


1926

# Addresses Delivered at the Dedication of the Lawyers' Club of the University of Michigan, June 13, 1925

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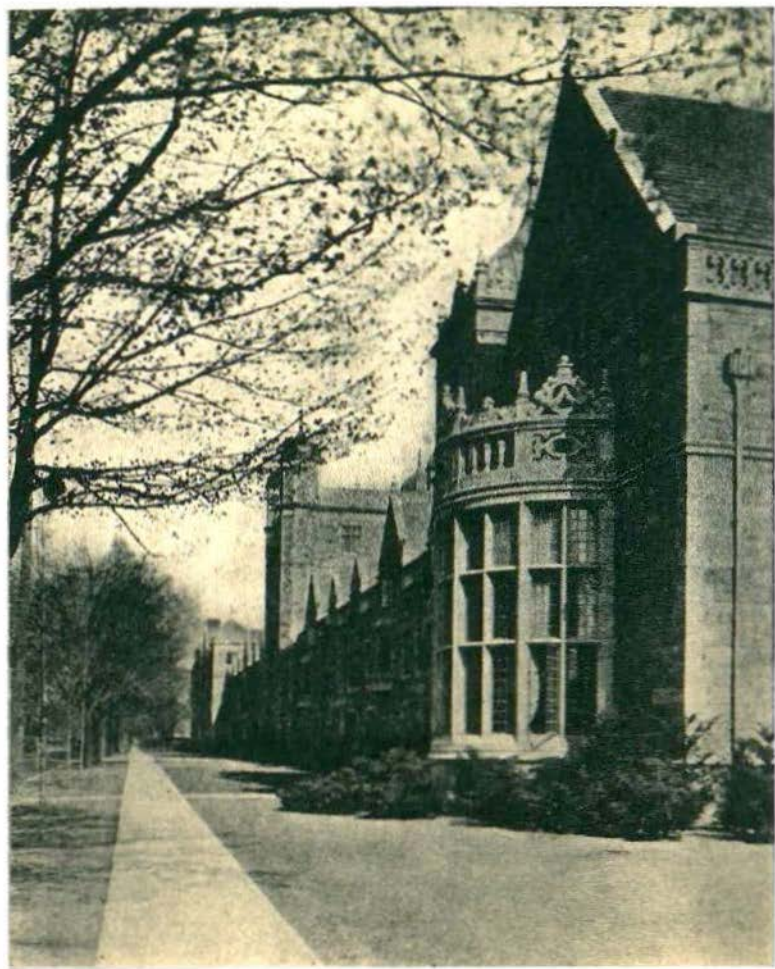
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A D D R E S S E S  
delivered at the  
DEDICATION OF THE LAWYERS' CLUB  
of the  
UNIVERSITY OF MICHIGAN  
June 13, 1925

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ANN ARBOR  
UNIVERSITY OF MICHIGAN  
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## FOREWORD



ON April 25, 1922, Mr. William W. Cook, a graduate of the College of Literature, Science, and the Arts of the University of Michigan in 1880 and of the Law Department in 1882, wrote to the Regents of the University an offer to erect for the University, at his own expense, "a law students' combined club and dormitory building." In the letter it was stated that "All dues and all profit from the operation of the building shall be used exclusively for legal research work."

The gift having been accepted, a strikingly beautiful group of buildings with sleeping rooms and studies for 160 students, dining facilities for 300, a large common living room and comfortable quarters for visiting members, was completed in the early fall of 1924.

These buildings were dedicated to their purpose on June 13, 1925. Dean Alfred H. Lloyd, then acting president of the University, presided. The donor was represented by a close friend, Mr. John T. Creighton, counsel for the Trust Department of the National City Bank, New York. The response to Mr. Cook's letter, as read by Mr. Creighton, was made for the Law School by Dean Henry M. Bates. Addresses were made by Dean James P. Hall, of the University of Chicago Law School, Mr. John M. Zane, a graduate of the College of Literature, Science, and the Arts in 1884, LL. D. 1914, an active member of the Chicago Bar, and Dean Roscoe Pound, of the Harvard Law School. To preserve Mr. Cook's letter and these addresses this volume has been compiled.

## INTRODUCTION

By JOHN T. CREIGHTON



HIS cordial reception is indeed gratifying, and I thank you, both on my own behalf and on behalf of the gentleman whom I am here to represent. As an alumnus of your Law School, nothing could give me greater pleasure than to take part in this dedication. As the representative of him who made this dedication possible, I feel that I have been accorded the highest honor of the day.

It has been my privilege to watch the growth of the Lawyers' Club from a brain-child to its present state of maturity. The idea had already been conceived, but I have seen its evolution. The amount of forethought and consideration expended in its development was a source of ever increasing astonishment to me. No mother could lavish more care upon her first-born than was given this undertaking. And now we see it, full grown, a living actuality—taking its place as a pioneer in a new realm of legal progress.

What is the purpose behind this work? You may be sure that it is something more than the pleasure of erecting a beautiful building; something more than the pleasure of giving physical comfort.

Much has been done for the other departments of learning both from without and from within. But for the Law School, up to this time, nothing in a material way has been done from without and little from within. There are things that should be done and important results to achieve. Of this he shall tell you himself through the letter he has asked me to read you.

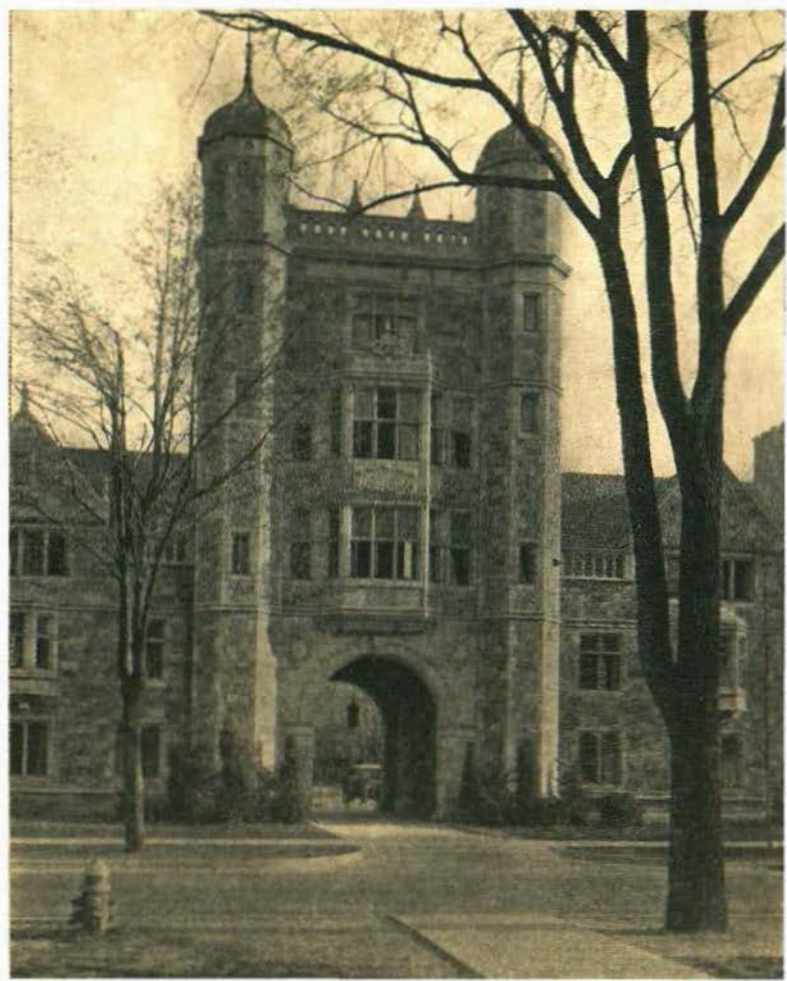
I know you must be equally curious about the man. I might describe him physically—his height, weight and general appearance—but that would not serve your purpose. Nor would a description of his habits of life, for that would be largely an account of the daily expenditure of thought and energy he has put into this great undertaking.

