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## JACOB BURNS AND THE INSTITUTE FOR ADVANCED LEGAL STUDIES

*David Gray Carlson\**

Jacob Burns lived a long and fabled life, which was obviously its own reward. Among the very many things that could be said, and the thing I would like to memorialize here, is the profound legacy Mr. Burns left behind at Benjamin N. Cardozo School of Law, where he served as chairman of the board for many years and as founder of the Jacob Burns Institute for Advanced Legal Studies. In his memory, I would like to say a little about the history of this endeavor and Mr. Burns's role in it.

In 1987, it occurred to members of the *Cardozo Law Review* and to the faculty that, for whatever reason, a large number of permanent and visiting faculty members were dedicated Hegelian scholars. These included Drucilla Cornell, Michel Rosenfeld, Arthur Jacobson, and Peter Tillers. These four persons—three of whom were visitors—constituted a large percentage of all law professors in the United States who worked in this lonely tradition. Why not, with this nucleus, put together a symposium on Hegel and Legal Theory, by way of promoting interest in this new line of inquiry?

Now this was a speculative venture, in more ways than one. Though Hegel is a philosopher of the utmost importance in Europe, he is virtually unknown in America and especially unknown in the pragmatically inclined field of legal academics. Nevertheless, we found a tremendous outpouring of interest in the symposium, and soon found we had enough speakers and papers to fill three full days of symposium time.

As we planned the conference, Mr. Burns took an interest in the endeavor, learned a little about it, and supported it from the beginning. He attended the conference, and hosted a cocktail party. At that party he even hazarded a short talk on Hegelian philosophy and, in a most charming manner, demonstrated an impressive comprehension of at least the claims this difficult philosophy presumes to make.

This conference was immensely important in the history of the school. For one thing, the conference generated two issues of the *Law Review* and constitutes, in fact, the longest law review symposium in American history.<sup>1</sup> Three of the visiting professors who helped

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<sup>1</sup> See Symposium, *Hegel and Legal Theory*, 10 CARDOZO L. REV. 847 (1989). A follow-

launch the project—Cornell, Rosenfeld, and Tillers—joined our faculty full time. The *Law Review* editor who supervised the conference, Lawrence Cunningham, has also joined the faculty. The endeavor is potentially of historical significance, as it established Hegelian jurisprudence as a genuine influence in American legal discourse. The conference established the law school as an internationally famous center of jurisprudence and legal theory. Some of the best jurisprudence in decades is published in that symposium.<sup>2</sup>

All of this came about through the encouragement and sponsorship of Jacob Burns. Because of the tremendous success of the symposium, Mr. Burns elected to establish the Jacob Burns Institute for Advanced Legal Studies, to allow our faculty to continue other such endeavors. Today, this is one of the best endowed funds of its type in the United States. It has produced a great many important events, including two related symposia, *Deconstruction and the Possibility of Justice*<sup>3</sup> and *On the Necessity of Violence for Any Possibility of Justice*.<sup>4</sup> The former included an original essay by Jacques Derrida,<sup>5</sup> the founder of deconstruction, who later became a Jacob Burns scholar and adjunct faculty member at the school.

Another endeavor of the Jacob Burns Institute was a symposium entitled *Closed Systems and Open Justice: The Legal Sociology of Niklas Luhmann*.<sup>6</sup> Professor Luhmann, the inventor of autopoiesis,<sup>7</sup> later joined us as a visiting scholar under the auspices of the Jacob Burns Institute and contributed a second essay to the *Law Review*.<sup>8</sup>

Mr. Burns's generosity also enabled our constitutional law

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up issue with responses was also published. See Symposium, *Hegel and Legal Theory: A Response*, 11 CARDOZO L. REV. 503 (1990). A shortened version of the original symposium was published as a book. See HEGEL AND LEGAL THEORY (Drucilla Cornell et al. eds., 1991).

<sup>2</sup> In this regard, I would name Peter Benson, *Abstract Right and the Possibility of a Nondistributive Conception of Contract: Hegel and Contemporary Contract Theory*, 10 CARDOZO L. REV. 1077 (1989); Alan Brudner, *Hegel and the Crisis of Private Law*, 10 CARDOZO L. REV. 949 (1989); Kenneth Casebeer, *Work on a Labor Theory of Meaning*, 10 CARDOZO L. REV. 1637 (1989); Richard Hyland, *Hegel: A User's Manual*, 10 CARDOZO L. REV. 1735 (1989); Arthur J. Jacobson, *Hegel's Legal Plenum*, 10 CARDOZO L. REV. 877 (1989); Michel Rosenfeld, *Hegel and the Dialectics of Contract*, 10 CARDOZO L. REV. 1199 (1989).

<sup>3</sup> 11 CARDOZO L. REV. 919 (1990). This symposium was later issued as a book, in shortened form. See DECONSTRUCTION AND THE POSSIBILITY OF JUSTICE (Drucilla Cornell et al. eds., 1991).

<sup>4</sup> 13 CARDOZO L. REV. 1081 (1991).

<sup>5</sup> Jacques Derrida, *Force of Law: The "Mystical Foundation of Authority,"* 11 CARDOZO L. REV. 919 (1990).

