1949

Henry Moore Bates 1869-1949

University of Michigan Law School

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HENRY MOORE BATES
1869 - 1949
IN MEMORIAM

HENRY MOORE BATES
1869—1949

Services in honor of Dean Emeritus Henry Moore Bates were held in the Rackham Building, Ann Arbor, Michigan, on Friday, June 10, 1949.
ORDER OF EXERCISES

President ALEXANDER GRANT RUTHVEN presiding

Memorial prepared by the Faculty of the Law School

GROVER C. GRISMORE

On behalf of the Alumni

HERBERT W. CLARK

On behalf of Legal Education

ROSCOE POUND, Dean Emeritus,
Harvard Law School

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In Memoriam
HENRY MOORE BATES
1869-1949

President Alexander G. Ruthven:

Ladies and Gentlemen. The late Henry Moore Bates became a member of the faculty of our Law School in 1903. He was its dean for 29 years, from 1910 to the time of his retirement in 1939. I do not need to remind most of you that throughout his career as teacher and administrator, he was a forceful advocate of high standards of legal scholarship. It is no exaggeration to say that under his leadership our Law School underwent a complete transformation, abandoning somewhat outmoded earlier procedures in favor of thoroughly modern methods based on sound scholarship. In view of Dean Bates' great services in the University, it is altogether fitting that we should meet today under University auspices to do honor to his name and to remember him to his former associates and friends. I have asked Dean E. Blythe Stason of the Law School to introduce to you the several speakers on the program and I will now turn over the meeting to him for that purpose.

Dean E. Blythe Stason:

Mr. President. Dean Bates' associates on the law faculty have prepared a memorial which will be presented by Professor Grover C. Grismore. Professor Grismore thirty-five years ago joined the law faculty and throughout all of the intervening years he has been one of Dean Bates' closest friends and warmest associates.

Professor Grover C. Grismore:

Henry Moore Bates, Professor Emeritus of Law and Dean Emeritus of the Law School, was born in
Chicago, Illinois, on March 30, 1869. He was the son of George Chapman Bates and Alice E. Bates. He received his early education from private tutors and in the public schools of Chicago; in the fall of 1886 he enrolled in the College of Literature, Science and the Arts of this University; he received the degree of Bachelor of Philosophy in June of 1890.

Returning to Chicago after graduation, Mr. Bates entered the Union College of Law (now Northwestern University Law School), and completed the requirements for his law degree in June, 1892. For a time, following the completion of his law course, he was actively in charge of the library of the Chicago Law Institute. That experience, together with his close association with a very scholarly lawyer, Mr. Julius Rosenthal, the nominal librarian, accentuated his keen interest in, and his appreciation of, legal literature. This activity overlapped the beginning of his law practice. For eleven years he practiced law successfully in Chicago - a practice which was to have its effect upon the lives and careers of many alumni of this School who, in later years, were to owe their original positions in splendid Chicago offices to the Dean's reputation and his wide acquaintance with fellow-members of the Chicago bar. His first association was with the law firm of Williams, Holt and Wheeler, now known as Sidley, Austin, Burgess and Harper. After a few years in that office he formed a partnership with Mr. John Maynard Harlan, a prominent public figure in the life of Chicago who was the son of the late Mr. Justice Harlan of the United States Supreme Court. It is a matter of more than passing interest that a young law clerk employed by the firm of Harlan and Bates was Evans Holbrook who was destined to be a colleague of Mr. Bates on this Faculty until Mr. Holbrook's death in 1932. On September 4, 1894, Mr. Bates was married to Miss Clara Anne Belfield; Mrs. Bates and their daughter, Mrs. Josselyn Van Tyne, survive him.
In 1903 Mr. Bates accepted appointment as a member of the faculty of the Law School of the University of Michigan. In 1910 he was appointed Dean of the School, a position which he held - together with that of Tappan Professor of Law - until his retirement in 1939.

During his thirty-six years of service to the University, and more particularly after his elevation to the Deanship, Mr. Bates took an active interest in every association or organization which sought to raise standards in the field of legal education, to encourage legal research, and to stimulate the interchange of ideas and methods between the various academic disciplines. He was honored by responsible assignments on behalf of such organizations as the Association of American Law Schools (of which he was President in 1912-13), the American Institute of Criminal Law (member of Executive Committee, 1911-1914), the Commissioners on Uniform State Laws (Commissioner, 1921-1933), the American Judicature Society (member, Board of Directors), the American Law Institute (member of Council, 1924-1929), the American Political Science Association, the Chicago Law Institute, and the Social Science Research Council. In addition he was affiliated with Alpha Delta Phi social fraternity, Phi Delta Phi legal fraternity, the University Club of Chicago, the Detroit Club, and the honor societies of Phi Beta Kappa and the Order of the Coif. In recognition of his contributions to legal education, and to the legal profession, he was awarded the honorary degree of Doctor of Laws by his own University and by Kalamazoo College and Wayne University.