Of his personal history, it is significant that he was attracted to this Law School by his admiration for Judge Cooley, who had been his father's counselor and friend. Cooley's unchallenged greatness as a lawyer, jurist, teacher and writer fired his youthful ambition. The force of Cooley's character exerted a profound influence upon his entire life. There seems to be a close connection between Judge Cooley's wonderful career in the research of the law and the ideas expressed in the communication you are about to hear.

There are many things I should like to say about this man, but he would not permit it. He would be deeply embarrassed by anything approaching commendation. But I might venture to make one comparison that is revealing. You are all familiar with his book. There is no way he can escape public commendation for that work. It is the result of more than two score years of the most painstaking effort, effort expended in the light of a long and rich experience. Genius is the capacity for taking infinite pains. His book is the result not of spasmodic effort, but of daily care and thought. And when he began to evolve the Lawyers' Club he went about it in exactly the same thorough manner and gave it the best that was in him. It is this type of effort that produced the Lawyers' Club, and it is from the fullness of his experience that he outlines its ideals and its purposes.

It may all be summed up in this: William W. Cook's predominant characteristics are an irresistible concentration of mind, linked with force of accomplishment. His great idea once conceived, these are the attributes which made possible its successful fruition.

I shall now read you his letter:





## A LETTER TO THE LAWYERS' CLUB



**I**BELIEVE there can be no higher public service in this country than to aid in the improvement of the law schools. That leads to the improvement of the American Bar and that means the preservation and improvement of American institutions. The bar always has been and still is the leader of the people. In fact, a democracy always trusts the lawyer.

Now, the improvement to my mind of the law schools can be brought about only by raising the standards of admission, scholarship and character; especially character, and by that I mean strong personality with intelligence and principle. How can this be done at the University of Michigan?

First, by high qualifications for admission. The Regents have recently raised them and might well raise them still higher. All I can do is to help to attract enough applicants to allow elimination and selection, but after all the only reliable attraction is the character of your law school itself. I would make admission a privilege and a prize.

Secondly, by the best of surroundings and associations. This means a club house, which you now have; a library building; a law building; dormitories, research rooms; the presence of distinguished jurists, judges, members of the bar and visitors; able professors. A separate library building will give quiet, seclusion and the studious atmosphere, necessary to investigation and research. The next two dormitories should contain ample quarters, not only for selected law students from your law school, but also for judges, jurists and distinguished guests of the University, and also for selected literary students who intend to study law. The

attendance of practicing attorneys and of judges still on the bench, and of jurists generally, will influence the law students and raise their standards and ideals. Judge Cooley was Dean of your law school when I attended it, and Judge Campbell was one of his associates. Both were at that time judges in your Supreme Court. The law students themselves were a somewhat tumultuous gathering, but the influence of the character, learning and dignity of the law faculty taught us more than the books. However, law students are no longer a mere aggregation and a law school is now something more than a mere opportunity to learn. Requirements are higher and should be made higher and higher still. I would have a selected body of law students, just as Oxford and Cambridge have a superior class of young men. The goal sought is the character of the law students, to be reflected later in the character of the bar. When the University graduates law students unsurpassed anywhere in character and scholarship, the effect on the bar and the country will be very great, especially throughout the West. The Lawyers' Club Building now finished is of no consequence except to forward that purpose. If I were wealthy enough I would offer to do for Harvard, Yale and a law school on the Pacific Coast that which I propose doing for the law school of the University of Michigan, and thereby influencing other law schools.

Thirdly, the school should be endowed so that the best professors and jurists may be obtained and retained and liberally paid. Lecturing can unite with creative work. Jurists are not plentiful but the law schools can get them.

I do not think the American people realize the value and importance of the law schools. The

general impression is that a law school needs only a library and a few professors and that applicants should be admitted without much preparation and that the course should be neither long nor severe. Your own law school is one of the best and yet its percentage of instructors to students is less than three, while the percentage in the medical school is over fifteen, and in the engineering department ten. The following table is for the present collegiate year:

<i>Department</i>	<i>Students</i>	<i>Instructors</i>	<i>Per Cent.</i>
Medical	534	83	15.54
Engineering	1674	182	10.87
Literary	5774	290	5.02
Law	503	14	2.78

The public expends hundreds of millions annually on common schools, high schools, colleges and universities. This is the American system and has revolutionized society, but in the higher education the requirements are unformed, crude and insufficient to winnow the wheat from the chaff. Emerson writing over fifty years ago on "Education" pointed out the futility of educating together the quick and the dead, and yet his warning is not heeded. Moreover, the overcrowding of the great universities renders it imperative that a more drastic selection be made. This applies to the law schools, because the law schools make the lawyers and the lawyers weave the fabric of our government. Henry Adams, writing in 1889, said that after the failure to impeach Justice Chase of the Supreme Court of the United States in 1805: "Henceforward the legal profession had its own way in expounding the principles and expanding the powers of the central government through the Judiciary." That was over a hundred years ago

and has been verified by our intervening history. That fact alone is enough to summon the legal profession to exclude from its ranks those to whom the Constitution means nothing, and those who have neither character nor principle.

America is still in the making but in the domain of law is no longer dependent on England. On the contrary it is working out a jurisprudence of its own. Here, too, the law schools must furnish the men to do the work. Law students will be the law makers, law expounders and law systematizers of the future. They should be a finished product—the brightest and the best. Republican institutions in America have not yet fully demonstrated that self government is enduring in a vast diversified country. Macauley wrote in 1857 that the American Constitution “is all sail and no anchor.” Already we have taken in sail by strictly limiting further immigration, especially of those who cannot understand nor appreciate American institutions. But still we have industrial menaces which defy the government. Whether self-government can survive these dangers remains to be seen. The mission of America is to demonstrate that a great people can govern itself. Republican institutions are still on trial and it is for the law schools to marshal the forces and train the recruits. Our government always has been and will continue to be a government by the legal profession.

The American people have largely broken away from old forms of religion and are evolving a religion of character—the worship and practice of high ideals. It is based on intellect and culture, and is more than those. It is principle carried into practice and example. The greatness of a people consists, not altogether in its laws, art, science,

literature, religion, philosophy, inventions, wealth or power, nor in its great men alone, but in the average character of its citizens. Raise this and you raise the nation. Now nowhere do people search for and rally quicker under reliable leadership than in America. A strong and trustworthy character is no sooner found than trusted. This is true worship—worship of the American kind. It has been called an “intellectual aristocracy.” That is well, so far as it goes, but it omits as an equal factor, the devotion of that aristocracy to principle. Applying all this to the legal profession, it is true that the profession is “intellectual” and to a certain extent it is an “aristocracy,” based not on birth or titles or wealth or social position, but recruited afresh each year from the people. “The law is no profession for the stupid, the indolent or the ignorant.” In Emerson’s forceful language, it is “a profession which never admits a fool.” Its successes are earned and its activities many-sided. It leads into all other occupations; no other occupations lead into it. There are few who tread its hot and dusty highway from end to end, but those few mould public opinion instead of following it. But as an “intellectual aristocracy,” it has not always led the way towards higher standards of life. It is competent to do so and hence I do not think I exaggerate when I say that the law schools are of supreme importance in this respect to the future institutions, beliefs and conduct of life in America. The power of the American Bar is unorganized and unseen, but upon it depends the continuity of constitutional government and the perpetuity of the republic itself.

