

ValpoScholar

Valparaiso University Law Review

Volume 44
Number 4 *Symposium on The Civil Rights of
Public School Students*

pp.1309-1316

Symposium on The Civil Rights of Public School Students

For Jack, Poet and Bridge-Builder between Cultures

Dr. Heinrich Scholler

Dr. Barbara Wagner

Follow this and additional works at: <https://scholar.valpo.edu/vulr>



Part of the [Law Commons](#)

Recommended Citation

Dr. Heinrich Scholler and Dr. Barbara Wagner, *For Jack, Poet and Bridge-Builder between Cultures*, 44 Val. U. L. Rev. 1309 (2010).

Available at: <https://scholar.valpo.edu/vulr/vol44/iss4/24>

This Essay is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.



FOR JACK, POET AND BRIDGE-BUILDER BETWEEN CULTURES

Dr. Heinrich Scholler*
Dr. Barbara Wagner**

We begin by honoring our friend Jack Hiller by recalling his own words. The words we have chosen to begin our reflection in praise of Jack are taken not from his published articles, but from his correspondence with Barbara. They are not technical or scientific. They are neither generically philosophical nor specifically jurisprudential – the argot of his trade. Rather, they are expressions of images arising from the innermost soul of a friend who studied poetry, wrote poetry, and supported other poets by publishing them. Now we return this favor to you, Jack, by republishing some of your own poems. Each set of your poems ends with the pregnant word of hope, “again.” In this way we let you speak again to us in your serene, politically reflective style.

Feeling

Foggy,
this muted world,
still, quiet, shading greys,
seeping inside, making me feel –
foggy.

Watching TV

He sits,
gazing ahead,
helpless, hypnotized by
the Cyclopean stare of the
TV.

Shadows

Shadows,
cut off from night,
slink eastward all the day,
shrink, hide, then stretch to join the night
again.

Jack Hiller has left us. With these words, we want not only to commemorate him, but also to say everything that we would like to have

* Professor of Law, University of Munich.

** Director, Mirja Sachs Stiftung, Munich.

1310 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 44

said but never found the time to express. One made it easy by shifting responsibility to the distance between us, or the differences of language, or the frantically running time (as the ancient Romans put it, “*Tempus fugit.*” “Time flies.”). Since much was left unsaid between us, we would like to speak to you directly, dear Jack, and in this way to address the friends and colleagues who will celebrate your memory by reading these reflections.

Dear Jack, like us, you always had a strong interest in Africa. The same was true for Asia, especially the Far East. We focus on this special part of the world, for which we all had a special love.

Even though these cultures were at the center of our conversations from the very beginning, we have come to appreciate more fully over time that you view questions and problems of justice not only in purely legal terms, but also in images and the imaginary; not only as an attorney, but also as an artist. Yes, Jack, you began your studies as an artist, and your interest in art and culture showed up over and over in your career and forged connections between law and art that are not normally found among legal experts. Just as surprising, though—perhaps even more so—was your interest in the problems or tensions between law and religion, which lived on in Protestant communities and groups long after the Reformation, always begging for a higher viewpoint and a better resolution.

Our mutual friend Paul Brietzke brought us together in Valparaiso. But we didn’t really get to know each other as deeply there as when we met in Malaysia, where you were a Fulbright professor, and where we had come for a while at the invitation of the law faculty (and thanks to your own generosity). We say “a while,” but we mean “a long while” because—even though it was only a few weeks or a couple of months in Malaysia—the depth of our encounter there made our friendship perdure for decades.

Once we were walking along a Malaysian beach with you, and experienced a little scene that was supposed to have a guiding meaning for us. Between two giant trees close to the water there was an immense spider web, but the spider was nowhere to be found. Someone of our group wrapped a stone in a leaf and threw it through the spider web. The stone tore out a few important threads, but the web did not fall down. It continued to hang upright, attached at the left and right sides with a relatively large hole in the middle. We waited a moment and looked at it with suspense. Suddenly the spider came out of her hole (she likely sensed the movement of the web) and realized that her work of art had been damaged. Did she simply notice the twitching movement of the threads or could her eight eyes—spiders are said to

have eight eyes—also see it? With great haste she ran to the hole, patched it quickly, and then darted back to her trusty hiding spot to wait on the tiny animals she could once again catch in the net.

