The Law School of the University of Michigan: 1859-1984: An Intellectual History

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The intellectual history of the University of Michigan Law School is recorded in the titles of contributions to legal literature published from its organization in October 1859 to the present.¹ These writings demonstrate a continued commitment to legal scholarship and illustrate both the changing patterns in the subjects chosen for research and writing, and the methods utilized for treatment of the subjects.²

Specific areas of the law selected by Michigan's legal scholars for treatment reflect personal interests, but societal concerns also influence the selections. Moreover, the last three decades have been marked by new influences affecting the choice of subject matter: an awareness of the crucial need for improvements in statutes, practice, and procedure; changing theories and frames of reference for areas of the law; policy decisions to accord protection to certain groups; and finally, a willingness to explore non-legal disciplines, in part to achieve a greater understanding and more effective practice of law, and in part to develop and hone the skills necessary to the compleat lawyer of the

¹ The prime source for bibliographical information is the list of contributions to legal literature in E. Brown, Legal Education at Michigan 1859-1959, at 803-919 (1959).
² Space considerations have forced an illustrative rather than an inclusive approach. Many titles that merit inclusion have been omitted.
late twentieth and early twenty-first centuries.

The enormous enlarging of the perimeters of legal research and writing, conspicuous as it is, has by no means ousted the attention paid to the old stand-bys: property and contract, torts and crimes, practice and procedure, and constitutional law. These fields have experienced constant scrutiny and a steady stream of publications, sometimes producing improved teaching materials, sometimes exploring newly developing aspects of these subjects. Further, the basic subjects have been constantly enlarged, revised, and adjusted.

The multiplication of areas in which contributions to research and legal literature are made began, roughly, in the 1950's. An even greater development in the intellectual life of the School, however, began half a century earlier. At that time, the faculty's publications showed decreasing reliance on exposition and increasing application of legal analysis. Currently, the School's publications reflect these developments, presenting literature in the whole range of legal thought. Collectively, they reflect a wide range of substantive concerns and varied methods of presentation.

I. Campbell through Hutchins: The First Fifty-One Years

The establishment of the University of Michigan Law Department, the first organizational meeting of its three faculty members, and the earliest contribution by one of its faculty to legal literature occurred in the same year, 1859. Dean James V. Campbell's opening address to the student body was published, as was his opinion in Reed v. Wessel. The practice of research, writing, and publication had begun.

Among these publications, the most noteworthy were the Michigan Supreme Court opinions written by Campbell. Appearing in over ten volumes of the Michigan Reports, they were praised by his contemporaries as illustrating the strength of his reasoning powers, the soundness of his judgment, and his in-

4. 7 Mich. 139 (1859).
5. Another of the first faculty members, Thomas McIntire Cooley, was a prolific writer. His publications span 16 of the 41 separate subject classifications in E. Brown, supra note 1, at 804-919. During his service on the Michigan Supreme Court, 1865-1885, he wrote a substantial number of opinions. Charles Irish Walker, the third of the original faculty members, had an extensive practice in Detroit; only two publications by him have been located.
domitable love of justice. They continue to receive high respect and careful attention. In contrast, the writings of the other faculty concentrated on describing the law as it existed, tacitly assuming it to constitute a relatively static institution. This emphasis resulted from several factors. Until 1883, all faculty served on a part-time basis. Research and writing were done on their own time, supported by their own resources. Access to the library’s few books was difficult for faculty and students alike. Perhaps most importantly, there was no external incentive for a professor to write. Lecturing was the prime method of instruction. Lecture notes, once prepared, could be used repeatedly with minor adjustments; student notebooks indicate scant faculty effort to keep the students aware of current developments. A faculty member’s writings increased neither his status nor his salary. Although royalties could be expected from books, the number of articles and books actually produced was remarkable. These authors established the groundwork that may have been necessary for the law faculty’s later intellectual development.

The first casebook by a Michigan faculty member appeared in 1891. The movement from lectures and textbooks to the case method undoubtedly contributed to the replacement of expositions on the status quo by analysis of principles and their evolution. The law faculty increased preparation of casebooks and began to explore newly developing areas of the law. Cooley had written articles concerning railroads as early as 1883, and in 1890 published his treatise, The Railways of America. Three articles on taxation appeared in the 1890’s. Two casebooks on business organizations were published in 1896. The earliest publication dealing with international law, Cooley’s article, “The American Bar Association and an International Court of Justice,” appeared in 1890. Cooley had lectured on “Wills, Their Execution, Revocation, and Construction” during the Law Department’s first academic year, 1859-1860, but no publications in

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7. E. Brown, supra note 1, at 74-75.
8. In 1889 there were 10,208 books in the Law Library. Seven periodicals were received. Id. at 922. For an account of the early years of the Law Library, see id. at 359-74.
9. Id. at 534-36.
that area came out before the 1890’s.\textsuperscript{11}

Changes accelerated in the new century. The interaction between law and economic analysis is illustrated by Horace Wil­gus’s 1901 treatise, A STUDY OF THE UNITED STATES STEEL COR­PORATION IN ITS INDUSTRIAL AND LEGAL ASPECTS. Sunderland’s 1906 article dealing with corporate monopolies\textsuperscript{12} and Aigler’s 1910 article investigating the constitutionality of a federal corpo­ration tax\textsuperscript{13} evidence the faculty’s recognition of the economic and legal problems posed by a shift from a predominantly rural, individually-owned economy to one marked by increasing industrialization and the greater use of the corporate form of business organization.