Another thing. There is an imperative demand that the legal profession do something to condense,

simplify, clarify and develop the law. I am not one of those who bemoan the multiplicity of American decisions and statutes. From the chaos there is evolving a new jurisprudence, with the courts and legislatures of forty-eight states and of the federal government experimenting on a vast scale. The time has come, however, to formulate and consolidate the law. This will have to be done for the most part at the law schools by jurists and law professors. It requires leisure to study; time to think and write. This involves expense and that expense is provided for by this Lawyers' Club, where all profits and dues are to be used for that purpose and that purpose alone. The success of the plan, however, will depend on the wisdom with which that fund is administered. If real jurists are obtained and retained from the bench, the bar, and law professors, we shall be far on the road towards making the law clear, concise and understandable. The Encyclopedia Britannica in describing the characteristics of a great university names six, the last being as follows:

"6. Publication is one of the duties of a professor. He owes it not only to his reputation but also to his science, to his colleagues, to the public, to put together and set forth, for the information and criticism of the world, the results of his inquiries, discoveries, reflections and investigations."

The whole plan now has a start in your Lawyers' Club Building. That provides a nucleus and a substantial income. By persistent and intelligent effort the work should move forward; first, to attract to the University jurists and those capable of writing law; secondly, to insist on creative work in condensing, simplifying and clarifying the law. The American Law Institute, organized in 1923, is

engaged in that work and has an appropriation for ten years from the Carnegie Foundation. That does not prevent the University of Michigan pursuing the same objects independently, and pursuing them not for ten years only but indefinitely. If the American Law Institute can get the proper men to do such difficult, yet important and high-class work, the University of Michigan can obtain them also by paying the price. This is a difficult but rich field. The road is wide and open to all. In constructive legal work no one is in the lead. Judge Cooley of your law school showed what can be done. The legal needs today are different from the legal needs in his time, but the public demand that the legal profession justify its existence is a trumpet call to every law student who is true to his profession.

Can your law school be made a great centre of legal education and of jurisprudence for the good of the public? I believe it can and in that belief shall press on.

Yours very truly,  
(Signed) William W. Cook.





## THE NEEDS OF A LAW SCHOOL

By HENRY M. BATES



WIDE and remarkable experience, sound judgment, fine legal scholarship, and great intellectual ability have combined to make Mr. Cook's gift and his plan for this School unique in the annals of legal education. Beautiful and satisfying as are the buildings which he has erected, still more important and still more likely to produce good results for law and the administration of justice, is the plan into which he has put so much thought.

Perhaps the outstanding feature of that plan is the provision which it makes for a large continuing income, to be devoted exclusively to the purposes of advanced legal research and publication. This is not the time to dwell upon the details of that plan, the outlines of which have been made known through our publications. Wisely executed, that plan will be influential in the opening of a new era in legal education and scholarship. Not only has the last word not been said as to the objectives of law schools, but I venture to say we are in the early stages of their work. The possibilities of researches in law have scarcely been touched. Only a small part of the field has been cultivated. The time has passed when profitable legal research can be confined to mere analyzing and restating the various elements of the law. We no longer think of law as an end in and of itself, or as a mysterious scheme of rules super-imposed in some mystical way upon the human race. We think of law today merely as a means to an end,—as an instrument with which we may work for the social welfare of the race. So considered, law ceases to be merely a set of rules for

the guidance of conduct. Rather it is a plan of life, reaching down into every phase of human existence, inarticulate itself except as associated with, and applied to, the life of which it is at once a product and an influential, if not a controlling factor.

This means that the legal scholar of the future must study law in all its functional aspects and must extend his researches into the almost unlimited fields from which the law derives its life and growth and meaning.

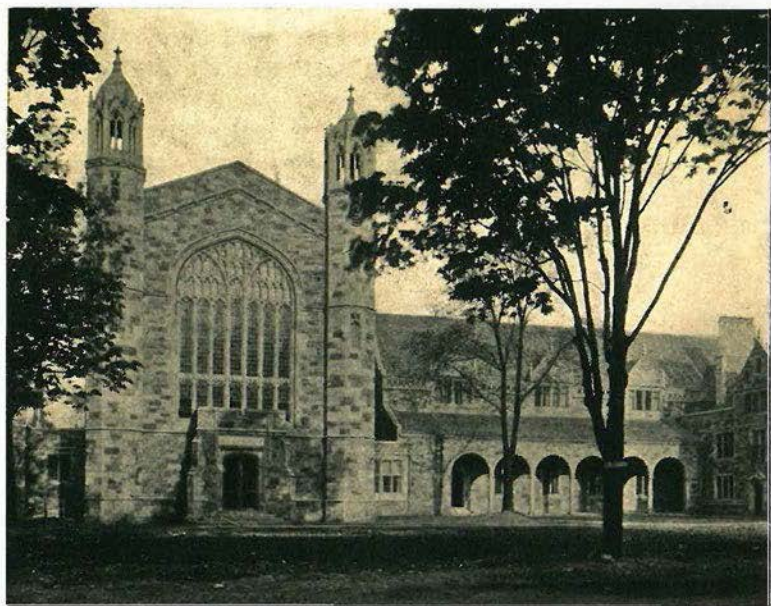
This is no work for children, or for men chiefly engrossed in other occupations, however closely they may appear to be related. The teaching and study of law very definitely have become a part of university scholarship, which must be pursued in the broadest and most scientific spirit. To its service men who would succeed and who would be really useful must devote their every effort,—in fact, their entire lives. As Secretary of State Hughes said in Washington, in February, 1924, the legal scholar has at last come into his own. The able and successful at the Bar and upon the bench are so overwhelmed with the tasks devolving upon them that they have neither the time nor the vitality to pursue legal scholarship into its more distant retreats. As the Secretary said, they are turning in despair to the law teacher and the legal scholar, for help. This is no tribute to innate superiority on the part of the legal scholar. It is merely a realistic recognition of the fact that legal scholarship, like practice at the Bar, or like any other highly developed profession, is the work of the expert who can command the time and has the training and the technique of work needed to explore and cultivate the field of law. Specifically, this must mean, for the law schools, continual

pressing on along the scholarly lines, which have characterized the better institutions during the last few decades, the establishment of genuine and worth while graduate work in the stronger of these law schools, the creation of fellowships and scholarships, and the study not only of our own legal system, but of those of other nations and civilizations.

Mr. Cook's great gift promises much for the future of this School in the prosecution of this work, so vital to the well being of the human race. His gift has another noteworthy feature, to which I have called attention at other times. We all believe that the work of the modern law school is vastly superior to the training in the old Inns of Court in England and in law offices, in the early history of America; but we lament the fact that the contacts of those earlier days between great lawyers and judges, and neophytes at their studies, have been almost lost. Mr. Cook's gift and the plan suggested in his message point to a plan whereby we may to some extent preserve and unite the excellences of the old and the newer schemes of legal education. As these plans mature, we may fairly anticipate the constant presence of men of the law who have achieved at the Bar and upon the Bench; and that their presence and their lectures and addresses, and their counsel to individual students and conferences with members of the faculty, will prove of great benefit.

Again, on behalf of the University and of my colleagues, let me assure Mr. Cook of our gratitude for his munificent gift and our deep appreciation of the care, the interest and the wisdom with which he has planned its use. It is true, as he has said, that the permanence and the excellence of Ameri-

can institutions must always depend largely upon that scheme of law which holds them together and enables them to function with as little friction and as little danger as possible. Only through sound legal scholarship and effective training of the stream of young men and women coming into the law can our legal scheme be maintained upon a sound basis. It is not too much to say, then, that this great gift and this wise plan of Mr. Cook's will continue, for generations to come, to contribute splendidly to the safety, the prosperity and the happiness of the American people.