In 1910, when Mr. Bates assumed the Deanship, the Law School was in a transitional stage so far as educational policies and methods were concerned. Though some American law schools had determined that the then traditional type of instruction - largely informational in character - was not effective, and
had abandoned the notion that the law student must cover the whole field of the law during the period of his formal legal training, this School had made but little progress in that direction. Very early in his administration, Dean Bates and his colleagues gave consideration to the matter of the revision of the curriculum and to changes in methods of instruction. Courses were reclassified, some as required and others as electives, and the student was left free to choose the content of over half of his program. Emphasis was placed upon real intellectual effort, rather than upon the mere acquisition of information. It was the conviction of the new Dean that the development of capabilities was of far greater importance than was a detailed and necessarily superficial acquaintance with the entire field of the law.

Standards of admission, too, were raised. The School had been content to admit students upon the completion of a high school course, a fact which tended to cause prospective applicants with college training to enroll in law schools with higher admission requirements. Soon after Mr. Bates became Dean one year of college work was required; a few years later the requirement was stepped up to two years, and, not long thereafter, the academic degree (except as to entrants upon a combined curriculum arrangement) was required.

That the innovations for which Dean Bates was responsible have proved themselves is attested by the success, at the bar, of the students who were trained under the program, and by the high esteem in which graduates of this School are held by prospective employers. Moreover, long before the word "placement" was one of significance in the educational field, Mr. Bates began a systematic effort which was to result in the association of young graduates in leading offices throughout the country. Many of these young men are now senior partners in those offices. It is not a matter of accident that, today, splendid law firms
from coast to coast are seeking the graduates of this School. Much of the demand for current graduates is merely the result of many hours of persistent, effective effort on the part of Dean Bates.

To Mr. Bates his office provided an opportunity not only to guide the course of the School, and to participate in its formal instruction, but also to assist its students in more personal ways. He was always available for consultation, even upon matters of private concern. He was ever ready to give counsel and aid to each student. In the twenty-nine years of his deanship, he spent uncounted hours of his time in this fashion. Thousands of men throughout the country - many of them leaders in their communities - mourn his passing as that of a personal friend.

Nor was this interest in students limited to those in the Law School; it extended to those in other departments; and it was this interest which was largely responsible for his generous expenditure of time and effort in the founding of the Michigan Union, an institution in which he retained a most lively interest to the very end. It would be difficult indeed to name any other individual who exercised so much influence in the development and realization of the Union plan.

The marked changes in the student body, and in the character of the work required of the students - and of the faculty - resulted, also, in improvements of the physical facilities. It was the standing which the School had attained under the wise leadership of Dean Bates which, in large measure, influenced the late William W. Cook, of the New York bar, to provide for this School the magnificent Law Quadrangle which now houses its activities. Mr. Bates was the chief guiding force in the realization of Mr. Cook's plans.

The present magnificent collection of legal materials in the Law Library is also in a very real sense due to the vision and unflagging interest of Dean Bates. He had a fine sense of the value of materials and constantly called the librarian's attention to opportunities
to make important acquisitions. He was one of the few people to realize at an early date the importance of collecting statutory law, a field in which most libraries, even today, are deficient. He was zealous in seeking funds for the support of the library, both as regards the collection of materials and the staff. In no small degree the present library may be regarded as a memorial to his vision and sagacity.

As head of the School, Dean Bates was constantly searching for possible improvement in its work. He was always willing to consider proposals; rarely did he manifest impatience with those whose views he deemed unsound. Tolerance was one of his outstanding qualities.

In teaching, his paramount interest for many years was in Constitutional Law, a field in which conflicting opinions are common and understandable. His teaching of that controversial subject was remarkably free of bias. His students were stimulated by this thoughtful analysis. Early in his teaching career he recognized the modern trend in constitutional doctrine, even though he did not in all respects consider it sound or wise. Not infrequently, when the highest court had reached a conclusion surprising to many members of the bar, a former student of his would remark: “The Dean forecast that years ago.”

