

# POEM IN TRIBUTE

April 6, 1979\*

*To Professor Brigitte M. Bodenheimer, Emerita — In Tribute*

Forgive us, Brigitte, for noticing.  
(Of course you hate the fuss!)  
But it really *takes* a day, you know,  
To say what you mean to us.

We know you've lots of things to do —  
Teaching<sup>1</sup> and writing<sup>2</sup> and such<sup>3</sup>  
Plus children to care for (thousands in fact!)  
And all of it means so much.

But we've told Edgar to skip the news<sup>4</sup>  
(Or at least we thought we did!)  
And now we want to recount with pride  
The things you'd rather have hid.

Two wars,<sup>5</sup> two countries,<sup>6</sup> two law school degrees,<sup>7</sup>  
And nepotism rules on top!<sup>8</sup>  
'Twixt Neckar<sup>9</sup> and Putah<sup>10</sup> a diaper or two<sup>11</sup> —  
Nothing could make you stop.<sup>12</sup>

With grit,<sup>13</sup> with skill, with compassion deep  
(The Levys<sup>14</sup> would be so proud!)  
You've helped the folks whose needs got lost,  
Those faceless in the crowd.

The poor,<sup>15</sup> the old,<sup>16</sup> the displaced too,<sup>17</sup>  
They've all received your aid.  
And you were there to help the young  
As stepping stones were laid.

Juvenile courts,<sup>18</sup> adoption law<sup>19</sup> —  
Your mark is clear and fine —  
And now the children of divorce  
Can see a hopeful sign:

Conflict of laws<sup>20</sup> and new court schemes<sup>21</sup> —  
You've thought it through anew,<sup>22</sup>

And as the world for kids improves,<sup>23</sup>  
They'll owe their thanks to you.

So students, colleagues, even deans,  
Whose lives you richly cheer,<sup>24</sup>  
Join gladly here and now to name  
Our "Person of the Year!"

And if my meter is quite poor,  
You know it means in fact  
That substance conquered form once more.  
For sure you'll not mind that!

With love, respect — in fellowship —  
We toast you, colleague dear:  
Prosit! Much luck! Long life and health!  
From friends both far and near!

— Carol S. Bruch†

\* On this day the Davis community marked Professor Bodenheimer's forthcoming retirement with lectures by Professors Homer H. Clark and Herma Hill Kay and a program at which various tributes (these lines among them) were read.

<sup>1</sup> Professor Bodenheimer began her university teaching career at the University of Utah's College of Law in 1962. During her four years as a member of that faculty she ran what can fairly be termed an intellectual gauntlet, teaching Commercial Law, Family Law, Criminal Law, Remedies and Federal Jurisdiction. Since 1971 at Davis, her coursework has concentrated in the Family Law area, expanded by classes in Children and the Law and yet another specialty, Marital Property Law. This remarkable diversity in teaching has not been confined to the university classroom. A veteran instructor of Utah's bar review course, Brigitte also wrote a much-used *MANUAL FOR JUSTICES OF THE PEACE IN THE STATE OF UTAH* (1956), and remains unfailingly helpful when those adrift in the sea of the law (be they laymen, practitioners, legislators or colleagues) turn to her for wise counsel.

<sup>2</sup> Citations to many of Professor Bodenheimer's significant works are contained in these footnotes. Her most recent publication can be found *infra* at page 229 of this volume. Bodenheimer and Neely-Kvarme, *Jurisdiction Over Child Custody and Adoption After Shaffer and Kulko*. Typically, it discusses exceedingly complex material with welcome clarity, illuminates the potential impact of abstract doctrine on those who turn to the law at times of personal crisis, and comes down firmly on the side of practicality and humanity, tempered with a dash of idealism.

<sup>3</sup> Undoubtedly the most important current "such" on Brigitte's agenda is her service as the U.S. State Department's expert at meetings on international child abduction by one parent at the Hague. Her presence augers well for the possibility of a meaningful international convention in this troubled area. See *UNIFORM CHILD CUSTODY JURISDICTION ACT* (1968); *Equal Rights, Visitation, and the Right*

to Move, 1 FAM. ADVOCATE 18 (1978); *The International Kidnapping of Children: The United States Approach*, 11 FAM. L.Q. 83 (1977); *Progress under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978 (1977); *The Rights of Children and the Crisis in Custody Litigation: Modification of Custody In and Out of State*, 40 COLO. L. REV. 495 (1975); *Judicial and Legislative Cures for Child Custody Ills*, 12 THE JUDGES' J. 82 (1973); *The Uniform Child Custody Jurisdiction Act*, 3 FAM. L.Q. 304 (1969); *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207 (1969).