## THE NEXT TASK OF THE LAW SCHOOL

By JAMES PARKER HALL



WHEN, last December, I first saw these beautiful buildings, I could only exclaim: "It is a dream—a wonderful dream come true!" There was nothing original about this exclamation. You have all said or thought the same thing every time you have approached this quadrangle. In my mouth this trite but spontaneous utterance was but part of the *res gestae* of being conducted through the group by Dean Bates, the proud and intimate spirit of this architectural magnificence. And now, when I am privileged to return and to share in the dedication to the high service of man of this miracle of the builder's art, it still seems to me a dream—realized materially for the moment in stone and steel and paneled oak, but even more a symbol and a promise of a fuller realization yet to come in the lives of men. Happy he who dreams such dreams as did the giver of these buildings; happy he who is spared to see his vision enshrined in the enduring stone that today we dedicate; but happiest of all he who knows, as Mr. Cook may do, that from his dream "the best is yet to come." And it is to that dream yet unfulfilled, to that best that yet may come, that I would devote the part allotted to me in these exercises.

There is a new spirit stirring among lawyers today. A change is taking place in the conception of the proper function of a university law school. Until very lately it was conceived almost wholly as a high-grade professional training school, employing, it was true, scholarly methods and exacting

standards of study and achievement, but only indirectly seeking to improve the substance and administration of our law. The law, it was assumed, was what the courts and legislatures made it, and the task of the law school was to analyze, comprehend, and classify this product, and to pass on to students a similar power of analysis, comprehension, and classification, as regards at least the principal topics of the law, so as to enable them worthily and successfully to play their parts as judges and lawyers in the lists of future litigation.

Nor was this for the time being an inadequate or unworthy end. An immense amount of groundbreaking work had to be done to escape from traditional conceptions of legal history, of legal doctrine, of methods of legal reasoning, and of the function and end of law itself, which for years fettered legal scholarship and held it in bondage to a seventeenth and eighteenth century philosophy of law, ill fitted for an age of conscious experiment and development. Until there had been trained up a considerable body of practitioners familiar with the theories and processes of the newer methods of legal education, and somewhat emancipated from the too rigid legal formulae of the past, there was small opportunity to do much to improve the content of the common law itself. The discoveries of physical science may be nearly all placed at the disposal of mankind, though very few persons have a clear understanding of their underlying theories. The successful application of medical science requires the skilled participation of the medical profession at large, but all are united in opposition to disease and injury, and those in responsible positions, even of a public character, are not chosen by popular vote. The law is administered and

largely made by lawyers and judges in the course of, and as incidental to, litigation, in which the lawyers are necessarily partisan and the judges usually elected by popular vote (to say nothing of direct primaries). Without a well-trained bar the resulting product of law cannot be creditable, and this is why no task of a law school can ever be more important than that of giving the best possible legal education to those who will be the practitioners and judges of the next generation, and also why it must precede all other tasks.

But the efforts of the past thirty years to improve legal education in America have been measurably successful. Over fifty law schools now require at least two years of college work for admission, and, by the concurrent action of the Association of American Law Schools and of the American Bar Association, a movement has been set on foot that is likely to secure adequate requirements for public admission to the bar in most of those states where professional education is fairly well served. The battle for fair educational standards for the legal profession is in the way of being won. The task that remains is of a different sort.

In almost every branch of our law, the last thirty years have witnessed a rapidly increasing complexity and uncertainty, often accompanied by a rigidity unresponsive to changing social needs. The causes have been obvious. Fifty different domestic jurisdictions, complex and rapidly changing social conditions, a great volume of litigation, an ill-trained bar, an elective and often rather mediocre judiciary, and the Anglo-American system of law-making by judicial precedent have resulted in a nation-wide complexity and uncertainty about a host of legal doctrines, which



occasion constant expense, delay, and irritation in nearly every legal relationship. Some legal complexities are natural, because they correspond to the complexities of life, and some uncertainties are inevitable where there exist arguable differences of opinion about substantial matters of policy; but a large part of all litigation is due to disputes that involve no important questions of policy but only a consideration of conflicting decisions and dicta, or of conflicting analogies.

Few states have a jurisprudence of their own so comprehensive and so well-settled that it is seldom necessary to venture outside the covers of their own reports and statutes in order to find the law on any topic. In most states, the judges willingly and necessarily listen to citations from many other jurisdictions upon legal questions where there are gaps in the serried array of their own decisions which the accidents of litigation have never chanced to fill. And in the west, some of our states are still too young to have boxed the compass of legal doctrine even once around within their own courts. It is inevitable, then, at least as regards the substantive law and to a lesser extent as regards procedure, that the search for the law of a single state should cover an ever-increasing territory and that judicial borrowings by one state from the decisions of others should be of undiminishing frequency. This, though sometimes deplored, has very real advantages. The richer and fuller legal experience of the older states is placed at the disposal of the newer ones, and briefs and decisions upon novel questions anywhere in the country are at once made available to all for use in similar situations. A state with a wealth of judicial experience to draw upon, whether its own or that

of its neighbors, is much more likely to be able adequately to consider all phases of a controverted question than can a state without such assistance. Everyone knows how much more helpful a few actual cases are, as a basis for discussion, than the same amount of abstract argument. What we should deplore is not the bulk and variety of our legal material—that in itself is not an evil and has some notable advantages—but that today there often exists no adequate means for its proper appraisal and utilization.

A case will arise that is obviously not concluded by authority in its jurisdiction. By the aid of our present very excellent system of digests and annotated cases it is possible for the attorneys, with reasonable effort, to collect at least nearly all of the principal authorities in other states that directly touch the matter. They are often really or apparently conflicting, and have to be analyzed, discussed, and evaluated in order to be useful, and, in cases of any difficulty, this is a task often performed rather poorly by the average lawyer. To begin with, he necessarily approaches the question with a partisan bias—he is naturally more interested in winning for his client than in improving the law of the state; secondly, being usually a general practitioner, he is seldom an expert in the field of law concerned; and lastly, he can seldom afford the time necessary for a really careful study of the matter. And the courts are usually no more favorably situated, for, while not partisan like the lawyers, they are seldom specialists and are under limitations of time even more pressing than are the counsel who appear before them.

And so it all too frequently happens that the advantages of richness and variety of judicial

material are quite neutralized by the lack of time and specialized knowledge necessary properly to work over the quarry and to separate the nuggets from the dross. If this valuable but unwieldy and often conflicting mass of decisions could be explored and sifted and set in order by a body of competent experts in each state, acting along common lines but adapting their work in each state to its particular needs, there would speedily result a marked improvement in the content and administration of our law. What individual lawyers and courts, in the exigencies of partisan litigation, now do poorly and haphazardly, could be done expertly and comprehensively by the faculties of our university law schools, if they were organized with this as one of their major objects—and the benefit to their communities would be very great.

If our states were without agricultural departments, and the task of dealing with the manifold problems arising in this field were left to the individual farmer, or to community groups or voluntary associations of farmers, as was the case not long ago, it is clear that no such progress in agriculture would have been possible as has resulted from public agricultural departments and experiment stations, where the problems common to thousands of farms have been patiently and skillfully investigated and dealt with by experts in each of the recognized branches of the calling, and the results made public for the benefit of all. The state agricultural schools have trained scientific farmers, men who know how to induce nature to yield food for man better than did their fathers—but it has also developed agriculture itself by scientific investigation and research, not as a mere by-product of the training of farmers, but as an

end in itself for the benefit of the farming class and of the public everywhere, and no one today doubts the wisdom and utility of this or wishes it otherwise.

The same thing has been done in medicine. Our leading medical schools today not only train practicing physicians, instructed in the hard-won knowledge of the past, but they are more and more becoming centres of medical research as well, enlarging the boundaries of knowledge for the future and co-operating with the endowed foundations which are chiefly devoted to research. Our better schools of engineering also conduct research in the problems of applied science, and would doubtless have done so far more widely than they do, were it not that discoveries useful to industry are generally patented and exploited commercially, and that our major industries maintain magnificent research laboratories of their own for this purpose. It is well known how often they are able to use the discoveries in pure science that are the product of research in university laboratories under the direction of university departments of science.