In his passing, the University of Michigan has lost one of its most valuable and devoted servants. Legal education has lost a wise, effective and progressive leader. Those of us who worked with him, and knew him intimately, have lost a tried and true friend; one who set for himself, and lived up to, an absolute standard of integrity and performance. He was unfailingly kind to, and thoughtful of, others; always ready to further their interest, though, too often, it meant a sacrifice to himself. He was intolerant only of slothfulness, dishonesty, and sharp practice. The loss is irreparable, but we may take comfort in the fact that the standards of integrity and accomplishment which
he set will always stand as a beacon in a world in which these qualities are all too rare.

Dean E. Blythe Stason:

Dean Bates' thousands of friends among the alumni of the University and of the Law School are represented by Mr. Herbert W. Clark, of the San Francisco Bar. A highly respected and nationally known leader of the Bar, Mr. Clark is four times a graduate of the University of Michigan. He holds the degrees of Bachelor of Arts, Master of Arts, Bachelor of Laws, and Doctor of Laws.

Mr. Herbert W. Clark:

There are people to whom any sense of fitness would assign a long life. Henry Moore Bates is one of these. In full vigor of mind until the end and before any physical deterioration had occurred to render his days uncomfortable to himself or his family, he died April 15th, on the sixteenth day following his 80th birthday. At eight o'clock in the evening before he died he was in buoyant spirits, his humor was keen and kindly, as always; his laughter was young. Eight hours later the end came. He was unafraid. "When it (was) time for him to take his leave, he (was) as ready to go his way as to engage in any other seemly, or self-respecting act; careful of one thing, that while life (should) last his understanding (should) never disown the relation of a being possessed of mind and social aim."

If any solace is to be derived from the event it is to be found in part in the fact that the end came suddenly and as Dean Bates, a courageous man, would have wished it to come, and in part in the fact that the superb qualities of his mind and the rectitude of his character exert a direct and profound influence upon the conduct of scores of Law School alumni.

Dean Bates served the Law School for thirty-six years as teacher and dean, having joined the faculty
in 1903, after eleven years of successful law practice in Chicago where he was recognized as the leader of the younger members of the able bar of that community. He was appointed Dean of the Law School in 1910. He retired in 1939, at the age of 70. To the alumni of the Law School his life illustrates the truth of a remark made by a respected and revered 19th century English Statesman: "The great business of life is to be, to do * * and to depart."

Most of those, and they are numbered in many hundreds, who studied under Mr. Bates, could not avoid learning at least two things from his teaching and example, both of which have been aptly expressed by Cardozo: One is that "Skill is not won by chance. Growth is not the sport of circumstance. Skill comes by training; and training, persistent and increasing, is transmuted into habit. The reaction is adjusted ever to the action. What goes out of us as effort comes back to us as character." The other, that "The common law, unless bound and riveted by statute, has instruments at hand of many varieties and shapes for the molding of that justice which is the end of her endeavor."

In 1903, when Mr. Bates joined the faculty, the law school was at the beginning of a period of slow transition. Inheritor of a great tradition, it had been content to rest on its inheritance during a time when two or three other schools were shaking themselves loose from purely informational instruction and were successfully turning to the development of a new approach in teaching - an approach which emphasized the development of the capabilities of students rather than their capacity to absorb and remember information. The Law School had able men on its faculty in those days and they were led by an able dean; but to those of us who were then in attendance it subsequently became apparent that if the methods and purposes of instruction had not been changed when they were changed, the school might have dropped into the ranks of third or
fourth rate law schools. Certainly it was not then a great Law School except in virtue of the tradition which it had inherited from such men as Judge Cooley.

Dean Hutchins, an able administrator and an excellent teacher in an earlier tradition, was raised to the Presidency of the University and Mr. Bates was appointed to the Deanship of the Law School. He was 41 years old. He had had brilliant success as a practicing lawyer and, during the preceding seven years, as a teacher in the law school. Those of us who were privileged to be his students in that early period well remember what he did to us and for us more than forty years ago. His teaching methods were somewhat novel in the school - so novel that frequently Dean Hutchins accompanied prominent visitors to Professor Bates' class to observe what was going on. Not infrequently he and his guest remained throughout the entire class period. And on occasion, the methods observed by the visitor subsequently brought offers to Professor Bates to change permanently to other law schools. Fortunately for the future of our school, such offers were refused.

Dean Bates not only did not believe, he knew, that a law school could not afford to devote any time to teaching a student how to take a default. The first day he worked in a law office in Chicago he had been asked to do that very thing. To his chagrin, he didn't have even a hazy idea of how to proceed. The office boy was sent to the court clerk's office with him and there gave him an expert two-minute demonstration of how the law is practiced. Thus he had already begun to learn, although he may not then have fully realized it, that mere information and knowledge of "How-to-do it" are easy to acquire and that they can be acquired by the untrained man without ever going to law school.

