

4-1-1977

## A Tribute to Adolf Homburger

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### Recommended Citation

Jacob D. Hyman, Charles S. Desmond, Mauro Cappelletti, Mary K. Kane, Charles D. Breitel & Thomas E. Headrick, *A Tribute to Adolf Homburger*, 26 Buff. L. Rev. 211 (1977).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol26/iss2/1>

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# A Tribute to Adolf Homburger

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## A TRIBUTE TO ADOLF HOMBURGER

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## A TRIBUTE TO ADOLF HOMBURGER

*Dr. Adolf Homburger, after an association of more than thirty years with the law school, will next fall assume a position at the newly founded Pace University School of Law. To Professor Homburger, able scholar and steadfast friend of the review, the editors gratefully dedicate this issue.*

JACOB D. HYMAN\*

Adolf Homburger joined the full-time faculty of the University of Buffalo Law School just after it became the only New York State law school upon the merger of the University of Buffalo with State University of New York in 1962. In the ensuing fifteen years of rapid growth, he has made a major contribution to the School's educational effort, to legal scholarship, and to the School's standing and reputation, not only in the State but also internationally. These facts have been formally recognized in the University's unusual action in twice renewing his professorship after he had passed the mandatory retirement age of 70. It is a source of deep regret to his colleagues that institutional rigidity deprives the School of the benefit of further years of his teaching and scholarship, regret tempered by the knowledge that his service will continue at a new and promising law school in the State, led by a respected former colleague, Dean Robert Fleming.

Dr. Homburger received his J.U.D. degree from the University of Vienna in 1929. After admission to practice in 1933, he continued in private practice in Vienna until 1938, when he came to Buffalo, where he had spent some time as a youth. In 1941 he graduated from the University of Buffalo Law School with honors, and was admitted to the New York bar in 1944. From 1944 until 1946, he served as staff attorney to the New York State Judicial Council, exploring, among other matters, the intricacies of class actions, which remained a significant focus of his scholarly activities. While in private practice in Buffalo between 1946 and 1963, he taught at U.B. on a part-time basis. Except for a sabbatical leave in 1969-70, he has taught full-time at U.B. since 1962. Civil practice and procedure and land transactions have

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been, in that order, his principal areas of teaching and scholarship, but he has also taught other subjects, including comparative law and professional ethics.

For many years Dr. Homburger has been chairman of the New York State Judicial Conference Advisory Committee on the Civil Practice Law and Rules. Others more knowledgeable will cite his contributions to New York procedural law. It is enough to mention here that his long service as Chairman evidences the high regard in which his scholarship has been held by the bench and bar of the State.

The same qualities that earned him that esteem have been ever-present in his work as a teacher. Always the complete master of his field, he has constantly demanded of his students the high quality of legal craftsmanship and the uncompromising integrity that mark his own work. It is no easy task, in teaching law, to instill habits of precision in handling the law's technicalities while insisting upon the broader view, that critical scrutiny of technicalities which is necessary in order to determine whether they serve the ends of justice. Dr. Homburger achieved and maintained that difficult balance in all that he taught, not least in his course in New York practice, where he demonstrated that the study of the legal doctrines of a particular state could be used to probe the law deeply.

As a faculty member, Dr. Homburger has always been sensitive to the needs of the Law School's program, and has repeatedly accepted assignments to teach very large classes because of student demand and because no one equally qualified was available. He has been very generous in contributing to special educational programs undertaken from time to time and in making his learning and teaching experience available to his colleagues.

Dr. Homburger's reputation as a proceduralist resulted in invitations to lecture at European universities and in a year (1969-70) as Fulbright Scholar at the Institute of Comparative Law at the University of Florence, to which he returned again in the summer of 1972.

Scholarship in the field of civil procedure and the effectiveness of New York's procedural system will continue to be enriched by his work. Although we will continue to be its beneficiaries, we at Buffalo are sorry that his work cannot be done here, where we would enjoy the challenge of his dedication to legal edu-

cation, his friendly willingness to share his learning and his flashes of wry humor.

HON. CHARLES S. DESMOND\*

Law teaching, like studying law, can be "as dull as ditch water" or it can be a fulfilling, even exalting experience. Once in a while one encounters an enthusiastic, concerned, glowing law teacher, who communicates and instills his ardent belief in the greatness of the law and its messages to man, its ancient and ever-modern role as the carrier to our troubled planet of such order as there is among us. Such a teacher was and is Adolf Homburger, allegedly grown old in the service but to us and to his students ever-young, and ever-glowing. His teaching has carried over into strong service in modernizing procedure, into practical and effective expositions of legal ethics, into counselling of students and cooperation with the organized bar and court administration. His life has illumined the law and the profession. No one can know how great his impact has been on hundreds of students, lawyers and judges. We do know that he deserves well of our ancient public profession, that he has left his mark on legal education.