Now, in its essence, law, too, is an applied science, as are agriculture, and medicine, and engineering, and industrial chemistry; and its proper comprehension and beneficial application to the affairs of men often requires research and the skilled service of non-partisan experts, just as do agriculture and medicine and engineering and industrial chemistry; and this research may most usefully be conducted by public or quasi-public agencies, for the same reasons that are potent in agriculture and medicine—that otherwise it will not be done with the thoroughness and fairness and skill that the public need demands.

I will not here enter into a discussion of the

difference between legal principles and those of natural science. It is entirely true that from certain viewpoints—such as, for instance, their origin, and sanctions, and immutability—legal principles can be said only in a metaphorical sense to resemble those of natural science. We may *discover* the so-called laws of nature, but are powerless to make or change them, while the law of real property and of corporations is not only made by custom and courts and legislatures, but may be altered by the same agencies. The frank admission of this important difference between human law and natural science, while fundamental for a certain kind of analysis of the two, in no way affects the analogy just suggested. In agriculture and in medicine the principles involved, though unalterable by man, are so complicated that the public service of experts is necessary to make them usefully available to the community. In the case of law exactly the same situation exists, even though most or all laws could be altered by the legislature or even by decisions of the courts. In the absence of any conscious effort to make such an alteration, the question is—as in natural science—what is in fact the existing principle, and this inquiry in the case of law, as in the case of natural science, is often one that can be answered only by the research and experience of experts. It is also true that the *method* of discovering a legal principle is not the same as that of discovering one of natural science. The method of trial and error in testing the hypotheses of the investigator is the reliance of those who question nature, while considerations of history, custom, precedent, analogy, policy, justice, and professional tradition play a part in the determination of legal principles, and call for the

exercise of a kind of judgment different from that which successfully conducts laboratory experiments. But the point to be insisted upon here is the need of research and expert judgment of an appropriate sort in correctly deducing either legal or scientific principles.

The next task of our better law schools, then, should be to provide for skilled research in the principal topics of the law, the development of capable experts in these fields, and the publication of the results of such research so as to be readily available to the profession. In the larger state university schools, the work will be organized to serve two different but co-operating purposes: (1) It will make an intensive study of the law of its own state for the benefit of the local bench and bar; and (2) it will make a similar study of appropriate parts of the law of the whole country—in this co-operating or preparing to co-operate with the American Law Institute. An effective organization to do this will require a substantial increase in the present size of law school faculties, a diminution in the hours of teaching, and the deliberate making of productive legal scholarship a larger end of law school effort than it is at present. It will involve the encouragement of true graduate work in law—not merely in the sense of prescribing extra courses but in the more vital sense of training legal scholars—and the establishment of seminars in the more important legal topics or problems. It will involve larger law libraries and a considerably increased expenditure for law schools. It will involve widespread and harmonious co-operation with the bench and bar, in order that the social rewards of such endeavors may be realized to the fullest extent. And it will involve a certain period of

faith in the wisdom of the undertaking while awaiting the fruits that cannot be immediately garnered.

Here at Ann Arbor such work may be now initiated and carried on under an extraordinarily favorable set of conditions: You have an old and well-established Law School, for many of its earlier years without a serious rival in this part of the country; you have a large and loyal body of alumni widely distributed throughout the nation; you are a part of one of our greatest universities, supported by the resources of a rich, populous, and progressive state; you are to have (and in part dedicate today) one of the most beautiful and useful groups of buildings devoted to professional education in the world; you have one of the great law libraries of America; you have an able and enthusiastic faculty, most of whom have their best years yet before them; in Dean Bates you have a leader, wise, energetic, and persuasive, who is happily of an age when he, too, may hope to enter the promised land, instead of merely gazing upon it from Mt. Pisgah; in the Michigan Law Review, with its connections with the state bar association, you have an adequate organ of publicity ready to your hand; and, from private endowment as well as public taxation, you are likely to have the resources necessary to undertake a fitting share in the great public task of clarifying our law and adapting it better to the needs of our time.

And so, as we dedicate today the Lawyers' Club, the initial realization of that beautiful quadrangle of law whose remaining buildings will soon take shape, we stand on the threshold of a fine and worthy adventure for the betterment of our ancient profession. The temple reared by human hands is before us. It remains for it to be possessed by the

spirit of human service for which these cloisters are a fitting habitation. Into it will be poured the labors of devoted teachers and scholars, the efforts of students, the support of alumni, and the co-operation of the profession; and out of it will come, in the fullness of time, an influence that will work mightily for the improvement of our law and its administration in the state and in the nation. Its mission will be conceived in no narrow spirit. It will teach students. It will train scholars. It will hold up high ideals for the profession. It will inspire and help other schools to follow its example. And above all it will labor to simplify and clarify the law, to fashion it to our changing needs, and to keep it the flexible instrument of social progress that is the difficult and crowning achievement of human institutions. To no purposes less high and noble can this beautiful gift be dedicated. And, with the generous and far-sighted giver, it is to the future that we chiefly look. Those of my own years, whose voices are heard here today, will be gone before the full realization of this greater dream. We may do something to point the way, but on the shoulders of the youth that will yet pass through these halls must rest the burden of reaching the goal. Blessed be youth—plastic, vivid, fearless—to whom once in every generation a new heaven and a new earth are possible! Age may dream, as well as youth, and even more often than youth may see its dreams arise in battlemented towers against the sky; but in the world of the spirit, where ideas are translated into life, those dreams come true that under their banners can enlist youth. And because the dream that these buildings shadow forth is one that must appeal to youth—to the able, well-trained, hopeful youth



that will pass here some of their choicest years and will receive here the indelible impress of this school—we may well feel that in their hands the ideals of the giver are safe and will prevail.



## THE SIGNIFICANCE OF THE ENDOWMENT

BY JOHN M. ZANE



ENGRAVEN over the entrance to this building are the words "The Character of the Legal Profession Depends on the Character of the Law Schools. The Character of the Law Schools Forecasts the Future of America."

Speaking in some sense on behalf of the legal profession, I can here make a confession and at the same time a prediction. The confession is a confession from one who has passed his life in practice at the bar; and the prediction is of the same character. The confession is in regard to what is, beyond question, the narrowness of the ordinary practitioner. The prediction is that the influence of such endowments as this will have a vast influence in correcting the ordinary narrowness of the profession. It is in that spirit that I speak to you today, and the idea is this: That the contact which is brought about between teachers of the law and practitioners of the law is bound to result in benefit, but mainly benefit to the practitioners of the law.

As we look around upon this noble endowment, we see more than lovely buildings, more than this embodiment in stone of refined and elevated taste, more than this Lawyers' Club where practitioners may enjoy the advantages of research in surroundings that are an incentive to excellence, more even than the Law School which will find shelter in these halls when munificence has completed their full design. These results are in themselves admirable,

but behind this fair exterior it seems to me we can discern the flowering of an idea that will bear fruit in the development of jurisprudence. It is the conception of the constantly recurring necessity of securing the liberalizing and broadening of professional outlook and the elevating influence upon the lawyer in practice, that comes from contact with those who pass their lives in the teaching of the law and whose constant, disinterested aim is the attainment of righteous law. Not much less does the legal teacher need the correction of the restraining hand of professional opinion.

Someone has said that the law that is created by a legal profession is "tough law." By that is meant that it is fully tried and enduring law. As we look back over the history of jurisprudence we may be certain of the fact that the only systems of law that have endured are those that have been created by a fully developed legal profession. The reason is plain but it is often forgotten. A system of law that will survive from age to age is a system that grows by the imperceptible acceptance of its rules by the great mass of the particular social community over which that law is to rule. The only true lawgiver is this practically united sense of the whole community. The most absolute despot that ever lived was powerless to impose a system of law upon his subjects without their consent. Only those written and enacted laws have been successful and enduring, which have embodied rules that before enactment had already met the endorsement of the social organization, and therefore needed no enactment.