<sup>4</sup> Edgar and Brigitte Bodenheimers' shared interests and activities (including their lunchtime walks home across campus and dinner after the six o'clock news) mark an unusual marriage — one with abundant intellectual, professional and personal sharing that at the same time supports each's distinctive personality. Brigitte, for example, in contrast to Edgar, is a member of the "Brinkmanship School of Research and Writing." Somehow, for her the right word or the solution to a thorny problem often seems to come only long after the painstaking hours of research are completed and occasionally, indeed, after the editor's "deadline" is past. As a fellow member of this beleaguered group of scholars, I am continually sustained by the memory of one such occasion, when Brigitte's editor called to threaten that his publication simply could not wait any longer for her promised contribution. With a not-to-be-repressed giggle and only a modest display of pride, Brigitte later revealed that she had successfully reassured her distraught caller by saying that the manuscript was being typed and would be in the mail shortly — neglecting only to mention that *she* was the typist, busily composing at the keyboard!

<sup>5</sup> Professor Bodenheimer was born Brigitte M. Levy on September 27, 1912, in Berlin. She grew up in Berlin, Frankfurt and Freiburg, moving to Heidelberg with her parents and brother when her father, the distinguished Roman law scholar Ernst Levy, accepted a chair at that university in 1928.

<sup>6</sup> One of the many forced to flee Germany during the 1930's, Brigitte came to the United States in 1933 as she was completing her doctorate degree in law at Heidelberg. Here, after a second legal education at Columbia University and the University of Washington, she became an American citizen in 1939 and, shortly thereafter, a member of the Washington State Bar.

<sup>7</sup> Dr. jur. 1934, University of Heidelberg; LL.B. 1936, University of Washington. One cannot recite these dates without commenting on the remarkable accomplishment that they reveal: a doctorate in German law at 21 and an American law degree a scant two years later!

<sup>8</sup> Because Edgar was a member of the law faculty at Utah during a period of strong nepotism rules, Brigitte's first teaching position was delayed until 1962 (15 years after their arrival in Salt Lake City), when she was appointed as a Lecturer. Only after the University made a waiver of its nepotism rule in her case did she become an Associate Professor of Law (in 1964). This unfortunate story was to be repeated. When Brigitte resigned her position at Utah in 1966 to come to Davis with Edgar as he became a founding member of our faculty, this university's nepotism rule, in turn, barred her from the classroom. Instead, she was given office space as an unsalaried research assistant, later using the (still unsalaried) title of Research Professor of Law. When the rule was finally relaxed somewhat Brigitte returned to teaching, first as a Lecturer in January 1971 and then as a full professor in 1972.

<sup>9</sup> The Neckar River, which flows through Heidelberg.

<sup>10</sup> Putah Creek, visible from Brigitte's office window at Davis.

<sup>11</sup> A modest understatement, as befits a tribute to Brigitte Bodenheimer. Peter, Tom and Rosemarie (called "Ti") joined the Bodenheimers during their years in Washington State and Washington, D.C., and Brigitte was at home with them during their early years. See notes 6 *supra* and 12 *infra*. All three have followed in their parents' footsteps of scholarship and service, two as professors (Peter of Astro-Physics and Ti of English) and one (Tom) as a doctor specializing in the delivery of health care services to the poor. They have also contributed three grandchildren, to Edgar and Brigitte's continuing delight.

