I have written and contemplate what the reader's reaction to these remembrances might be, I recognize that some may consider it excessive praise with impossible justification in reality; in short, that I may have indulged in flattery, which is just another form of dishonesty. Nevertheless, it would be untruthful for me to modify what I have said; it is felt deeply. Nor would I stain my own recollections, or those of others, about a person whose qualities were great enough to require no unjustified gloss.

I regret, as I am sure the Pace University School of Law also regrets, that Pace was not fortunate enough to have Adolf Homburger for a longer time. I understand fully why Pace chooses to inaugurate its *Review* with a dedication to him. It is a good start, and we all hope, as would Professor Homburger, that the Law School and its *Review* will fulfill Pace's aspirations.

MAURO CAPPELLETTI*

I first met Adolf Homburger, with whose work I was already familiar, in the late 1960s when, as editor-in-chief of the volume on civil procedure of the *International Encyclopedia of Comparative Law*, I invited him to associate with me as an advisor and contributor to that volume. We subsequently collaborated on a number of occasions, a collaboration which, fortunately for me and my colleagues, involved several visits by Professor Homburger to the Institute of Comparative Law in Florence. Here Professor Homburger is remembered for the wide range of his scholarship and for his remarkable ability to be conversant with current practical developments and problems while, at the same time, producing learned, insightful, and enduring research work.

As a comparativist, he had a remarkable knack of expressing himself in terms which were as clear to lawyers trained in the civil law as to those trained in the common law. For example, in his article "Private Suits in the Public Interest in the United States of America,"¹ writing with a deep knowledge of and sensitivity to European procedures and concerns, he was able to isolate and discuss effectively the features of class and public interest actions in the United States which are especially notable from a comparative perspective. This article has proved invaluable, not only to me but also to my graduate students, who come from all over Europe.

On many occasions, I had the opportunity of turning to Professor Homburger for advice on my own research and writing. I came to value immensely the warm, thoughtful, and enlightening assistance which he so unhesitatingly offered. My personal debt to Professor Homburger is increased by virtue of another aspect of his career, one which related to my interests: I cannot overlook his practical achievement as principal draftsman of the 1975 New York Class Action Law. He was always a leader in advancing the kind of procedural innovations that, from my practical research, I believed to be essential.

* Professor of Law, European University Institute and Stanford University.

1. 23 BUFFALO L. REV. 343 (1974).

My entire relationship with Adolf Homburger, both professional and personal, was a source of profound enjoyment and satisfaction for me. The warmth of his personality, his unbounded generosity, and his unfailing friendliness and willingness to serve, coupled with his extreme modesty and unprepossessing manner, made of him a friend whose loss is keenly felt. As a scholar, a friend, and a man, he will be missed by all.

HON. MATTHEW J. JASEN*

On July 9, 1978, the remarkable career of Professor Adolf Homburger came to an end. To say that his death was an incalculable loss to Pace University School of Law is but a partial appraisal, for the year he spent at Pace and the years before that at the State University of New York at Buffalo, Faculty of Law and Jurisprudence, were themselves an asset of incalculable value to legal scholarship and writing and to the public, the students in his classes, and the faculty members who shared his friendship. By virtue of these contributions, Pace University School of Law gained immeasurably in the quality of its educational program and in the enhancement of its reputation. It is sad that future students at Pace will not be exposed to this intelligent and decent man and that his faculty colleagues will be deprived of his principled influence.

As longtime Chairman of the Committee to Advise and Consult with the Judicial Conference of the State of New York on the Civil Practice Law and Rules, Professor Homburger admirably adapted New York's civil practice to the needs of modern litigation. Among his many outstanding contributions as a proceduralist was his performance as the principal draftsman of the 1975 New York Class Action Law.¹ The product of these efforts was typical of all his work—comprehensive, practical, and progressive.

Professor Homburger was, in my judgment, a scholar in the best sense of that term—outstanding in his intellect, imaginative and creative in his thinking, and superbly trained in the best traditions of both the civil and the common law. He was contagiously enthusiastic and possessed boundless vitality. By virtue of his extraordinary gifts, he attained a reputation that extended throughout our nation and to parts of Europe.

Such memories as these will live on among all who knew him. For this, for a precious friendship, and for all he gave to us so unsparingly, we shall be grateful for all time.

* Senior Associate Judge, New York Court of Appeals.