II. BATES AND STASON: THE NEXT FIFTY YEARS

The law faculty’s widened interests and greater emphasis on legal analysis were encouraged during the early years of the twentieth century by two very different men: Henry Bates and Edson Sunderland. Bates had served as librarian of the Chicago Law Institute during years of active practice in Chicago prior to his 1903 appointment. He brought “to Michigan a genuine appre­ciation of the value of research material in a library”\textsuperscript{14} coupled with a conviction that legal research and writing constit­uted the best possible prerequisite for the effective teaching of law students. Yet he had joined a law faculty which pursued its individual interests and wrote, or did not write, as seemed most expedient to each individual. Moreover, productive scholarship brought no relief from teaching duties, committee assignments, or administrative burdens.

Appointed Dean in 1910, Bates sought to foster research and writing among his faculty.\textsuperscript{15} His ambitions, however, were con-
strained by a pervasive lack of money. He could badger the faculty; but he could not convince the legislature to provide money for reduced teaching duties, sabbaticals, library books, and secretarial assistance. Accordingly, the law faculty continued its intermittent and self-supported pattern of research. Sunderland alone was able to attract outside funding for his work in civil procedure. Such grants recognized his pioneering efforts to institute procedural reforms which would ensure a more effective administration of justice.

Although contributions to legal literature by the faculty increased during the first ten years of his deanship, Bates, in 1921, stressed the nature of the fundamental problems: lack of library equipment, a need for increased faculty size and strength, and greater opportunity for faculty research and study. The solution was to receive "not only more but a very great deal more help than we have ever had in the past," help for which the only hope lay in the state legislature or "aid from some generous alumnus or other friend of the school."

In referring to a "generous alumnus," the Dean probably had in mind William W. Cook, Law 1882, who would prove to be the School's greatest benefactor. Although full data concerning Cook's gifts are unknown, Cook proposed funding the construction of a law building and a residence hall. Proceeds from the residence hall's operation would support legal research under the general direction and coordination of the Law School. In this 1922 proposal, promptly accepted by the Regents, Cook broke before him. An investigation provided the answer. There were no standards for admission to the Law Department and there were no examinations until the end of the year. Hence, the coaches urged freshman members of the team to enroll in the Law Department, knowing they then could depend on a full academic year of team participation. Bates determined to improve the caliber of the law students. By 1912, at least one year of college work was required for admission; by 1915, two years; by 1928, college graduation.

16. Bates was the first dean to have full-time clerical help. E. Brown, supra note 1, at 44 n.66.
17. During the first years of Bates's deanship, several faculty continued to write and publish: Edwin Dickinson, Edgar Durfee, Edwin Goddard, John Waite, and Horace Wilgus published the first in what ultimately would be for each an impressive list of publications. See generally id. at 803-919.
18. Bates stated that at least one-fifth of the library volumes were placed where they were unavailable for ready use. University of Michigan Law School Report to the President of the University for the Year 1920-21, quoted in E. Brown, supra note 1, at 216.
19. E. Brown, supra note 1, at 216.
20. Id. at 313.
21. Cook had intended to lavishly endow Hillsdale College, located in the town in which his father owned a bank. When he abandoned this plan, he funded a University of Michigan dormitory and then turned his attention to the Law School's needs. Id. at 311-12.
new ground. He conceived legal research to be not an optional activity for individual faculty members but an "indispensable adjunct to instruction in the law. . . . Whatever the sources of Cook's ideas, his proposal visualized that the Law School . . . was deliberately to encourage organized and systematic research in the law . . . ."  

Work began promptly on the residence hall. Once in operation, it enabled the law faculty to anticipate a flow of funds, however small, to be used solely for legal research. Because Cook had provided scant information concerning what he meant by "legal research," several faculty meetings dealt with the evolution of a policy for selecting the projects to be supported from Cook money.  

With his faculty devoting increasing attention to scholarly research, Bates turned his attention to the problems of the Law Library. In 1926 Hobart Coffey was appointed Law Librarian. He built upon what he characterized as the "foundations . . . [of] a truly great collection" to create a law library that would support subsequent contributions to legal literature.  

The next year, Bates made another appointment, this one designed deliberately to evidence the School's commitment to research as a prerequisite to effective teaching. Edson Sunderland was appointed Professor of Law and of Legal Research, indicating to the faculty that tangible rewards could be the consequence of research and writing that had heretofore gone largely unrewarded.  

Although funds from Cook's estate became available in 1935, they were less than anticipated, largely because of the diminished value of all investments during the Great Depression.  