“Is this perhaps a symbol for our life?” you wondered. The question invites other questions. Will some divinely-hurled object open a chasm through which freedom streams in to our intricate system of threads and cords? Does fate then quickly come out of its hole to take the freedom away by pulling the cords even tighter? Or perhaps we should represent this symbolism more positively. Even when a hole is rent open in our lives and the whole system we have established threatens to fall apart, a guiding hand comes and patches our life back together so that we can continue to enjoy the fruit of life. Many experiences in life are also ambiguous, and we have been privileged to learn from your interpretations and insights.

A memory of Heinrich. When Barbara and I arrived in Malaysia, I had already given her the Chinese name “Fei Mau Twei,” or in English “flying legs.” We had previously taught at a special academy in Taiwan and every morning at six—the time for roll call there—we walked on the large cinder track. Barbara was naturally much faster than me and always walked ahead of me, and I saw her thin legs whizzing away. So I named her “flying legs,” as it reminded me of a name for Till Eulenspiegel that I’d read in some book once. Till allowed himself the prank of stretching a rope across the street between two houses and asking the villagers to give him shoes, which they promptly took off their feet. Flying legs then tied the wrong shoes together and from the rope upon which he was dancing he threw the shoes into the crowd below. The crowd pounced on the mismatched pairs and had to sort out his prank by fighting with one another to find the right solution. That was “flying legs,” the great rope dancer, and so I named Barbara after him, “Fei Mau Twei” in Chinese. I remember very well that you, Jack, liked Barbara’s Chinese name and also the tale of Till Eulenspiegel. Maybe the whole story is a picture of human communication because there are different speeds and also goals and wishes, but in the end we can turn the dissolution into a game and get a positive result. Therefore, as I remember quite well, you liked also the name “Fei Mau Twei” for Barbara.

Back to you, Jack. Another extraordinary side of you was your preoccupation with music and its relationship to the law, a problem that isn’t immediately obvious to many. From the things you left behind and that Nancy Young sent me, we now have what is likely your last examination of this theme, which you undertook with our German colleague Bernhard Grossfeld. We knew nothing about this contact with

1312 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 44

Grossfeld, and were surprised to learn of it, since Grossfeld doesn't usually work in the realm of public law.

Grossfeld often investigated the fields of literature and poetry. This broad concern was an overlapping interest for both of you. In particular, you and Grossfeld both explored the relationship on the one hand between narrative content and proverbs, and between the law and legal maxims on the other. Even Goethe—who of course also studied law and who is the source of many important legal phrases—wrote a wonderful fable about Reynard the Fox, in which human legal arguments and strategies are carried over to the animal world. This work is especially fascinating to Heinrich, since he has also worked on the general relationship between narrative content and legal maxims, and has investigated specifically the Ethiopian legal maxim. And he encouraged an interesting paper in legal theory at the University of Munich about the problem of law and legal maxims (Judith Laeverenz, "Märchen und Recht"—"Tales and Law," 2001).

We turn now to your time in East Africa, where you occupied yourself intensely with tax law. Long before others, you grasped the fundamental significance of this area of the law both to protect the public welfare, and to guarantee equal and fair support for public benefits by all citizens. But you were not just a tax lawyer. You were also keenly interested in art, concerned especially with the interpretation and reproduction of the body's movements. These interests led you to explore the stunning Makonde woodcarvings. These woodcarvings and other woodwork in Ethiopia also attracted us. To this day in Heinrich's home in Munich there are two magnificent chairs carved out of the great trunks of two trees and showing no signs of being glued or otherwise connected together. Just so were the illustrious seats of the village elders, called Balabat. These chairs demonstrate Ethiopian artwork, fostered not only by the people of the Amhara, but perhaps even more strongly by Nilotic people like the Oromos. After Heinrich's return to Munich, for a while he operated a store with a large display window, in which he sold authentic original Ethiopian art, not to earn money but to increase interest in Ethiopian art.