It results that enduring law in a civilized society has come from the careful scrutiny of legal principles in litigated cases by adequate tribunals

manned by a legal profession. There in the contact between lawyer on the bench and lawyer at the bar, who are more than average representatives of the intelligence of their fellows, has grown the law, by the winnowing and sifting, the weighing and application of those principles of right and duty, which reflect the accepted law of the community and the enduring life and growth of law have been manifested through the efforts of professional lawyers, as advocates and judges, working in this sustaining medium of the community's adoption of law.

Into this judicial *officium juris*, if I may use the term, pass customs, statutes, inherited moral beliefs, average conceptions of right and wrong, and even those subconscious habits of mind that rule men's ideas and lives without any consciousness on their part, and from this workshop come, sometimes only after repeated misapprehensions and grievous mistakes, the enduring principles that will live as permanent jurisprudence. But this process has its dangers. Its greatest evil results from a constantly working tendency of the human mind. A precedent is easy to follow even though its application be a mistake. The great mass of men dislike the labor of thinking and hence on their brows is branded the mark of mediocrity. To act is easy but to think is hard, and the law in the hands of its practitioners is always tending to become a mere art, and not a growing science. The judge and the practitioner constantly prefer to sink to the level of parrot-like repetition and to become what Cicero calls a *leguleius*, *praeco actionum*, *anceps syllabarum*. They are always ready *stare super antiquas vias*, while they forget the rest of the saying, which enjoins, *videre quatenam sit via recta et bona et*

*ambulare in ea*, to look for the good and right way and to walk only in that way.

If life were static, law and most other rules for human association would be lasting; but humanity moves onward. Progress is the law of life and man develops new needs. New situations create new duties and alter the old. Law must constantly meet new demands, not in its fundamentals, it is true, for the formative influences of social life remain those age old virtues which must always condition human existence and association; yet in its application law must be a progressive science. Like the river it must flow on forever, but it must be fed by living springs. A practitioner, who is not a jurist by nature, cannot supply in full measure those revivifying influences. He must be brought under the influence of those who devote their lives to the theoretical perfecting of the law. These teachers of the law, in their searching of the history of principles and of adaptation of them to changing human conditions, are striving to make the law not the cold grasp of death laid upon us by the past, but the touch of a living and healing hand.

Yet here again the jurists, these gallant strivers for theoretical perfection, are often not sufficiently alive to the thought of how slow and gradual must be the process by which changes in the law will meet general acceptance and how widespread in collateral matters will be the results of change. The deepest rooted conviction of men in regard to law is that it must meet the supreme test of an impartial rule, in an administration freed from personal idiosyncrasy, where all men are in truth and in fact on an equality before the law and its tribunals. If it be made the subject of frequent change, law ceases to be what general acceptance

demands that it shall be. Hence we come back to the necessary influence of the practicing lawyer, unbending and opposed to change though he be, upon the teachers of jurisprudence.

If we look to history it tells us that once and once only was this reciprocal influence secured. The Roman patented counsel, juriconsults or jurisprudentes, were men who had been trained in the practice and in service as judges. Their words will live forevermore in the pages of the Roman Digest. To those patented counsel, no longer in the practice, the courts referred difficult cases for decision. From these men came, too, the teachers of the law. They by their *responsa* created that enduring body of law, which survived the ruin of Rome and the destruction of the barbarians, and which still governs in the tribunals of a large portion of the world.

Ages rolled on and another body of law of professional creation—the common law—was growing to be of such an enduring character that it now rules another large part of the earth. The profession there sought to provide for legal education by Readers at the Inns, who were taken from the number of eminent lawyers. But that system provided no means for liberalizing the understanding of those teachers of the law, and the method, poor as it was, perished in the days of Cromwell. The lack of competent instruction was continued into times within our memories. Nor till then can it be said that scientific legal training began, in the sense that such training is given in the natural and physical sciences.

But improvement in methods of instruction is only a part of what we need. Important as is the science of jurisprudence, widely and deeply as it

reaches to all points of human life in society, there is yet not one of the social sciences that has been less regarded as a field for research. There has been nothing but superficial research into the processes by which law comes into being or into the processes by which the evolution and progress of society have been aided or hampered by the provisions of positive existing law. Not only is there needed a fund of scientific knowledge by which the inertia, the conservatism of legal institutions may be wisely directed, so that legal institutions may not be a bulwark against the true progress of humanity, not only is there needed the collection of the vast materials at hand for improvement of the practical application and administration of the law in procedure, in practice, and in adequate tribunals, but even more is there required the scientific exposition and classification of those failures in the enacted law, which are strewn on every page of human history. It has been said that no man was ever wise enough to draw a statute. Certain it is that wherever the power and function of creating law by enactment has existed, it will be found that every body of men to whom that power has been confided, however incompetent and ignorant may have been its composition, has always assumed its own perfect ability for wise and skillful legislation. There is a peculiar propriety in the prayer for Heavenly guidance that begins each day of legislation, but there is a melancholy monotony in the certainty that Heavenly guidance will be withheld. Perhaps it is true that such aid is vouchsafed in legislation as in other things, only to those who aid themselves, and that a great legal endowment with a large personnel and apparatus for research, and the collection and classification of human errors



and failures in legislation may lead us on to a better age of lawmaking endeavor. To this result the practical lawyer must contribute his part by becoming a jurist worthy of membership in the order of Ulpian. This can be gained only by a close association between those to whom law is an art and those to whom it is a science.

Since I have read the letter of the Founder I know the vision of things to come that the author of this endowment has had. It is plain that here this close association has been provided for in a real and tangible way. We can hail this munificent beginning as a provision for contact between practitioners and teachers. We can easily visualize its effects upon the law school, and not less can we rejoice in its tendency toward liberalizing the profession. We may hope that this example may spread as wide as our whole country.

To one who loves our Sovereign Mistress, Themis, for herself alone, who regards her service not as a mere means of livelihood but as a consecration to noble duties, to such a one when, it may be, he is worn and spent in the toil of the profession or the struggles of the forum, there will come a retirement to this Club. Here in the ease and comfort of his surroundings, with his soul soothed and bathed in the beauty of cloister and hall, he will find his devotion to our Lady of the Law quickened and renewed. In preparing material for litigation or legislation, he will find himself associated with men acquainted with every phase of the literature of the law; he will find ready to his hand the materials gathered by research and sifted for his use; he will find the resources of a great library, the garnered labors of ages; he may call up the wise and good of ancient days and dwell in serene communion

with those who in their day gave themselves wholly to the search for truth in the science of the law; and he can even feel the inspiration of the bright ranks of those immortals whose wisdom and justice still guard that eternal throne before which all men do homage. If he be a spirit touched to fine issues, his heart will overflow in gratitude to the Founder to whom he owes these blessings.

In the quaint old ceremony of livery of seisin the feoffer took the feoffee with him upon the land and both holding the deed of conveyance the feoffer handed to the feoffee the hasp or key of the door and added: "Enter into this house, and God give you joy." So today we enter this splendid house with the hope that the blessings of the search for truth and of labor for the law will give joy to those who shall in the long time to come enjoy this benefaction.



# THE LAW SCHOOL AND THE PROFESSIONAL TRADITION

By ROSCOE POUND



NLY historians know that Michigan, Illinois and Wisconsin were once, at least in legal theory, governed by the Custom of Paris. That fact has not left a mark upon the actual law of any of those jurisdictions. Nor is the reason far to seek. In the pioneer days of the French occupation of this part of North America there was little scope for such law as is to be found in books. There was need only for a rude administration of offhand justice in the simple concerns of a frontier society. And had there been need for anything more, the chances are that there was no one in the region who knew much about what the Custom of Paris was. In like manner the legal theory is that our forefathers brought to this country the common law of England as their inheritance. But let us remember that it was a long time before the common law of England, as any actual body of legal precepts, was in fact a measure of the administration of justice in what are now the United States. In colonial America the administration of justice was chiefly either ministerial or legislative. It was for the most part in the hands of magistrates who were either clergymen or soldiers. Indeed, in the simple society of colonial America, there was little need for law as we now understand it. The chief problem was to keep the peace. There was no complex social and economic structure requiring an elaborate legal apparatus as a condition of its existence.