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22. Id. at 313.  
23. Eventually, Cook's will would provide some guidance.  
24. In fact, several faculty meetings were consumed by lengthy discussions over correct pronunciation of the word "research." Unpublished conversation with William Wirt Blume, a member of the faculty during these years.  
25. For further information, see Coffey, The Law Library, in THE UNIVERSITY OF MICHIGAN: AN ENCYCLOPEDIC SURVEY 1399 (W. Shaw ed. 1944).  
26. E. BROWN, supra note 1, at 335-37. During the Depression years a prevailing shortage of money limited every aspect of the Law School operation, although the School was able to retain all of its faculty. When Dean Bates, at a faculty meeting, raised the issue of the reduction of staff, he remarked that, of course, the newest appointees would be the first to be dismissed. Edwin C. Goddard, three years Bates's senior on the faculty, spoke next. He asserted that such a course of conduct was not justified. If appointment terminations were necessary, the men affected should be the older ones who had paid for their homes, educated their children, and had some savings. The younger men could not manage without employment. He, for one, was ready to serve without salary. Bates did not mention the subject again, but there were no terminations, and also no salary increases until economic conditions began to improve. Account by William Wirt Blume.
Nevertheless, Bates did not slacken the pressure for productive scholarship and his attitude, if not his practice, was continued by his successor, E. Blythe Stason, appointed Dean in 1939 upon Bates’s mandatory retirement.

The faculty that Stason inherited was characterized by a genuine commitment to research and writing. The new Dean’s first report to the President—for 1939-1940—was characteristically generous in recognizing the faculty’s ongoing research projects as well as individual accomplishments. He described Hessel Yntema’s continuing analysis of inter-American law of commercial transactions, Paul Kauper’s investigation of municipal charter provisions for public utilities, and Russell Smith’s efforts in “organizing and studying the voluminous and important efforts in materials in modern labor law.”

Stason pointed out that William Wirt Blume had completed his “monumental task of collecting, compiling, and editing the Transactions of the Supreme Court of the Territory of Michigan, 1805-1836 . . . published in six volumes . . . .”

In the early 1940’s, most faculty members were engaged in research projects. For example, Ernst Rabel continued his work in conflict of laws. Three faculty members were receiving external support for their work: Sunderland by the Judicial Council of Michigan, Simes by the American Bar Association, and Yntema by the United States State Department. Pearl Harbor was as 

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27. University of Michigan Law School Report to the President of the University for the Year 1939-40, quoted in E. Brown, supra note 1, at 351-52.

28. E. Brown, supra note 1, at 349. Blume commenced his work in 1931 at the urging of Dean Bates after the discovery in Lansing of the Territorial Supreme Court’s files and bound volumes. By 1931 a knowledge of common law pleading had become rare; three decades later, it was almost nonexistent. Because Blume, acting as Sunderland’s assistant, had acquired a thorough knowledge of both common law and code pleading, Bates concluded that he was the logical person to use these records to determine what had occurred in the territorial court. Blume provided the answers, using not only the official records themselves but all available relevant information. After Blume had sorted the hundreds of documents, some on scraps of paper, an expensive commodity on the frontier, and correlated his results with the entries in the bound volumes, he discovered every available fact pertaining to the court, its judges, officers and lawyers who practiced before it, and every recorded fact pertaining to the background of the cases and their litigants. No other territorial court has been given such meticulous and thorough attention.

The publication of this work, Transactions of the Supreme Court of the Territory of Michigan, 1805-1836, subsequently declared to be an official Michigan Reports, was only the beginning of Blume’s work in territorial legal history, which he would continue until his retirement from the law faculty in 1963.

29. E. Rabel’s treatise, The Conflict of Laws: A Comparative Study (1945), received the Ames prize, awarded by the Harvard law faculty for the most meritorious legal publication in English during the past five years.

30. University of Michigan Law School Report to the President of the University for
unexpected for the Law School as for the country as a whole. Dislocations followed.

Faculty who remained at Michigan during the war found that the much smaller student body gave them greater opportunity for research and writing. Publications continued to appear, although in smaller numbers. More importantly, faculty and Dean alike had time to consider future problems. In 1942, as a result of a new emphasis on research, the Regents created the position of Director of Legal Research.

Two faculty who returned from war-time duties began to prepare increasingly sophisticated teaching materials in constitutional and labor law. While employing the casebook format, they used illustrative materials drawn from non-legal sources designed to bring into focus the impact of external events upon the development of the law. These two men's works reflected an increasing shift away from a concentration on case material, through the use of non-legal sources and new perspectives on customary legal sources.

the Year 1941, quoted in E. Brown, supra note 1, at 352-53.


32. The faculty considered "the impact upon law of developments in politics and government, as well as in socio-economic conditions; evaluation of the insights that other disciplines, such as psychiatry, medicine, sociology, and economics could contribute to a broadened conception of the law . . . ; development of a more extensive research program; . . . and finally the need for a greater appreciation of international and comparative law by law students and faculty alike . . . ." Brown, The Law School of the University of Michigan 1859-1959, 38 Mich. St. B.J., Aug. 1959, at 16.

33. Lewis Simes held the position from 1942 to 1954. The view that the research activities at the Law School would benefit from having one man responsible for their coordination had been expressed as early as 1929, when a Legal Research Institute was established with Sunderland as Director. The Institute was short-lived, probably as a consequence of a violent difference of opinion among the faculty about the relationship of the Institute to the administration of the Law School. The Institute did publish one book, G. Ragland, Discovery Before Trial (1932). E. Brown, supra note 1, at 340-46.