<sup>6</sup> 13 CARDOZO L. REV. 1419 (1992).

<sup>7</sup> Professor Luhmann contributed an original essay to the symposium. See Niklas Luhmann, *Operational Closure and Structural Coupling: The Differentiation of the Legal System*, 13 CARDOZO L. REV. 1419 (1992).

<sup>8</sup> Niklas Luhmann, *The Code of the Moral*, 14 CARDOZO L. REV. 995 (1993).

faculty to pursue projects in public law. Thus, the *Law Review* held the first symposium on the emerging jurisprudence of Antonin Scalia, then a newly appointed justice of the Supreme Court.<sup>9</sup> Thanks to the Jacob Burns Institute, the *Law Review* was able to put together an issue on the unraveling appointment of Robert Bork to the United States Supreme Court, an issue the *Law Review* managed to produce to coincide with the historic Senate vote denying Judge Bork his chance for immortality.<sup>10</sup> And, this issue contains the *Law Review's* symposium on the role of the executive branch of government in constitutional interpretation, which featured Attorney General William P. Barr, Judge Frank Easterbrook of the Seventh Circuit, and some of the leading scholars in American constitutional law. On a more international note, a symposium was held and published, entitled *Comparative Constitutionalism: Theoretical Perspectives on the Role of Constitutions in the Interplay Between Identity and Diversity*,<sup>11</sup> which concentrated on the theoretical implication of the world-wide resurgence of constitutionalism and, more specifically, on the challenges facing Eastern Europe after the collapse of communism. This symposium featured Justice Aharon Barak,<sup>12</sup> of the Supreme Court of Israel, together with a great many of the world's leading philosophy and law professors.

An important symposium, which will be published in 1994, is *The Legal Theory of Jürgen Habermas*.<sup>13</sup> Habermas is, of course, the leading social philosopher alive today, and we were lucky enough to have him attend in person and to contribute a new essay to the symposium. This symposium is scheduled to appear simultaneously with the publication of the English translation of his new book on law, *Facticity and Validity: Contributions to a Democratic Theory of Law and the Constitutional State*.<sup>14</sup>

The Institute has also founded a new journal, *Cardozo Studies in Law and Literature*, of which Professor Richard Weisberg is the editor. This journal has quickly won itself a very large circulation and has become an important outlet for artists, philosophers, literary crit-

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<sup>9</sup> Symposium, *The Jurisprudence of Justice Antonin Scalia*, 12 CARDOZO L. REV. 1583 (1991).

<sup>10</sup> See Symposium, *The Bork Nomination: Essays and Reports*, 9 CARDOZO L. REV. 1 (1987).

<sup>11</sup> 14 CARDOZO L. REV. 497 (1993).

<sup>12</sup> Aharon Barak, *Hermeneutics and Constitutional Interpretation*, 14 CARDOZO L. REV. 767 (1993).

<sup>13</sup> The Goethe House in New York Friedrich Ebert Foundation also joined the Jacob Burns Institute in sponsoring this symposium. The symposium will be published in the *Cardozo Law Review* in 1994.

<sup>14</sup> Forthcoming from MIT Press in 1994.

ics, and law professors alike. Among the special projects this journal arranged, through the help of the Jacob Burns Institute, was a symposium: *Semiotics and the Law*,<sup>15</sup> which gathered together British and American scholars on the subject of language philosophy and its implications for law.

The Institute has also sponsored the International Seminar on Evidence in Litigation, of which Professor Tillers is the director. This Seminar has, among many other things, produced a symposium, *Decision and Inference in Litigation*,<sup>16</sup> which has become a much cited beacon in evidence scholarship which Professor Tillers has helped to revolutionize.

One major research project and book that the Institute has made possible is Professor Richard Weisberg's forthcoming volume, *Legal Rhetoric Under Stress: The Example of Vichy*, expected to be published in 1994. This volume looks at the legal profession during the collaborationist Vichy regime during World War II, and the role that lawyers played in palliating Nazi ideology.

In addition, The Jacob Burns Institute has made it possible for scholars, including Niklas Luhmann, Renata Salecl, Alan Brudner,<sup>17</sup> and Jacques Derrida, to visit for short periods of time at the school.

Throughout this period, Mr. Burns took an active role in the planning of these activities. A great many of us were privileged to have the opportunity to get to know Mr. Burns. As an occasional chairman of the faculty committee that oversaw the Institute, I was among many who came to appreciate the unflagging enthusiasm he had for this school and its intellectual energy. I know he was very proud that his Institute gave rise to such an impressive outpouring of creative activity. This school, and indeed American legal academics, will never be the same as a result of Mr. Burns's dramatic intervention in our lives.

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<sup>15</sup> 4 CARDOZO STUDIES IN LAW & LIT. 123 (1992).

<sup>16</sup> 13 CARDOZO L. REV. 253 (1991).

<sup>17</sup> In this capacity, Professor Brudner contributed a quite brilliant and important essay to the *Law Review*. See Alan Brudner, *The Ideality of Difference: Toward Objectivity in Legal Interpretation*, 11 CARDOZO L. REV. 1133 (1990).