As there was little need for law, there was little

need for lawyers. Moreover, those who laid the colonial foundations had a profound distrust of lawyers. The seventeenth-century era of colonization coincides with the nadir of the common-law courts under the Stuarts, and the seventeenth-century lawyers were too often conspicuous as tools of arbitrary power. The clerical tradition, born with the rise of the lay advocate and lay judge at the expense of clerical advocate and clerical judge in the Middle Ages, revived when lawyers began to supersede the clergy in the great offices of state after the Reformation, and strengthened by Puritan experience of lawyers during the Commonwealth, reinforced the Puritan disposition to regard the law as a "dark and knavish business" and the lawyer as a mischievous parasite.

It is significant that the two American law books that appeared first, prior to the Revolution, were treatises on practice before magistrates. Gradually from the second quarter of the eighteenth century there come to be lawyer-manned courts and judicial justice. Just before the Revolution this tendency was becoming strong. But the organization of judicial justice was not complete till well into the nineteenth century. That century was still to see legislative new trials, legislative appellate jurisdiction, and legislative divorce. Indeed the latter existed in some places well past the middle of the century.

In time the commercial and economic development of the country called for law, and here, as everywhere else, law and lawyers proved to be inseparable. In the period immediately after the Revolution and in the fore part of the nineteenth century, along with the development of American law came the development of the American lawyer.

But while we developed lawyers, we did not develop a bar in the sense in which the organized profession is known at common law.

A profession is something that goes back to the relationally organized society of the Middle Ages, where the members of a craft, or those who knew an art or mystery, or those who pursued a common end, lived a common life. They were brethren, they lived together, they ate at a common table. But that idea of a common life, the idea of the pursuit of a common end by a body of men held together by some relational bond, was alien to the seventeenth and eighteenth centuries—the era when our institutions were formative. That was an era, not of relational society with ideals of a common life, but of a highly individualist society with ideals of a competitive individual life.

In England, as in Europe generally, the lawyers were and are organized in two branches. In England the upper branch, the barristers, constitute the bar. They are organized in self-governing societies that have an immemorial corporate existence. The lower branch, the solicitors or attorneys, were not organized in England until the nineteenth century. They were merely enrolled in the courts in which they practised.

In America we made no separation, except for a brief time theoretically in New Jersey, and we took for our model the lower branch of the profession. The American lawyer is “Attorney and Counsellor.” It is significant that we put “attorney” first and that statutes sometimes speak of the whole profession as “practicing attorneys.” We took the attorney or solicitor, not the barrister or counsellor, for the type of American lawyer. For the whole genius of the time was opposed to the professional

idea. In the Jefferson Brick era of our institutions there were many who regarded anything that set any man off from his fellow citizens as undemocratic. To brand one lawyer as of a lower branch of the profession, or label another as belonging to a higher type was deemed un-American. Indeed many went further and held that even to segregate the competent from the incompetent, and to label the competent as authorized practitioners of the law was undemocratic and reprehensible. The American lawyer, borne on the roll of the court and admitted to practice therein, subject to discipline and removal only by the court, is in truth not a member of the bar in the common-law sense. He is an attorney or solicitor who is privileged to appear in court, as the solicitors may appear in the lower tribunals in England.

But, as Maitland has told us, "taught law is tough law." Our lawyers were deeply read in the books of the common law, and in those books they found the common-law professional ideal. To some extent also these ideals had been handed down from the pre-Revolutionary lawyers, trained at the Inns of Court, and had been passed on from generation to generation with the apprentice training of the beginnings of legal education in America. Moreover, in the days when practice of law was practice in court, when lawyers regularly went circuit and met each other day by day in court and at circuit, certain traditions were able to develop and to fuse with and give shape to the traditional ideals of the common-law books and the professional tradition brought over from England by pre-Revolutionary lawyers and handed down from lawyer to lawyer in the apprentice training of the old-time law office. Thus in substance, if not in

form, we did to some degree develop a legal profession, and for the first three quarters of the nineteenth century we may say in very truth that there was a bar in each American jurisdiction.

Two circumstances, however, have been operating more and more to break down such professional tradition and such professional self-control as we have. First among these is the rise of large cities and the change from a rural agricultural society to an urban industrial society. With this change, the era when the trial lawyer was the type and exemplar has passed. The leader of the bar is no longer the great trial lawyer. Perhaps he is not even the great advocate before the court *in banc*. The leader today is what one might call, in no depreciatory sense, the client caretaker, the pilot of business, the steward of the leaders of industry. Lawyers no longer meet each other day by day in court, much less at circuit. They are no longer well known each to the other and all to the bench. On the one hand there is an upper stratum, whose work is perhaps quite as much business as legal. At the other extreme there is a lower stratum, little trained, little sifted, and chiefly engaged in practice before criminal tribunals. Thus in the large American city of today there may be some thousands of lawyers but no bar. It is instructive to compare the profession of law in the great cities of contemporary America with the lower branch of the profession in England before the organization of the Incorporated Law Society. Sampson Brass, Mr. Vholes, Dodson & Fogg and Caleb Quirk, Esquire, of Alibi House, well known in England in the first half of the nineteenth century, have passed with the organization and incorporation of the solicitors as a self-governing profession. They are



thoroughly familiar and perfectly easy of identification in any American city of today.

Another circumstance which has tended to break down such professional solidarity as we had been able to develop, is the disappearance of that handing down of professional traditions from lawyer to lawyer which was involved in and was the good side of the old apprentice training. Even when I came to the bar, in 1890, the majority of lawyers were office trained. But a generation ago office study was becoming impossible, and it has all but disappeared as real study under a preceptor. The good features of the change are patent. Every circumstance of the administration of justice in the complex urban industrial society of present-day America calls for a deeper and wider training of lawyers than the training in rules of thumb and in procedure which was afforded by the law office. But needed as it was, the change from an apprentice-trained profession to a school-trained profession has tended to leave the beginner in practice of law to his general moral sense and his knowledge of the doctrines of equity as to fiduciaries and has made for breaking off the tradition that had grown up and has been handed down in the old-time law office and at circuit. Moreover, it has been having this effect at the very time when the tradition was most needed because the bar had become unwieldy, without cohesion, and without the effective check of professional opinion brought to bear on each lawyer through every-day contact in court and at circuit.

We must not overlook the one conspicuous advantage of the old system of apprentice training, namely, that the law student in his formative days came in contact immediately with the leaders of

the bar. By daily contact he absorbed from them certain traditions, certain ideals of the things that are done and are not done by good lawyers, and a certain feeling as to what was incumbent on him as a member of the profession. We cannot transmit these things with like efficacy by any system of formal instruction. Hence thoughtful teachers of law, as more and more they see the great majority of those who are to enter practice coming to law schools, feel as one of their most serious problems the problem of how to provide an effective substitute for this feature of the old apprentice training.

Let us digress a moment to see how American legal education in the past has risen to the problems of the past—how it has met and proved equal to the needs of the administration of justice in America in the past.

One might say with truth, even if somewhat paradoxically, that American legal education begins with Blackstone's professorship at Oxford. The Vinerian professorship at Oxford was soon imitated in the United States. Chancellor Wythe at William and Mary, James Wilson at the College of Philadelphia (afterwards the University of Pennsylvania), James Kent at Columbia, and Isaac Parker at Harvard, lectured in chairs founded on the model of Blackstone's. But their lectures were not and were not meant to be professional training in law. They were part of the general education of gentlemen, not part of the professional education of lawyers. They were lectures for college students generally and for the community at large.