Agencies outside the Law School continued to request faculty assistance with projects. For example, the American Bar Association's Section on Judicial Administration requested and partially supported a survey of metropolitan courts in the Detroit area. Research Associate Maxine B. Virtue conducted the study; the resulting treatise, published in 1950, was the first treatise produced under the Law School's research program to have a woman as sole author.

During the post-war years, the law faculty restored the continuity of research broken by the war years and developed the collegial spirit for which the School has long been noted. The careers of two individuals illustrate the creativity of the Michigan faculty during these years. Paul Kauper, who taught at Michigan for thirty-eight years, achieved recognition for his writings in constitutional law. Recognizing the rapid developments in constitutional law in the post-war decades, he sought to keep his constitutional law casebook current. An examination of Paul Kauper's bibliography, however, illustrates the varied aspects of his commitment to legal scholarship. All of his publications reflect concern for the impact of legislative changes on economic and societal patterns that in turn engender not only litigation but also further legislation, forcing constant modifications in the content of Law School courses and creating new opportunities for research and writing.

When Paul Kauper began to teach constitutional law, the typical course would devote some attention to the constitutional aspects of taxation by federal, state, and local governments. As long as relatively few citizens were affected directly by federal estate, gift, or income taxation, law schools felt no particular need to expand their coverage of the subject. But the Internal Revenue Code of 1939 and the war-years' tax enactments affected a marked change: litigation burgeoned as tax collections rose. The initial reaction to law students' demands for more tax instruction was expansion of its treatment within the constitutional law course. This proved inadequate. Recognizing a need, Kauper prepared his 1947 two-volume *Cases and Materials in Taxation*. L. Hart Wright, who also taught a tax course, became increasingly dissatisfied with the use of the case method, believing it an inadequate technique for teaching students how to deal with the concrete tax problems they would encounter in practice. In 1951, Kauper and Wright published a casebook dealing

37. For Paul Kauper's bibliography, see 73 Mich. L. Rev. 9 (1974).
solely with federal income taxation and employing a novel teaching device, the problem method. Wright stressed to successive classes of students that research into any question involving federal taxation should begin with the Internal Revenue Code. He profoundly altered the scope of teaching techniques when he began using the problem method, applying it to a subject, statutory interpretation, that previously had been an accepted part—albeit of minor importance—of the Law School's curriculum.

Wright was not alone in emphasizing the importance of statutes. Stason recognized the need for extended research in the area of legislation. No longer, he asserted, was dependence on cases and the common law sufficient. Statutes and administrative regulations, and their construction by administrative agencies and by courts, affected almost every aspect of human activity. Reflecting Stason's concerns, the School in 1950 established the Legislative Research Center, responsible over the years for an impressive list of publications and for training successive Law School graduates in the techniques of statutory research.

In the post-war years, several faculty members began to explore a new area of the law. Trained originally as an engineer, Stason quickly recognized that peacetime uses of atomic energy could create unanticipated legal problems. His first articles in the area were published in 1947. This effort had a relatively brief life-span. Altogether, faculty and research associates produced a total of thirty-one titles on this subject between 1953 and 1959. In later years, Estep would concentrate on constitutional law and science and the law, the latter undoubtedly affected by his pioneering efforts in the atomic energy field. His significant publications in the area where science and law intersect deal with radiation injuries and remote sensing.

39. University of Michigan Law School Report to the President of the University for the Year 1948-49, at 96-97. Cook also recognized the need to address legislative questions. In a 1922 letter to the Regents, he evidenced his foresight by indicating that funds from his gift should be used to support research on legislation along with jurisprudence.
40. For the separate publications, including the three books—ATOMIC ENERGY TECHNOLOGY FOR LAWYERS (1956), ATOMS AND THE LAW (1959), and STATE REGULATION OF ATOMIC ENERGY (1956)—jointly authored by Stason, Estep, and Pierce, see E. BROWN, supra note 1, at 810-12.
Other Michigan faculty devoted their research and writing to subjects more closely related to traditional teaching responsibilities. George Palmer concentrated on two areas, restitution and trusts and succession. His four volume LAW OF RESTITUTION, which he considered his major work, was published in 1978.

Practice and procedure claimed the attention of two faculty members, John Reed and Charles Joiner. In addition to publications, Reed provided, and continues to provide, guidance through his presentations at practicing law institutes. Now an occasional part-time lecturer at the Law School, Joiner's federal court opinions have on occasion attracted nation-wide attention.

In a law school where the majority of course offerings was geared to the preparation of future lawyers for practice within the United States, the faculty had no reason to contribute to legal literature in areas of foreign and international law. Not until 1919 was a law professor appointed primarily because of his interest in international and comparative law. Edwin Dickinson was hired because of Dean Bates's conviction that the changing relationships between nations during the post-World War I period required some law student acquaintance with these particular fields.