1. N.Y. CIV. PRAC. LAW §§ 901-909 (McKinney 1979).

JOSEPHINE Y. KING*

I had the privilege of knowing Dr. Homburger in three significant aspects of his career and mine: as a teacher, as a scholar and author, and as a faculty colleague. At the time I made his acquaintance, he was relatively new to full-time teaching. He had been a popular and much respected part-time member of the faculty at the University of Buffalo Law School. I can recall his comment: "My academic friends have long urged me to become a full-time teacher. Now that I have, they tell me I have finally 'gone straight.'"

Although in my own freshman year I did not have Dr. Homburger, I have heard students over the years express the awe they experienced coming into his class in Civil Procedure. The awe never completely vanished, but it was gradually moderated by a mounting warmth which filled the classroom. No other teacher that I have known has elicited such affection from his students.

As an upperclass student in his courses on Real Estate Transactions and New York Practice, I can recall a sense of security. Here was a teacher who was master of his subjects. Equivocation never unsettled that security. His self-assurance sprang not from dogma or arrogance but from having thought, fought, and taught through an area of knowledge many times. His pedagogical approach was highly organized. His expositions clarified the law, but his questions instilled humility as they revealed the breadth of his knowledge. Without warning, he would interrupt with a droll aside which evoked smiles and chuckles from his charmed audience. In Real Estate Transactions, he philosophized: "A piece of land is like a woman; you can never be certain you know everything about its past."

Dr. Homburger's reputation in the classroom was soon supplemented by the recognition of his stature as a scholar. I had read his excellent book review in the *University of Pennsylvania Law Review*¹ and approached him to write for the *Buffalo Law Review*. The result was a momentous article on long-arm juris-

* Professor of Law, Pace University School of Law.

1. Homburger, Book Review, 112 U. PA. L. REV. 1222 (1964) (J. WEINSTEIN, H. KORN & A. MILLER, NEW YORK CIVIL PRACTICE).

diction co-authored by Professor Joseph Laufer.² I remember the preparation of draft after draft—with his instruction that his secretary type it triple-spaced, with wide margins, on legal-size paper. I thought those two perfectionist authors would never release the manuscript to my waiting editorial hands. The result proved well-worth the anxiety. The article has been widely recognized as an essential and authoritative contribution to the scholarship on jurisdiction.

Other scholarly works of impeccable craftsmanship and penetrating analysis followed. It is his work in the field of jurisdiction, however, which remains freshest in my recollection. The recent decisions of the United States Supreme Court in *Rush v. Savchuk*³ and *World-Wide Volkswagen Corp. v. Woodson*⁴ revive those memories, but with a sense of deprivation. How stimulating and enlightening it would be to discuss these cases with Dr. Homburger.

As a colleague, Dr. Homburger generously assisted, guided, and inspired the novices on the faculty. He combined, after all, every quality essential to professional excellence. He enriched each one of us by his warmth and kindness. The melodious voice and the deep, hearty laugh have not faded; recalling them, somehow, restores the world to order.

2. Homburger & Laufer, *Appearance and Jurisdictional Motions in New York*, 14 *BUFFALO L. REV.* 374 (1965).

3. 444 U.S. 320 (1980).

4. 444 U.S. 286 (1980).

ROBERT B. FLEMING*

The editors of the *Pace Law Review* chose well in dedicating this inaugural issue to Adolf Homburger. Professor Homburger's prime concern over the years was for the highest quality of legal study and research. This same concern must inform the editorial efforts of all who contribute to the development of this new scholarly venture.

Writing of Adolf Homburger in 1977, Charles D. Breitel, then Chief Judge of the New York Court of Appeals, said, "I refuse to accept any chronological limitations on him."¹ Truly there were none. He came to the Pace University School of Law intending to start a new career, at age 72, and he did so with freshness and enthusiasm. Only one year later, however, this career was cut short by his untimely death.

The contributions, personal as well as professional, that Adolf Homburger made to Pace in just one academic year were remarkable. He initiated a *genius loci* that leaves an imprint on each of our students. The students *sua sponte* established the Adolf Homburger Humanitarian Award, a yearly award honoring a graduating senior.

The loss of a friend and colleague of thirty years leaves one bereft; but the commencement of the *Review* offers a happy occasion by which to acknowledge our loss and debt. Adolf would have taken pleasure in that.

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1. 26 BUFFALO L. REV. 217 (1977).