<sup>12</sup> It is to Brigitte's great credit that the hurdles placed in her professional path did not deter her from making consistent scholarly contributions. See note 8 *supra*. Her non-teaching years were as professionally fruitful as those spent in the universities, with legislative reform playing a major role. Professor Bodenheimer's training in this area started early, during her stint as an Attorney and, later, Assistant to the General Counsel of the Federal Public Housing Authority in Washington, D.C., from 1942-1946. Her special responsibilities for State and Federal legislation in the areas of temporary war housing, low-rent public housing and urban development were to influence her later work in Utah. In private practice after her 1947 move to Salt Lake City, Brigitte specialized in German restitution claims and real estate matters. See *Forfeitures under Real Estate Installment Contracts in Utah*, 3 UTAH L. REV. 30 (1952). Her next public employment, in 1952 as Special Assistant Attorney General to represent the State of Utah in litigation concerning the constitutionality of a Public Employee's Retirement Law, led her back to legislation. Before long Brigitte had drafted public employees' and teachers' retirement laws for Utah and Wyoming. Soon she became a familiar sight in the halls of the Utah legislature as she took part in two lengthy, ultimately successful, lobbying efforts. Her first project, as a member of an interprofessional Citizens' Committee on Divorce, lasted three years and produced a state marriage counseling service attached to the divorce courts. See *The Utah Marriage Counseling Experiment: An Account of Changes in Divorce Law and Procedure*, 7 UTAH L. REV. 443 (1961). This interest in the divorce process and its impact on litigants under stress has continued over the years. See Book Review, *Foster and Freed, Law and the Family*, *New York*, 1 FAM. L.Q. 57 (1967); *Reflections on the Future of Grounds for Divorce*, 8 J. FAM. L. 179 (1968); *The New Canadian Divorce Law*, 2 FAM. L.Q. 213 (1968); *New Approaches of Psychiatry: Implications for Divorce Reform*, 1970 UTAH L. REV. 191; Book Review, *Rheinstein, Marriage Stability, Divorce, and the Law*, 7 FAM. L.Q. 112 (1973). Her next legislative foray, as Chairman of the Utah State Bar Committee on Juvenile Courts, was to have even greater eventual impact. In the first half of the sixties, her committee prepared a complete revision of the state's Juvenile Court Law, including a proposed removal of these courts from the then-existing control and supervision of the State Welfare Department. Two stormy legislative sessions and constitutional litigation followed, but the project's eventual success brought about more than a reform of the Utah Juvenile Courts. Governor Rampton, impressed with Brigitte's scholarship and legislative know-how, appointed her as Commissioner on Uniform State Laws for the State of Utah in 1965. Although Brigitte was to resign this position a year later upon her move to Davis, her affiliation with the National Conference of Commissioners on Uniform State Laws was renewed in 1967, when she was employed as Reporter to draft the UNIFORM CHILD CUSTODY JURISDICTION ACT, an Act with nationwide and international significance. See notes 3 *supra* and notes 13, 22,

and 23 *infra*. Similar legislative work has continued unabated during her years since as a faculty member. See notes 18 and 19 *infra*.

<sup>13</sup> Brigitte's quiet tenacity has stood the law well. In the face of nepotism rules, she persevered in her scholarly contributions. Her legislative victories have been neither speedy nor simple. When convinced that a new idea is important and valuable, she is willing to sow the seed once, twice, or however many times, until the idea takes root. See, e.g., *Equal Rights, Visitation, and the Right to Move*, 1 FAM. ADVOCATE 18 (1978); *Progress under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 1004 (1977); *Foreword, Legal Problems in Family Law*, 6 U.C. DAVIS L. REV. vi, vii (1973) (arguing that restrictions on a custodial parent's ability to move out of the jurisdiction constitute a violation of the parent's constitutional right to travel). Fully capable of spirited indignation in private, she has a well-developed sense of proportion that tempers her public statements, combined with a canny ability to inspire others to trek to Sacramento, Los Angeles, or wherever to fight the good fight. But when children are endangered by a law proposed in Sacramento, or about to be significantly helped by a law proposed in Washington or the Hague, and Brigitte agrees that her personal involvement may be important, she sets aside her distaste for hurried travel and possible public confrontation. With the fine attention to detail that characterizes her work, she prepares a concise, articulate, always diplomatic, written statement of her views so that if the legislators (as they are sometimes wont) have their minds elsewhere during the hearings or are impatient, her arguments will not get lost in the shuffle. Such meticulous scholarship and good common sense may soon encourage the adoption of a federal provision that will require state courts to give full faith and credit to custody decrees under standards based upon the UNIFORM CHILD CUSTODY JURISDICTION ACT. See the report of pending federal legislation at 5 FAM. L. REP. (FLR) 2303 (Feb. 13, 1979).

<sup>14</sup> Brigitte's parents, Marie and Ernst Levy.