With the aid of his colleagues, and with the tolerant encouragement of President Hutchins, revision of the curriculum and the methods and materials of instruction in the law school began under the leadership of
the new dean, and, within a very few years, the Law School of the University of Michigan took rank as one of the best law schools in the United States. The mere acquisition by the law student of a body of information was no longer enough. Intellectual effort and development were required in addition and they came rapidly to be so strongly emphasized that one who successfully took Mr. Bates’ course in wills never after that experience had to take a formal course in the law of damages. In studying the first he had, of necessity, been required by the method of teaching to develop capabilities which enabled him to handle the second subject without direct guidance.

Certain courses, which may properly be termed basic were required to be taken. Comparatively they were few in number. The larger number was in the elective list. It was recognized that the entire field of the law could not be adequately covered by a student in three years. A few courses were thoroughly studied; a method of approach to legal problems was thoroughly learned and the spirit of our lady the common law hovered constantly over the classroom. Precious time was not devoted to “bread and butter” courses.

It should not be thought, and no alumnus of the law school would think, that Dean Bates was a revolutionist. His informed and deep sense of history, especially of English and American history, made it impossible for him to favor change merely for the sake of change or to favor suddenness of change. He was a devotee of the common law. He understood and appreciated its history, its development, and its adaptability. With the aid of his associates he emphasized these things. The result, it is safe to say, is that wherever you find in practice today a lawyer who was trained at Michigan from 1903 to 1939 you will find a lawyer who approaches and solves his problems in the flexibly adaptable tradition of the common law, whether they be of contract, tort, wills, administrative law, or labor relations.
During the early part of the period 1910-1939 the Law School was built into a truly great school of law. The alumni neither underestimate nor overestimate the importance of the dignified and beautiful structures which now house the school. They but serve to clothe it in a manner befitting the stage of greatness to which Dean Bates guided its development.

But Dean Bates was much more than the effective teacher, more than the expert administrator and builder of a school of law. He was, above and beyond that, a wise and generous counsellor of the students who sought his help. He knew much of the background and activities of students who didn't even suspect that he was more than merely aware of their existence. Although contemptuous of the shirker, he gave liberally of help and support to the student who was trying to do good work. The door to his office was always open.

The Law School graduates of the period 1903 to 1939 cannot forget, if they would, the ability, time and energy Mr. Bates devoted to the successful organizing and launching of the Michigan Union. Those of the early part of that era who had the privilege of receiving constantly his wise advice and active guidance during the years before the Thomas M. Cooley residence was bought for Union purposes, and those who went through with him the period which culminated in the financing and construction of the Union on the site of the Cooley residence, will not forget the long and fruitful hours of thought and activity he put into a project for the benefit of all Michigan students - a project which is now taken pretty much for granted.

He was the leader in the building of this great school of law. That means that he possessed the ability and the driving force necessary to the carrying through of a great project. At the same time he was a shy and modest man; a man of sensitivity of mind and spirit. Although slow to offer his friendship, when it was offered it became something of great value; something which sustained you and made you proud.
More than 1700 years ago the Imperial Roman moralist penned some simple words to himself which are, without quotation, adaptable to describe Dean Bates as he was known to and will be remembered by the alumni whose private and professional lives he directly influenced:

He esteemed nothing an advantage which would compel him to break faith, to forfeit self-respect, to suspect or hate or execrate another, to play false, to desire anything which required screens or veils. He was loyal to his own mind. He made no scene, heaved no sighs, needed not a wilderness nor yet a crowd. The best was his, the life that neither sought nor shunned.

Now that he is gone, except from memory, we can appreciate what he taught us, what he did for us, why he did it, and why so many of us will continue to be influenced and guided by him. He gave us to understand in some degree the institution to which he was completely devoted - the institution of Law and Justice. His own loyalty to that institution is best expressed by the Dean himself in a letter he wrote to his mother on April 20, 1918, and from which I am privileged to quote, concerning his decision to return to the Michigan Law School after a year at Harvard. These are his words:

"...Finally (not as a matter of sentiment about Michigan) I have never been quite able to rid myself (and I wanted to do so) of a feeling that until the situation at Ann Arbor was on a more secure basis - there was my duty in life. I don't know that I can explain it to you but that has been my feeling. Sometimes the hard thing, the self-denying thing, is the thing one ought to do and the doing of which brings its own reward. It is not a duty to the University of Michigan, except incidentally, but to the profession - the institution of Law and Justice -
which I feel. For years that has been the interest I have felt my life was dedicated to, for such service as I could render."