Another faculty member, William W. Bishop, Jr., spent his long career teaching and researching international law. His casebook was another Michigan example of the new approach to casebook preparation in all areas of law: cases supplemented


45. The earliest publication in the field of international law, Rogers, International Extradition, 6 FORUM 612, appeared in 1888. On occasion Joseph Drake left his chosen field of Roman law long enough to write some articles dealing with comparative law. E. BROWN, supra note 1, at 818.


47. W. BISHOP, INTERNATIONAL LAW CASES AND MATERIALS (1949).
by non-decisional legal materials—in this instance treaties, agreements, statutes of the several nations; and by non-legal sources—reports of investigating committees, treatises, and scholarly articles. Bishop served as editor of the AMERICAN JOURNAL OF INTERNATIONAL LAW. Another journal, the AMERICAN JOURNAL OF COMPARATIVE LAW, was also edited by a Michigan faculty member, Hessel Yntema. The work of the AMERICAN JOURNAL OF COMPARATIVE LAW's executive secretary and a member of the School's research staff, Vera Bolgar, was published in several early issues.

A Ford Foundation grant led to the appointment of Eric Stein, an expert in international and comparative law, with a particular interest in the Common Market. Illustratively, his first publication after coming to Michigan dealt with the European Coal and Steel Community. Stein's two volume study, AMERICAN ENTERPRISE IN THE COMMON MARKET (1960), dealt with the actual situations faced by American enterprises seeking business opportunities within the Common Market.

Wright's concern with all aspects of federal taxation led him to a comparative study of the methods whereby certain European countries and the United States resolved disputes with taxpayers. His death prevented completion of a subsequent comparative study of the Value Added Tax (VAT) in Common Market countries and the potential consequences of the adoption of such a tax on business transactions within the United States.

Changes in American society influenced the research and teaching commitments of several faculty members. Frank Cooper was concerned primarily with administrative agencies, especially with their twin functions of rule making and adjudication. Although long a part of state and federal governments, administrative agencies grew to major importance only during President Franklin Roosevelt's administration. Lawyers largely unaccustomed to practicing before a body exercising powers normally lodged in two distinct branches of government, the legislative and judicial, needed information concerning administrative law practice. Cooper's writings met this need by providing a guide to the function and operations of administrative agencies.

48. L. WRIGHT, COMPARATIVE CONFLICT RESOLUTION PROCEDURES IN TAXATION (1968).
Another product of federal and state legislation, the increasing burden of estate taxation, was underscored by Alan Polasky's work. His instruction reflected not only his incessant research and meticulous writing but also his pragmatic approach to a complex subject. S. Chesterfield Oppenheim also was concerned with an area of the law that had been thrust into prominence by legislative enactments: antitrust and trade regulation. In sharp contrast was Olin Browder's continuing devotion to real property—historically the earliest area of the law with which lawyers were concerned. Robert Harris's initial interest lay in commercial transactions but was broadened to include investigation into the legal problems of the poor. William Pierce, like Browder, concentrated his efforts in one, albeit broad, area of the law—research and drafting—in connection with his membership on law revision and uniform state law commissions.

Stason, at the end of the first century of the Law School and the conclusion of his twenty-one years as Dean, reported to the President in 1960:

I have watched the growth of the School not only in numbers, but, more significantly in the quality of its scholarship and the breadth of its interests. . . . The decades immediately ahead may well see a corresponding increase in the simple number of things done in the Michigan Law School. They will, in any event, see the Law faculty providing some of the best teaching, research, and consultation available anywhere in our country.

Stason's modestly expressed satisfaction was justified and his expectations of increase fulfilled. When Allan Smith became Dean, the faculty was committed to research and chosen in part for that reason. Some individuals would prove less productive than others, typically because of heavier administrative burdens, but the accepted frame of reference for the School's faculty had been established. Bates's pioneering demands for research and writing were long past. Stason had built on the foundations. The faculty had no reason to anticipate any major change in direction and there would be none.

52. While a member of the law faculty, Harris served two terms as mayor of Ann Arbor.
53. University of Michigan Law School Report to the President of the University for the Year 1960, at 70.
The subsequent twenty-five years have been marked by constant changes in Michigan's legal research and writing that reflect new developments in law and society and the Law School's new needs. But although these changes encouraged a greater commitment to legal research and contributions to legal literature, the fundamental framework in which the faculty and research personnel operate remains unaltered.

A 1954 Ford Foundation grant enabled the School to increase its curricular offerings in the field of international and comparative law and enlist a number of new faculty members. By 1962, the Dean could report that "[a] high percentage of our students now take some work in that general area." Faculty leaves for overseas research in international legal studies resulted in casebooks and other publications.

Faculty members concentrating in American law were no less productive. From 1960 to 1965, Michigan law faculty published treatises and articles in the following course-related fields: automobile injuries, bankruptcy, constitutional law, criminal law, and others.