Law teaching in this country begins in an expanded law office; in the expansion of apprentice training of two or three students in the office of a general practitioner, into apprentice training of a

large number of students in an office in which the general law business has disappeared, or at least has fallen to a minimum, and the work of a preceptor alone remains. Such was the first American law school, the famous school of Judge Reeve at Litchfield, Connecticut.

In 1817, Isaac Parker, Chief Justice of Massachusetts and Royall Professor at Harvard, with characteristic Yankee sense, saw that it was wasteful to have a professor of law lecturing to students in the college and in addition this expanded law office teaching them law after graduation. Not unnaturally he thought of combining the lectures on law for college students and for the learned community generally with the type of law school developed by Judge Reeve. Thus in 1817 we got the first university school of law in the English-speaking world, the Harvard Law School. But at that time it was not a law school in any modern sense. From 1817 to 1825 it was simply a glorified law office under the eaves of a university. Note the law book that came from that school. Its first fruits were a "Treatise on Real Actions." For the problem of legal education at that time was simple. It was no more than to provide competent practitioners in the courts; to provide men who knew the art of the craft and were competent to take causes through the courts. This need was met chiefly by apprentice training in law offices. There was nothing, as yet, which the law school could do better than the law office. What the law school could do to meet the needs of this period was done quickly enough.

A new need soon became manifest and led to a new era in American legal education. As a general proposition it may be said that we received seven-

teenth-century English law. At the beginning of the eighteenth century colonial legislation was going its own way. By that time, also, political institutions in the colonies had become fixed. Colonial lawyers began to appear in the fore part of the eighteenth century and courts manned by lawyers were set up about the middle of the century. Such books as they had spoke from the seventeenth century. Even Blackstone's Commentaries (1765) speak from the end of the seventeenth rather than from the latter half of the eighteenth century. For his account of equity tells us of the equity which Selden pronounced a "roguish thing," not of the equity of Lord Hardwicke, and his accounts of contracts and of commercial law are no less backward if we compare them with the law reports of his time. Thus the English law which we received was the old English land law and over-refined procedure. The development of equity was not complete in England till Eldon in the nineteenth century, nor was the reception of the law merchant in England by any means completed at the Revolution. We had to go over the mass of English legal materials, determine what was applicable in America and what not, and reshape both the several precepts and the whole body of precepts, so as to give us a common law for the United States, while at the same time carrying on a parallel development of equity, a parallel reception of the law merchant, and a parallel legislative reform movement, alongside of what was going on in England.

Nathan Dane, in 1825, had the vision to see what was needed, and his endowment of the Dane professorship for Story was a turning point in American legal education. The resulting treatises,

representing Story's teaching, met the need for an American development of equity and of commercial law on the basis of English law, with the help of comparative law and of rational philosophical speculation. Also Story's treatises made it possible for the successive new commonwealths which arose in the course of our westward expansion, and set up legal institutions and began to make their own local laws and their own versions of the American common law, to receive and adapt the Anglo-American legal system instead of experimenting with codes. Such were the conditions to which the school of Story and Greenleaf, and Parsons and Washburn responded; and later the great school of Cooley met the same needs for the rising commonwealths of the West.

In the latter part of the nineteenth century a new need developed. The need of the time was, as it were, to digest what had been absorbed in the period of growth. The need was, for a season, not to create, but to order and systematize and harmonize; to put system into each several department of law, making its contents logically consistent, and, by subjecting them to analysis, to develop a dogmatic apparatus of criticism by which to bring about a condition of logical interdependence in the whole body of legal precepts. Langdell and his successors in many schools have addressed themselves to this need, and have met it so thoroughly that the profession is now ready to proceed with assurance in a restatement of the law.

Does not this story of the relation of American legal education to the needs of American law give ground for confidence that the new needs which are developing will be met no less effectively by the law school of today?

We cannot doubt that another turning point has been reached. Transition from rural, agricultural pioneer America to urban, industrial America, calls once more for creative juristic effort. New and serious needs are manifest, of which the reconstruction and further development of the professional tradition is not the least. Let me run over a few of these hurriedly. Obviously one is the professionalization of lawyers in our large cities. Another is overhauling of the criminal law, conspicuously the weakest point in our American policy. Another is improvement of legislation, of which Mr. Zane has spoken so well already. Yet another is enforcement of law, a sore point everywhere in America at this moment. Again there is the need of a better adjustment between law and administration, made acute in recent years by the rapid rise and development of executive justice through boards and commissions. And beyond these are the need of individualizing the application of legal precepts and the administration of justice so as to give the largest scope for the individual life under the conditions of an urban society, and the need of developing preventive justice. For all these things we must rely chiefly upon our law schools. In characteristic Anglo-American fashion we are seeking to meet the newly pressing needs, not by bureaus and boards, and commissions and ministries of justice and comprehensive abstract legislation, but by leaving them to individual research and individual inventive resource on the part of those who have been made conscious of them in their daily work. No one, as I see it, but the law teacher, who is working in the required conditions of permanence and independence, may insure a thoroughgoing unbiassed study and hence

an enduring scientific solution of the problems of American administration of justice today.

And so my vision of what shall be achieved under the auspices of this magnificent foundation goes even further than the prophetic vision of Dean Hall. I see not merely a restatement of American law—a scientific exposition of the body of legal precepts as they are. I see research going forward here that shall give us a better criminal law and a more thorough administration of criminal justice; a better understanding of how law is to be enforced, and of what may be enforced and what cannot be; a better understanding of the principles of legislation; a better understanding of the relations of law and administration; a thoroughgoing understanding of the possibilities of individualizing legal precepts in action; and a development of preventive justice that shall do for the administration of justice what preventive medicine has been doing for the public health.

Three problems immediately confront the American law school. One is to keep up the old-time effective teaching of law, as a teaching for common-law lawyers, in view of the enormous growth in bulk of legal materials, the bewildering growth of local law, the development of new departments of social control through the law, and, not least, the continually increasing numbers which now crowd our schools. A second is to do the work of research which is urgently required by the condition of the administration of justice in America today. This work can be done only with the aid of endowment. And I undertake to say that with endowment American law schools can do for the administration of justice quite as much as the medical schools have been able to do in their province through the

generous endowments which have been lavished upon them. The third problem is to provide some substitute for the old-time contact of the student with the leaders of the profession and the handing down of the traditional ideals and professional ethics of the bar, which were the best features of the apprentice training of the beginnings of American law.

As to the first, I think we may flatter ourselves that we are learning how to do it. As to the second, graduate instruction in law, in which you are making a notable beginning at Michigan, seems to point the way. This foundation will be fruitful in stimulating the work of legal research throughout the land. It will set an example to other donors of the possibility of achieving great things for the administration of justice in this country by intelligently bestowed bounty.

But most of all what I look for from this foundation is a solution of our third problem, and through that a means of reconstructing the professional tradition, and professionalizing the lawyers of our great cities. This seems to be involved in Mr. Cook's very idea of a Lawyer's Club. Here there is to be a bringing together of law students, and practitioners, and judges, and jurists in one institution, with a certain measure of common life, making the student conscious in his student days that he is a member of a profession. Here may well be restored the element in legal education which seemed to be lost with the passing of the apprentice training of the lawyer. We have bar associations, we have codes of legal ethics, we have projects for incorporating the profession. They are all good. I believe in them heartily. But the bar association and the code of ethics come after



the student has ceased to be formative. They do not enter vitally into the formation of the lawyer. And the projects for incorporating the bar, as I see it, will fail of achieving what we hope for them, unless there goes with them contact of students with the leaders of the profession in the students' formative years, bringing home to them subtly but thoroughly that they are members of a profession.

For such reasons I believe that Mr. Cook's foundation is destined to mark a turning point in the history of American legal education and therefore of American law. May it prove as fruitful as Blackstone's professorship at Oxford, as Kent's lectures at Columbia, as Story's professorship at Harvard.

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