Dean E. Blythe Stason:

Dean Bates was a great leader in legal education. One of his closest friends in the educational branch of the profession throughout the years has been the great Dean of Harvard University Law School. Legal education will be represented on this memorial program by Dean Roscoe Pound, now Dean Emeritus of the Harvard Law School and the dean of American jurists.

Dean Emeritus Roscoe Pound:

Mr. President, Dean Stason, Ladies and Gentlemen. It has been my uniform practice never to read from a manuscript or use notes when I am speaking to an audience, but in speaking of so old and dear a friend I feel a certain inhibition of emotion that stands in the way of an adequate oral speech. Moreover, when I think of Dean Bates' unswerving adherence to exact, accurate statement, his abhorrence of all exaggeration, of all overstatement, I feel that he would not be satisfied with one who followed the relatively loose method of oral statement instead of adhering to a carefully and meticulously prepared manuscript for every word of which he could vouch.

Although I had seen Professor Bates, as he was when I first knew him, at meetings of the Section of Legal Education of the American Bar Association, I think probably from 1903 onwards, I first began really to know him when we both taught in the summer quarter at the University of Chicago in 1909. It was a rather notable group who taught in that summer quarter. There was, of course, Dean Hall of the University of Chicago Law School; the elder Professor Burdick, one of the best known authorities on commercial law, I suppose, in the history of law teaching in this
country; Dean Richards of the University of Wisconsin; Professor Woodward, very well known as a teacher at Northwestern and at Stanford and, later, at Chicago; Professor Keedy, of the University of Pennsylvania Law School; Professor Hohfeld, of Stanford, who afterwards made his great reputation at Yale; and Dean Bates and myself. I shall always remember the way my wife used to describe that summer. Our wives did not see much of us, and Mrs. Pound used to say that the men taught every morning and then spent the rest of the day, and half the night, in discussing transcendental torts. It was then that I became thoroughly acquainted with Dean Bates, whom it was my good fortune to reckon as a very dear and true friend ever since. Afterward I looked forward to seeing him each year at meetings of the American Bar Association, of the Association of American Law Schools, and later, the American Law Institute. We served together on committees in the old days, when the committee of the section of Legal Education of the American Bar Association and the Committee of the Association of American Law Schools used to hold joint meetings, in order to see that the two bodies which were working for the improvement of legal education and raising the standards of admission to the bar cooperated, and to arrange programs so that there would be no duplication and no conflict.

Also I taught under his auspices one summer session at Michigan and he taught one school year under mine at Harvard. Also for some years after 1916, while fundamental questions were agitating the law school world, Dean Bates, Dean Stone of Columbia, afterward Mr. Justice Stone, Dean Hall of Chicago, and myself, then Dean at Harvard, used to meet informally to discuss law school problems, feeling strongly the importance that our schools should work together toward common ends of improving the law as well as improving legal education, all of us agreeing to take no radical steps without notice to the others.
In this way in the period of reconstruction after the first world war the four schools presented a united front. I should add that Dean Bates and I served together on the committee in 1915 to investigate the New York bar examinations as conducted under the regime of Mr. Danaher. Thus I speak of him from nearly fifty years of close association in the field to which he gave his energy and devoted activity - legal education as a means of advancing the administration of justice.

In the thirty-six years from the time Dean Bates in 1903 took up law teaching as his life work till his retirement in 1939, taking the country as a whole, much more progress was made in legal education than had been made in two generations before. In those years in which he was one of the chief actors, the academic law school rose to a commanding position in professional education, the law teacher gained a position among the leaders of the profession, cooperation between bar associations and law teachers and the Association of American Law Schools grew up, cooperation between law schools and bar examiners developed, and the views of law teachers as to the preliminary education to be required of those entering upon the study of law came to be adopted by the profession and more and more to be put into effect in the several states.

One who came into full time academic law teaching in 1903 found himself in a very different position from that of the beginner in the law school of today. Not only have the conditions of legal education and of admission to the bar put the law school in a commanding position, since today the bulk of the profession and those who make its policies come from the university law school, but the full time teacher in the university law school of today has the confidence and respect of the profession where fifty years ago he was regarded as an impractical theorist not worth listening to. In the greater part of the land the law
teacher of today has to use up no part of his energy arguing for good standards of admission to the bar or for recognition of legal education conducted by full time teachers in a full time law school or for recognition by the lawyers as one of themselves entitled to speak with authority on questions of law and problems of the administration of justice. He can devote himself to his teaching and to research and scholarly publication without having to be continually on the defensive as to his type of school and methods of teaching and his qualifications for teaching. I speak with assurance here, for in September, 1903, when Dean Bates was beginning as Professor of Law, I was delivering an apologetic inaugural as Dean of the Law School of the University of Nebraska where I proposed a three year course with high entrance requirements and full time teachers.