MAURO CAPPELLETTI\*\*

I have known Adolf Homburger personally since the late 1960's and, of course, have been familiar with his work for a much longer period. Our collaboration began when, in my capacity as editor-in-chief of the volume on civil procedure of the *International Encyclopedia of Comparative Law*, I asked him to associate with me as an Advisor and Contributor to that volume. Since then, we have had a number of occasions to collaborate and, fortunately, this collaboration has involved several visits of Mr. Homburger to the Institute of Comparative Law in Florence. My associates at the Institute of Comparative Law and I have thus been able to appreciate, and to learn from, Mr. Homburger's remarkable ability to be thoroughly conversant with current practical developments and problems, while at the same time producing learned,

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insightful and enduring research works. One example, among the many possibilities, is his outstanding report on "orality" in civil procedure,<sup>1</sup> prepared for the Eighth International Congress of Comparative Law while Mr. Homburger was staying in Florence. Not only did the report, and Mr. Homburger's memorable participation in the discussion, do much to contribute to the Congress, but also that report has proved to be of lasting interest to comparative legal scholarship. Another work by Mr. Homburger, that on *Private Suits in the Public Interest*,<sup>2</sup> has proved invaluable not only in the preparation of my *Mitchell Lecture* in 1975,<sup>3</sup> but also to my graduate students here at the new European University Institute. Writing with a deep knowledge of and sensitivity to European procedures and concerns, Mr. Homburger 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.

I have also had the opportunity to turn to Professor Homburger for advice in my own research and writings, and I have come to value immensely the warm, thoughtful, and enlightening assistance he has always offered. I am very grateful for this help and, finally, I am grateful for another aspect of Mr. Homburger's career as it relates to my interests. I cannot overlook his practical work as principal draftsman of the very important recent New York Class Action Law. He is clearly a leader in advancing the kind of procedural innovation that, from my own comparative research, I believe is essential.

In sum, my continuing collaborative relationship with Adolf Homburger, and my great interest in the important work which he has done, have been sources of profound enjoyment and satisfaction for me, both personally and professionally. While I am saddened by his retirement from active teaching at Buffalo, my sadness is tempered by knowledge that he will surely continue to be a dynamic force in the field of civil procedure and comparative legal scholarship.

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1. Homburger, *Functions of Orality in Austrian and American Civil Procedure*, 20 BUFFALO L. REV. 9 (1970).

2. 23 BUFFALO L. REV. 343 (1974).

3. Cappelletti, *Vindicating the Public Interest Through the Courts: A Comparative Contribution*, 25 BUFFALO L. REV. 643 (1976).



## MARY KAY KANE\*

The retirement of Adolf Homburger from the Buffalo Law Faculty is one of those occasions when words seem a poor means to convey the depth of personal feeling and admiration we all feel. Despite this sense of inadequacy, I am pleased to have this opportunity to offer a few comments about this very unique man.

An outstanding teacher, Adolf Homburger has excited generations of law students over what they originally conceived to be their dullest subject—civil procedure. He teaches them the rules—comprehensively and in detail—but at the same time he forces them to look through the rules to the judicial system as a whole; his example of integrity as well as of technical excellence shows them what it might mean to be a functioning part of that system. Thus, it is not surprising that his name brings the fondest of memories to so many Buffalo graduates and that his retirement this year sees the regrets of so many more students who have not yet had the opportunity to take “a Homburger course.”

As a legal scholar, Adolf Homburger is a model for us all. Although he did not become a full-time academic until he was fifty-eight years old, the list of his publications is long and impressive. His many years in practice combine with his early training in the civil law tradition to give his writing the uncommon strengths of practical depth and comparative breadth. He is always realistic but never unimaginative; he has a sure sense of what is unlikely to work but is not afraid to suggest something new.

These qualities are perhaps most in evidence in his career-long pursuit of reform in New York State procedural law. There, too, he has brought to bear not only his highly refined analytical powers but also his vast knowledge of European judicial systems and their successes and failures. For the last several years, as Chairman of the Advisory Committee on the Civil Practice Law and Rules of the New York Judicial Conference, he has painstakingly toiled to adapt New York's civil practice to the needs of modern litigation contexts. His successes on that front are too numerous to permit elaboration here. A recent example—the legislature's adoption in 1975 of the rule he drafted on class actions—will serve, however, to illustrate the work's importance. This rule will do much

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to restore New York to a position of leadership in procedural reform, as it is among the first statutes to deal efficiently with the many problems that have plagued the courts' attempts to manage class suits. The rule is comprehensive, practical and progressive—the hallmark of all of its author's work.