Your genius, dear Jack, lies in recognizing important connections that others overlook. In addition to linking art and law, music and law, you also focused on the connections and tensions between religion and law. Specifically you plunged into the importance of the sixteenth-century Reformation, which began in Germany with Martin Luther. Several years ago you wrote a letter stating that you had initiated a project to translate from German to English an important work on this subject, *Lex Charitatis* by Johannes Heckel. We knew Professor Heckel

very well, as he was a professor of church law in the law faculty at the University of Munich. For many years one of us (Heinrich) regularly took part in his seminars. Heckel wanted to take Heinrich in as a doctoral student. Heinrich decided on a different direction, but never lost interest in Heckel's *Lex Charitatis*. This ground-breaking work shows that—in sharp contrast to the Roman law or German law traditions that emphasize fear—the Protestant Christian perspective on law exalts the primacy of love.

By the time jurisprudence had developed into a distinct (and separate) discipline in the German universities in the eighteenth and early nineteenth centuries, the law generally stood in opposition to Christian belief. This had, of course, pernicious consequences in the disastrous period of National Socialism, where concentrated power knew no limits and where mindless obedience to the dictates of the State was far more common than any human enterprise of law should ever contemplate. After the war, the teachers of church law busied themselves with the problem of law and belief again, and they stressed a stronger tie between the two phenomena. This is expressed in the title of Heckel's book, *Lex Charitatis*, or "the law of love," both a description of the principal problem of jurisprudence and a powerful solution to this problem.

In the foreword to the English translation, Martin Heckel wrote as follows about his father's epochal volume: "The results of the book overcame the self-sufficient legal positivism and the historicism which up to that point dominated ecclesiastical law and its history; they eliminated the sterile separation of the method of theology and of jurisprudence which had fatal consequences for the legal praxis of the church and for the church's relationship with the state; and they provided the theological foundation for evangelical ecclesiastical law on which it depends for its existence, especially in an increasingly secular society."

In his leadership role in the project of translating the Heckel volume, Jack made a critical decision of profound significance. Jack invited Gottfried G. Krodel—a distinguished church historian thoroughly familiar with Reformation theology—to undertake the translation. Jack shepherded this project patiently and persistently. And we are delighted to note that, as we were writing these very words, we received a copy of the English translation from Professor Krodel. One of us (Heinrich) published an article in 1981 in the *Valparaiso University Law Review* entitled "Martin Luther on Jurisprudence—Freedom—Conscience—Law." He will now undertake a review of the English translation of *Lex Charitatis* in German or American journals.

1314 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 44

In this small contribution to your memorial, two of us have shared some experiences we had with you and our insights into your work. We note in conclusion that you would also collaborate with others from time to time. We return to one of your works mentioned above, sent to us posthumously, you might say, by Nancy Young, and dealing with the intersection between law and music. In any text where two authors work together, it is often difficult to identify from the text how much of it can be traced back to one or the other. So it is with this essay on law and music. We cannot tell who had which inspiration to grasp which connection. What is obvious, though, is that you and a German lawyer worked together as joint co-authors because you had much in common. You both worked outside the core area of your research and teaching interests, playfully exploring themes such as “The Magic of the Law” or “Poetry and Law: Comparative Law Symbol Studies.” Once again we let you speak to us through words from the summary of that article:

Music then gives a sense of togetherness in a common environment. When we march together according to common rhythm, we feel that we march in an orderly way that enables us to do things together. Music makes us aware that law is more than language, ratio, and reason – more than rhetoric and power. It is a human experience flowing from sources we do not fully control. It has to do with human dignity. Where does chaos end and order begin – or vice versa?

With this humble contribution we would like to take part in remembrance of you, with thanks for all you have done, and with sympathy for friends who now miss you.

Dear Jack, we end where we began, with your own words. Three more of your Cinquains pierce the darkness we feel at your passing. We thank you for shedding so much light on this world.

Night

The night
folds its black wings
and settles on the earth,
but with a watchful eye shining
on us.

2010]

Poet and Bridge-Builder

1315

Reflections

The moon
looks at itself
shining in the dark pond
reflecting on its reflection –
the moon.

September 27 1988

A bark –
was I dreaming
or are you here old friend
to run at my side in the woods
Again?