In the part he played in creating understanding by the bar of the professor of law who was not a retired judge or retired practitioner or an active practitioner giving a fraction of his time and energy to teaching, and no less in the part he played in making for understanding of the bar by the full time teacher who had never practiced or had no substantial experience of practice, he was a leader.

Dean Bates deserves to be remembered in the history of legal education. Such things do not appear in the books. What was achieved was done by his strong but attractive personality and high character, meeting with lawyers at bar associations and making them feel that one could be a full time university law teacher and yet a sound lawyer and that the university law school could turn out better and more effective practitioners than the law office or the apprentice type of school. Nor was this all. A type of full time teacher appeared, some of them very able men and excellent teachers, who had no interest in the practicing profession, did not get admitted to the bar, and would keep the law schools and practitioners wholly out of
touch. Some of these were not always easy to handle. But I saw Dean Bates deal with them so understand-
ingly and tactfully on more than one occasion in the Association of American Law Schools as to compel my admiration.

But great as was his part in putting the American University Law School in the place it now occupies, it is far from all of his achievement. His main interests were legal education, reform of procedure, improvement of the administrative of justice, and constitutional law where he had to adapt and supplement the great tradition of Cooley to the exigencies of the complex urban, industrial, society of today.

A word about each of these. He saw clearly that a university law school had to develop legal education beyond the mere training in use of the tools of the lawyer's art which was the aim of the apprentice type of school. He saw that law must be thought of as a specialized form of social control and studied in relation to all the agencies of social control, the ends of social control, and the means of attaining those ends. Hence there was increased need of research and of publication and of a broader legal scholarship. What he achieved in this direction you well know.

As to reform of procedure, he was a steadfast advocate of the movement which has led to the overhauling of procedure in so many of the states in the last two decades and culminated in the Federal Rules of 1938. He was an effective advocate when advocates were sorely needed, not, however, goading the bar, as I fear some of us did at times and many at all times, but speaking and writing persuasively with clear understanding of the views of the practitioners and the reasons behind them and full allowance for the difficulties which stood in the way of acceptance at once of the proposals of reformers. I doubt whether the help he gave in bringing about a modern legal procedure in this country will be appreciated hereafter by those who write the history of the movement simply
from the books and periodicals. The effect of his quiet but persuasive persistence in talking procedural reform to the profession on all occasions is something which is known only to those who were for a generation in the thick of the fight.

Those who may some day write the history of American law in what I venture to think they will recognize as a new formative era, namely, the twentieth century, are not unlikely to go only upon what was printed in the beginnings of that era and so miss a great influence which was felt rather than heard. For Dean Bates' output in print will appear meagre to them. They will not realize that the first dozen years of his deanship were taken up with a heavy task of reconstruction, in addition to the normal load of administrative work which kept most of the law school deans of that time from the publishing they would have liked to do and many would have been able to do otherwise. Then nine years, 1922-1931, were taken up by planning and supervising the magnificent group of buildings made possible by the gift of Mr. Cook. From experience of the very much lesser task of rebuilding and adding to Langdell Hall, a task of three years, not of nine, I know something of how effective such a task, added to the everyday work of teaching and administration, is to prevent a dean from writing anything. Then followed eight years of organizing and planning the research he had foreseen and Mr. Cook's munificence had made possible. Thus the tale of his deanship is complete, and the time for productive writing has been wanting.

Going over his writings as they are listed year by year in the indexes to legal periodicals, Dean Bates' publications fall into three classes: Papers and addresses on legal education, papers and addresses on law reform and improvement of the administration of justice, and writings on constitutional law and the rise of the service state. Notable in the first category is his brief paper "The Needs of a Law School" (1926)
responding to Mr. Cook's magnificent gift. The key note is: "We think of law today...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." What is to be remarked in this paper is recognition of the service state which a decade later came to claim the whole stage, and yet the balance and sound judgment which enabled him to see it in proportion and perceive also the place of law in our American polity in enabling our institutions to function with a minimum of friction. Neither the grip of the ideas in which his generation had been brought up, which could see only the general security and a state primarily concerned with maintaining it, nor the momentum of the movement for an omnicompetent state by which all human needs and even desires were to be satisfied, could disturb his balanced judgment.