<sup>15</sup> See the report of her public and private work in real estate law and reparations law in note 12 *supra* and her articles dealing with inequity under California's community property laws, *The Community Without Community Property: The Need for Legislative Attention to Separate-Property Marriages Under Community Property Laws*, 8 CAL. W.L. REV. 381 (1972); *Justice Peters' Contribution to Family and Community Property Law*, 57 CALIF. L. REV. 577, (1969).

<sup>16</sup> See her work in the area of retirement laws described in note 12 *supra*.

<sup>17</sup> Brigitte has worked with the displaced in both the narrow and the broader senses of the term. In private practice, she represented victims of Nazi persecution as they sought recompense for their economic losses. See note 12 *supra*. A major part of her legislative and scholarly effort has been dedicated to the needs of children who may be displaced as a result of their own actions, or the actions of those around them. See the references to her work in the areas of juvenile law, adoption law, and custody law in notes 3, 12, and 13 *supra* and notes 18 and 19 *infra*.

<sup>18</sup> See note 12 *supra*; *The Multiplicity of Child Custody Proceedings — Problems of California Law*, 23 STAN. L. REV. 703 (1971) (completed as a background study and recommendations for legislation in the areas of child custody and guardianship law for the California Law Revision Commission).

<sup>19</sup> Professor Bodenheimer's 1973 study of adoption law for the California Law Revision Commission will soon result in a draft proposal for a revised Adoption Law. Cf. *New Trends and Requirements in Adoption Law and Proposals for*

*Legislative Change*, 49 SO. CAL. L. REV. 10 (1975) (setting forth the analysis which will provide the basis for legislative drafting that Brigitte plans for this summer).

<sup>20</sup> Recognized as a leading family law scholar at home, Brigitte is known abroad as an expert in the conflict of laws. She is, happily, both. The uniqueness of her contributions in the areas of enforcement of custody decrees and jurisdiction is the degree to which she incorporates sound family law policy in the structure and interpretation of conflicts doctrine. See her writings and drafting cited in notes 3, 13, and 18 *supra* and notes 21 and 22 *infra*, and her article in this volume at page 229.

<sup>21</sup> See her work on conciliation courts and juvenile courts discussed in note 12 *supra*; her proposals for a new form of family court in California, set forth in her study of custody and guardianship law cited in note 18 *supra*; and the provisions of the UNIFORM CHILD CUSTODY JURISDICTION ACT that call for cooperative contact between courts sitting in related custody matters, discussed in note 22 *infra*.

<sup>22</sup> The UNIFORM CHILD CUSTODY JURISDICTION ACT amply demonstrates Professor Bodenheimer's unusual ability to shed years of traditional thought by cutting directly to the core of a problem. In the face of polar, albeit simultaneous, doctrines of custody jurisdiction under in personam and in rem rubrics, compare *May v. Anderson*, 345 U.S. 528 (1953) with *Sampsel v. Superior Court*, 32 Cal. 2d 763, 197 P.2d 739 (1948) and RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 79 (1971), she anticipated *Shaffer v. Heitner*, 433 U.S. 186 (1977) by almost a decade. As the Act's Reporter, she opted for a form of forum conveniens that is defined with reference to factors that promote the court's ability to enter a substantively sound order. UNIFORM CHILD CUSTODY JURISDICTION ACT, Prefatory Note, §§ 1, 3, 6, 7 and accompanying Comments (1968). The resulting custody order is given heightened protection in other jurisdictions, again for substantive reasons. *Id.* §§ 13-15 and accompanying Comments. Similarly creative and to the point are the Act's provisions for inter-court cooperation (§§ 19-22), for the return of absent parties for a unitary hearing (§ 11), and for recognition of custody orders without a reciprocity requirement in both the national and international settings (Prefatory Comment at 6, §§ 6, 7, 23 and accompanying Comments).

<sup>23</sup> The most dramatic example is the rapid acceptance of the UNIFORM CHILD CUSTODY JURISDICTION ACT, already adopted by 36 states. See *Jurisdiction Over Child Custody and Adoption After Shaffer and Kulko*, page 229 *infra*, note 93.

<sup>24</sup> Eminently realistic, Brigitte has at the same time an infectiously optimistic view of the world. Her cup of tea and ready box of tissues, interspersed with an encouraging, "Of course you can!" and a consoling "Of course no one could!" bring many to her for comfort and counsel. In each tale Brigitte finds another message to add to her storehouse of human knowledge and, in her teaching, her writing and her advocacy, applies what she has learned to the benefit of others.

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