54. A definitive biography of the Law School's contributions to legal scholarship exists for the first one hundred years, 1859-1959. This essay cannot repeat that task for the subsequent years. Instead, the essay provides illustrative references, both for the first century and the following quarter of a century. From 1960, illustrations of the range of the areas of law in which research and writing occurred have been drawn exclusively from treatises and periodical articles. Justifiable by space considerations, this decision leaves less well-documented the contributions of faculty members who have devoted their prime attention to the preparation of teaching materials—typically casebooks. Other under-represented groups include those who have prepared draft legislation, contributed chapters to books, testified before legislative committees, and prepared book reviews. Conversely, those who have published numerous articles and several treatises will be over-represented. Despite these distortions, however, this essay will serve its purpose of describing the interplay of research and teaching interests.

55. The Ford Foundation's first grant for research in international legal studies consisted of $500,000 or approximately $50,000 a year for ten years; the second, $350,000 for five years, was for "area studies" and research in comparative law.

56. University of Michigan Law School Report to the President of the University for the Year 1961-62, at 56.

57. They travelled in Europe, particularly to Brussels and England, and to Ghana, Hong Kong, and Japan.


59. The substantial number of tort cases arising from automobile injuries attracted Alfred F. Conard's interest, resulting in AUTOMOBILE ACCIDENT COSTS AND PAYMENTS: STUDIES IN THE ECONOMICS OF INJURY REPARATION (1964); and The Economic Treatment of Automobile Injuries, 63 Mich. L. Rev. 279 (1964).

60. In addition to teaching bankruptcy, Frank Kennedy authored seven articles deal-


peared in other areas less closely tied to courses: legal education,\textsuperscript{68} legal history,\textsuperscript{70} air law,\textsuperscript{71} civil rights,\textsuperscript{72} and psychiatry and the practice of law.\textsuperscript{73}

The 1966 report by Acting Dean Charles Joiner contains the earliest discussion of the techniques, as distinct from the subjects, of legal research. After noting that the “Law Library . . . [had] total holdings [of] 350,137 volumes . . . a faculty demanding more library work of the students and [that] more research of itself [had] severely taxed facilities . . . .”,\textsuperscript{74} he stressed the need for the adoption of a new technology, the computer, to allow for retrieval of information from the vast store of library materials, as well as for the adaptation of audiovisual devices, such as television, to instructional settings.\textsuperscript{75} The knowledge explosion was imposing ever-greater pressure for closer ties with other disciplines,\textsuperscript{76} to familiarize students with the constantly changing kinds of problems they would encounter during their professional lives, and to ensure that practicing lawyers remained aware of these same changes.

During Joiner’s year as acting Dean, the faculty continued to provide a steady stream of contributions to legal literature. In the area of international law, Gray and Stein individually were responsible for three books\textsuperscript{77} and George for two articles.\textsuperscript{78}


74. University of Michigan Law School Report to the President of the University for the Year 1965-66, at 67.

75. \textit{Id.}

76. \textit{Id.} at 71.

77. W. Gray & R. Stults, \textit{Civil Code of the Russian Soviet Federated Socialist...
Faculty publications on law in the United States spanned many fields: administrative law, antitrust, automobile injuries, civil rights, commercial transactions, constitutional law, contracts, corporations, criminal law and procedure, insurance, labor law, legal history, natural resources, patents, republic (1965); H. Jacobson & E. Stein, Diplomats, Scientists, and Politicians: The United States and the Nuclear Test Ban Negotiations (1966); Soviet Civil Legislation (W. Gray ed. 1965).


89. E.g., R. Smith, Subcontracting and Union-Management Legal and Contralegal Relations, 17 W. Res. L. Rev. 1272 (1966); R. Smith & Clark, Reappraisal of the Role of
Francis Allen, the School's tenth dean, expressed and acted on his concern that the Law School address problems of current relevance to society. He noted the impact of new knowledge and technology on the legal order and the need to exploit that knowledge intelligently. One route to such exploitation, now incorporated into the Law School curriculum, was quantitative research. Turning from techniques to the end product, Allen noted the "insistent demands" for social justice were not being ignored by the faculty, illustrating his point with mention of Robert Harris's work related to fair housing legislation and Yale Kamisar's efforts related to constitutional developments in criminal procedure. International legal studies focused on a wide range of topics, including nuclear test ban negotiations, copyright law, and regulation of securities and insurance. Because the faculty recognized the need to "provid[e] its students with the best possible preparation for professional practice," faculty continued to focus research and writing efforts on analysis and criticism of judicial opinions, statutes, and other legal developments.


94. E.g., Plant, "Good Samaritan" Laws in Legal Dilemma, 2 Trial, Oct.-Nov., 1966, at 34.


96. Student unrest during the 1960's took various forms but involved a consistent demand for greater attention to "social justice."