For me, however, the deepest significance of Adolf Homburger's career has been a personal one, and I would most like to say something about what it has meant to me, as a junior procedure teacher, to have had him as a colleague and friend during the last three years. His intellectual range and experience make him a unique source, and one that is all the more irreplaceable because his easy kindness rapidly dissolved any of the natural barriers that often separate junior from senior faculty. It is always a pleasure for a beginning teacher who is coming to grips with some new issue, or grappling with the difficult task of deciding how best to get an idea across to students, to discover a colleague with similar concerns. Discovering Adolf Homburger, with his love of probing discussion, was a true luxury. Not infrequently he was the one who wandered into my office, his eyes gleaming with some new problems he had just uncovered that demanded our mutual attention. This youthful enthusiasm and excitement about his field and the law in general is what makes Adolf so special: the example of a true scholar who never stops growing and who continually strives to uncover new worlds. For this example and for the excitement it gives me about my future years in teaching, I can tender only the deepest, most heartfelt thanks and the hope that someday I may do for some young colleague what Adolf has done for me.

## HON. CHARLES D. BREITEL\*

There are some men who are ageless and immortal. To me, Adolf Homburger is such a one. I refuse to accept any chronological limitations on him. Brilliant analyst, articulate expounder of legal procedure and concept, prodigious worker, and exemplar of the utmost intellectual integrity, his contributions to the procedural law of the State of New York, and indeed, to some of the procedural law of the Federal system, have been outstanding. No matter what burdens have been placed on him by the present and prior Judicial Conferences of the State of New York, he has always responded unfailingly without complaint. It will be a long time, if some of us have anything to say about it, before we will dispense with his services and cease to exploit his willingness to assume burdens. My only concern is that it may seem to those who do not know Professor Homburger as I do, or who do not know me, that I am lightly indulging in unrestrained praise. The truth is that he merits it.

To all of his intellectual achievements, and his sturdiness of character, he adds a personal charm and an intellectual humility, a humility rarely found except in those who feel secure enough to possess and express it.

If I were to list his many achievements with which I am most familiar the list would be much too long. I single out for mention but one. I refer to his outstanding work in the field of class action procedure and the magnificent way in which he, with great originality, developed, in evolutionary fashion, the concepts necessary to bring into rein, as well as expand, the use of a remedy that is so easily unruly, unruled, and destructive, rather than beneficial. It might even be said that he, more than most, has helped make the class action a modern remedy capable of being retained and expanded beneficially. When in another day the courts in this State, as well as the Legislature, were bedeviled by the entangling dilemmas in class action procedure it was he who led us to solution.

I envy his associates on the faculty of the Law School. I envy the generations of students who have been served by him.

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\* Chief Judge of the New York Court of Appeals.

## THOMAS E. HEADRICK\*

It is hard for me to add richness to the praise which Adi Homburger justly deserves. I have known him for such a short time, so unfortunately brief. Yet one needs but a short acquaintance to realize that he is a man of remarkable talent and breadth of vision. And more than that, he has the elusive quality that separates good lawyers from great ones; judgment, that acute sense of balance that distills knowledge and wisdom into ordered, sensible and practical ideas.

He is a modest man who—to turn Churchill about—has much to be immodest about. He has served New York State, the United States Government, and the United Nations, bringing to each, I know, that breath of clarity that opens minds, unravels issues and dissolves problems. He has taught in Florence, Strasbourg, Pescara, Hamburg and doubtless in many other places; in fact, he has taught anywhere that anyone has had the good fortune to hear his gentle probes, his humble speculations, his patient explanations. For he is a consummate teacher.

He is also a superb and careful scholar who found, over the years, a sustaining combination of scholarly pursuit and public service, a model for others to emulate. From all of his pursuits—the learning of generation after generation of his students, his solid contributions to the legal literature and his service to the judiciary and legislatures—this corner of the world has gained. Through his exemplary ways he has made all of us attentive to our wider responsibilities.

Much of his adult life has been spent within this law school. His commitment to its ideals has produced a special loyalty and devotion to the school, its faculty and its students. Next year, for the first time in about three decades, he will not stand behind a podium in a Buffalo law class; he will not teach our students. But even so, his counsel will inevitably echo from our walls; his guidance will still point us in appropriate directions, for his spirit is now part of our tradition. We have become rich from his immense contributions through the years.

Adi, we thank you.

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