In his paper "Defects in Our Legal System," 12 Michigan Law Review, 167 (1924), there is an admirable discussion of the then prevailing lack of adequate training of the bar for its immediate tasks. Indeed, the need of adequate educational requirements for admission to the bar was something he kept hammering upon in the days when this sorely needed urging. Even as late as 1915 in a brief but excellent paper in Case and Comment (note not in a law school periodical but in one sure to reach the element in the profession which had come from office training or from apprentice-type law schools) he is careful to show the difference between the office training of a generation before and such training as was possible in the second decade of this century.

In an address before the Illinois State Bar Association in 1914 he urges the law schools to develop leaders in juristic thought and shows how procedure has suffered from rule of thumb treatment in the apprentice-type schools. His feeling for the importance
of reaching the practicing profession and appreciation of the needs of the practitioner of which the latter was not always conscious is brought out in a paper on "Legal Institutes for Practising Lawyers," read before the Section on Legal Education of the American Bar Association in 1937. It is eminently practical, in the best sense of that much abused word, in its handling of a subject on which there has been much wasted writing and speaking. He saw what was needed, what stood in the way of providing it, and what could be done profitably and what not. Characteristically unpretentious, it yet says about all that can be said after there has been a decade of further debate. Nor must I omit in this connection to note an interesting review of a book "The Story of a County Prosecutor" (41 Michigan Law Review, 915, 1943) which shows the appreciation of the facts of administration of justice which has been so much preached by the American realists, but with at the same time clear understanding of how far they tell the whole story, how far they are fundamentally significant, what may be done about them, and what is inherent and beyond reach. In this brief review there is more than in many pages of what has been written about juristic realism.

Passing to the second category, namely, law reform, one must first notice his address on "Defects in our Legal System" before the Michigan Bar Association in 1924. Here, anticipating what was always thrown at us by the practitioner in those days, he admits that law and lawyers have always been subjects of attack and that in American history prejudices brought over from seventeenth-century England had died out slowly in America and had been for a time intensified by economic conditions after the Revolution. Also he recognized that much of the then current criticism of law and the administration of justice was unreasonable and unreasoning. Conceding this he went straight to the valid grounds of complaint. One was the condition of procedure, thoroughly reformed
in England a half century before but in America still obstructing effective application of the substantive law. A second, he pointed out, was the imperfect organization of our courts, in particular the deficiency of provision for petty cases, which still prevails in too many states, the want of coordination in the higher courts, and the lack of an administrative head "to give coherence and unity to the activities of the component parts." Third, he stressed lack of adequate training and inefficiency of the bar considered collectively. Fourth, he blamed "a certain sentimentality and a lawlessness on the part of a large part of the people, due to our political origin, our early history, and perhaps to our national temperament."

An especially strong part of this paper treats of organization of courts: Expensive and time-consuming multiplied appeals, conflicts of courts of concurrent jurisdiction, the system of courts of general jurisdiction of first instance as "a series of separate compartments and they in turn divided into sections and then cross sectioned," so that litigants too easily got in the wrong compartment to their undoing. He also points out how the ultimate court of review is needlessly burdened by unrestricted access to it so that eight justices had to hear arguments, read briefs and records, and decide a litigation, which had already gone through two courts, as to the ownership of a hen turkey. He discusses also the multiplication of specialized courts and the bad system of rotating judges. Much of this is still to be corrected in many states and pressure to multiply courts is always with us. In 1924, before much had been done to modernize the organization of courts in this country, it was a timely exposition and much of it will have enduring value. What is significant, as we look back to the time when it was read before the state bar association, is that it was read by a law teacher, speaking to a bar association as one of them urging upon the practitioners the primary purpose of a bar association, to advance the
administration of justice, to serve the law not the lawyers, but with a mastery of the subject compelling respect, where there had been too much ill-directed general denunciation and proposals dictated by enthusiasm with no basis in experience or in knowledge of the real causes of ills felt but not understood.

On his main interest, constitutional law, he published little. But his account of Chief Justice Stone, at the time of the latter's appointment as Chief Justice, shows a mastery of the subject as it stood at the critical time on the eve of our entering the second World War. His address to the State Bar of California as Morrison Foundation lecturer in 1936, entitled "Trends in American Government," shows appreciation of the development of the service state, which he had foreseen a decade before at the dedication of the Law Club building, and is a well balanced appraisal of the movement and of the swing to administration and away from adjudication which it involves. He shows why complete return to the nineteenth-century idea of the state is not possible and yet why the carrying out of the service state to its furthest logical possibilities is equally impossible under our polity. It is as timely today after the second World War as it was before the overturnings which that war has contributed to bring about. The same clear insight and balanced judgment may be seen in a review of a book on the contract clause by a teacher of political science, published in a Canadian legal periodical in 1929. This should be said also of a review of Laski's Studies in the Problem of Sovereignty, published in the Harvard Law Review in 1918. He remarks that "most of us who must confess to origins in the much despised Victorian period are probably not prepared to have the state reduced to the level of a public service corporation." But reducing it to that level and giving it a monopoly of all public service, with an all embracing definition of public service, is not unlikely to elevate it to a higher level of power. As Dean Bates
points out, "the state will never be absolutely secure and no unsupported theory is likely long seriously to increase or diminish the germs of conflict and danger which lie in any human society."