98. A. Miller, The Assault on Privacy: Computers, Data Banks, and Dossiers
bers of a major consumers’ research group;[99] others went on to command the attention of large audiences outside the academic sphere.[100] Each of these books dealt with an area of the law that came into existence within the prior three decades due to societal changes: inventions such as computers with the resulting data banks, highway signs, pollution of the environment and the resulting demand for its protection, and increasingly complex civil service determinations. Faculty members recognized the need to apply their analytic and research skills to emerging areas of the law and to educate students to “be experts tomorrow in fields that may not exist today.”[101]

As in past periods, the publications that appeared between 1966 and 1971 were prepared, in most instances, for one or more of the following purposes: primary teaching materials, including the original preparation and the revision of casebooks, supplements, and problems; complementary teaching materials, for example, to provide insight into an existing situation, to discuss an anticipated problem, or to present solutions to a contemporary difficulty; explorations of developing areas of the law, whether in the context of pure “law” or by the employment of information and insights from other disciplines. Faculty research commitment reflected three intertwined themes. First, instruction in the “old line” areas of the law, those of direct concern to the practicing lawyer, should remain current, requiring continuing research and updating of instructional materials. Second, facilitation of better international relations should involve an expanding concept of international law, not only by analysis of the formal relations between sovereign states but also by research into the areas of international organizations, institutions for resolving international friction, international environmental problems, and the control of nuclear energy. Third, exploration of the contributions to law that might be made by other disciplines should include understanding and using research techniques employed in such disciplines.

In domestic law, faculty publications from 1966 through 1971 dealt with particular aspects of the following thirty general sub-

(1971).

100. The Dean would have noted at least the following: R. CRAMTON, JUDICIAL REVIEW OF CIVIL SERVICE DETERMINATIONS: A TENTATIVE REPORT FOR THE COMMITTEE ON JUDICIAL REVIEW OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES (1970); R. CUNNINGHAM, CONTROL OF HIGHWAY ADVERTISING SIGNS: SOME LEGAL PROBLEMS (1971); D. KAHN, FEDERAL TAXATION OF ESTATES, GIFTS, AND TRUSTS (1970).
jects: administrative law, antitrust law, automobile injuries, bankruptcy, civil rights, constitutional law, contracts, copyright law, corporations, credit and the law.


criminal law and procedure, estate planning, family law, insurance, labor law, legal education, legal history, local


114. E.g., George, The Team Approach to Family Law Teaching, 1 FAM. L.Q. 64 (1967).


118. E.g., Brown, A Jeffersonian's Recommendations for a Lawyer's Education: 1802, 13 AM. J. LEGAL HIST. 139 (1969); Brown, The Bar on a Frontier: Wayne County, 1796-1836, 14 AM. J. LEGAL HIST. 136 (1970); Brown, Two Courthouses on Main Street: Waukesha County, Wisconsin 1846-1959, 15 AM. J. LEGAL HIST. (1971); J.J. White,
government, natural resources, patents, practice and procedure, practice of law, public utilities, real property, reformation, restitution, securities, taxation, torts.


121. E.g., Choate, Invention and Unobviousness—"After Thoughts"—Reliance on Features and Advantages Undisclosed at Original Filing, 49 J. Pat. Off. Soc'y 619 (1967).


wills, estates, and probate.\textsuperscript{131}

In the area of international legal studies, contributions to legal literature were made in comparative law\textsuperscript{132} and international law.\textsuperscript{133} Although fewer in number than publications in areas related to course offerings, publications appeared in areas that can be roughly classified as the law’s “new frontiers”: children and the law,\textsuperscript{134} ethics and the law,\textsuperscript{135} information retrieval,\textsuperscript{136} law and economics,\textsuperscript{137} law and medicine,\textsuperscript{138} legal aid,\textsuperscript{139} legal philoso-


\textsuperscript{137} E.g., Lozowick, Steiner & Miller, Law and Quantitative Multivariate Analysis: An Encounter, 66 Mich. L. Rev. 1641 (1968).


\textsuperscript{139} E.g., J.J. White, Ann Arbor and Legal Aid, 46 Mich. St. B.J., Jan. 1967, at 23.
phy, logic and the law, and the United States Post Office.

To anyone unaware of the societal pressures swirling around higher education in general and professional education in particular, the massive list of contributions to legal literature during Allen’s tenure as Dean from 1966-1971 would suggest a tranquil setting for the pursuit of rigorous scholarship. Endemic to any educational institution are student assertions that research productivity, rather than teaching skills, forms the basis for appointment and promotion, to the presumed detriment of students. These declarations multiplied in number and shrillness during the late 1960’s. Allen had been aware of the ferment and had sought wherever possible to defuse opposition to legal scholarship.

In 1971, St. Antoine succeeded Allen as Dean. After the turbulence of the 1960’s, legal education came under attack from several quarters during the 1970’s. St. Antoine, asserting that analysis, thinking, and contemplation form the basis of the law and legal education, reaffirmed the need for excellence in both teaching and research. He emphasized the conjunction of theoretical and practical training in producing competent attorneys. A “major legal thinker is not only a teacher for the students in his classroom; through his writings and speeches, he is also a teacher for the whole profession, and occasionally for the whole society.”


143. Reformers argued for courses and programs with greater social relevance. Some states adopted curricular requirements for admission to the bar. Many practitioners favored greater emphasis on the practical skills and knowledge used daily by attorneys.

144. University of Michigan Law School Report to the President of the University for the Year 1971-72, at 2-3.
In his 1977 report to the president, St. Antoine emphasized faculty teaching, scholarship, and service to state and nation. The appointments process reflected the concern for teaching. The long tradition of research flourished. For example, several multi-volume definitive treatises were produced in whole or in part at Michigan during the decade. Faculty members were honored with prestigious lectureships in law and related disciplines. Several casebooks were prepared or revised. Indeed, the Law School may have had the unique distinction of having four faculty members with three different casebooks to their credit. With regard to public service, faculty continued to hold government appointments, to participate actively in law reform efforts and development of uniform state laws, and to hold important positions in the Michigan State Bar Association and the Association of American Law Schools.