What stands out in my memory is a natural leader; a sterling character; an attractive but firm personality; a scholar without a scintilla of display, patient except as to trifling by those who should be at earnest work and as to pretence and pseudo-scholarship and wisecrackery; zealous to make the law school effective toward the advancement of justice while not neglecting its immediate task of turning out competent lawyers, forgetful of his own fame and putting aside the writing of which he was entirely capable in order to give first place in his energies to his tasks as teacher and administrator; withal a true and loyal friend. May I say of him what I had to say formerly of another dean of like devotion to his life's work, to justice, and to scholarship, and like strength of conscience: "In hand and foot and mind foursquare, fashioned without flaw." Such was the Greek ideal. And such, I say, was Dean Bates.

Dean E. Blythe Stason:

Among Dean Bates' multitude is one of his former students who is now Governor of the State of Michigan. Governor G. Mennen Williams was graduated in the law class of 1936. Unable to be here today because of conflicting engagements he has sent us a message from which, in concluding this program, I would like to read two or three sentences:

"Dean Bates was known to our Class (1936) as a liberal lawyer with a keen and warm interest in the individual students. We have an affectionate feeling for him as a man, and a high respect for him as a scholar and administrator. Dean Bates' passing will be mourned by his many friends but his friendship will ever remain in our memories."
The following memoir on the late Dean Emeritus Henry Moore Bates was approved by the Board of Regents of the University on April 30, 1949. It appears in the Regents' Proceedings for that date:

The death of Henry Moore Bates, Dean Emeritus of the Law School, has removed a distinguished officer and teacher, to whom the University stands indebted for no small share of the prestige which it enjoys at the present time. As Tappan Professor of Law from 1903, and Dean of the Law School from 1910 until his retirement in 1939, Dean Bates' efforts were constantly directed toward the improvement of legal instruction and the raising of professional standards in the practice of the law. While the results of his exertions are to be seen in the high level of achievement attained by our own Law School, his influence was also widely felt through the American Bar Association, of which he was a prominent and active member, and the Association of American Law Schools, which he served as President in 1912-13. In addition to the recognition which came to him as an administrator, Dean Bates was widely known as a profound scholar in the field of constitutional law and as one of the great teachers of this subject. It was, furthermore, characteristic of him throughout his long and honorable career to feel a genuine and keen interest in the students of his School, not only during the period of their enrollment but after they had entered active legal practice, and this same concern for the welfare of Michigan students led him to take an effective part in the establishment of the Michigan Union and the provision of its present facilities. The circle of his friends, among the faculty and the alumni body of this University and in the legal profession throughout the country, is a wide one. They, together with the Regents of the University of Michigan, will sorrow at the loss of a vigorous and universally respected leader, whose contributions to the causes he espoused will be a lasting monument to his memory.
IN MEMORIAM

HENRY MOORE BATES
1869—1949

Rackham Lecture Hall,
11 a.m., June 18
1949.
HENRY MOORE BATES

Henry Moore Bates, in whose honor this memorial meeting is held, was born at Chicago, Illinois, March 30, 1869, of New England parentage. He was graduated in 1890 from the University of Michigan with the degree Ph.B. and from the Law School of Northwestern University in 1892; subsequently he received the honorary degree of Doctor of Laws from Kalamazoo College, Wayne University, and the University of Michigan. After eleven years spent in the practice of the law in Chicago, Mr. Bates came to the University of Michigan as Tappan Professor of Law in 1903 and was chosen Dean of the Law School in 1910; he held these positions until his retirement, as Dean Emeritus, in 1939. In 1894 he married Clara A. Belfield, who with a daughter, Helen Belfield Bates Van Tyne, survives him. Mr. Bates died on April 15, 1949, at Berkeley, California.
ORDER OF EXERCISES

President Alexander Grant Ruthven presiding

Memorial prepared by the Faculty of the Law School

Grover C. Grismore

On behalf of the Alumni

Herbert W. Clark

On behalf of Legal Education

Roscoe Pound, Dean Emeritus,
Harvard Law School

Message from Governor G. Mennen Williams '36 Law.

These memorial exercises were arranged on behalf of the University by the Faculty of the Law School.