While St. Antoine served as Dean, from 1971 to 1977, contributors to legal literature were active in major areas of American law, international and comparative law, and new frontiers of the


147. E.g., Assistant Attorney General in charge of the Antitrust Division (Thomas E. Kauper) and attorney in the Office of Legal Counsel (Roger Cramton); membership on the Michigan Administrative Law Commission (William J. Pierce) and Chair of the Michigan Governor’s Workmen’s Compensation Advisory Commission (Theodore St. Antoine); Chair of a city government committee to investigate investments (L. Hart Wright) and the City Building Authority (Elizabeth Brown).

148. For example, Jerold Israel assisted in drafting the Michigan proposed criminal code, Paul Kauper the corporation code, Joseph Sax one of the environmental protection laws, Alfred F. Conard the no-fault automobile accident liability law, and Russell Smith the public employee relations law.

149. Since 1977, William J. Pierce has served as Executive Director of the Commissioners on Uniform State Laws.

150. Francis A. Allen and Alfred F. Conard have served as presidents of the Association of American Law Schools. Among those holding significant posts in the Michigan State Bar Association are Olin Browder, Edward H. Cooper, Jerold Israel, John W. Reed, and Theodore St. Antoine.
law. Publications in domestic law, closely tied to course offerings, fall under twenty-eight separate headings: administration of justice,\textsuperscript{151} administrative law,\textsuperscript{152} air law,\textsuperscript{153} antitrust,\textsuperscript{154} bankruptcy,\textsuperscript{155} civil rights,\textsuperscript{156} commercial transactions,\textsuperscript{157} constitutional law,\textsuperscript{158} contracts,\textsuperscript{159} corporations,\textsuperscript{160} criminal law and pro-


\textsuperscript{158} E.g., P. KAUPER, \textit{THE HIGHER LAW AND THE RIGHTS OF MAN IN A REVOLUTIONARY
cedure, damages, evidence, family law, labor law,


162. E.g., Reed, Trends in the Law of Damages, 3 LITIGATION, Fall 1976, at 8.


164. E.g., Donahue, Comparative Reflections on the "New Matrimonial Jurisprudence" of the Roman Catholic Church, 75 MICH. L. REV. 994 (1977).

legal biography, legal education, legal history, natural resources, practice and procedure, practice of law, real


property, regulated industries, taxation, torts, trusts, wills, estates, and probate, and workmen's compensation.

Contributions to international legal studies, under the headings of comparative law and international law, show the

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179. E.g., Bolgar, The Contract of Adhesion: A Comparison of Theory and Practice,
School's continued commitment to research and writing.

Publications concerning the "new frontiers" of the law, while smaller in number than their counterparts dealing with domestic law, are impressive for their breadth of interest: atoms and the law,181 children and the law,182 economics and the law,183 ethics and the law,184 law and medicine,185 law and politics,186 law and social science,187 legal philosophy,188 logic and the law,189 mental


181. E.g., Cramton, A Comment on Trial-Type Hearing in Nuclear Power Plant Siting, 58 VA. L. REV. 585 (1972).


188. E.g., F. Allen, Mr. Justice Holmes and "The Life of the Mind," 52 B.U.L. REV.
illness and the law,\textsuperscript{180} and science and the law.\textsuperscript{191}

In 1977, Terrance Sandalow succeeded Theodore St. Antoine as Dean. Sandalow still serves in that capacity. Faculty research interests have continued to range broadly; contributions to legal literature parallel this broad range of interests and demonstrate the vitality of faculty scholarship.

Between July 1, 1977 and December 31, 1983 a steady stream of contributions to legal literature emanated from the Law School. Again, the greatest number was associated more or less directly with domestic law, publications appearing in the following twenty-five fields: antitrust,\textsuperscript{192} bankruptcy,\textsuperscript{193} civil rights,\textsuperscript{194}

\begin{itemize}
\item 190. \textit{E.g.}, Andelman & Chambers, \textit{Effective Counsel for Persons Facing Civil Commitment: A Survey, a Polemic, and a Proposal}, 45 \textsc{Miss. L.J.} 143 (1974); Chambers, \textit{Alternatives to Civil Commitment of the Mentally Ill: Practical Guides and Constitutional Imperatives}, 70 \textsc{Mich. L. Rev.} 1107 (1972); Watson, \textit{Mental Abnormality}, 27 \textsc{Va. L. Week}, Oct. 25, 1974, at 137.
\item 191. \textit{E.g.}, Final Report, supra note 42; Martin, \textit{The Proposed "Science Court"}, 75 \textsc{Mich. L. Rev.} 1058 (1977).
commercial transactions,195 conflict of laws,196 constitutional law,197 contracts,198 corporations,199 criminal law and proce-


198. E.g., J.J. White, Contract Law in Modern Commercial Transactions, an Artifact of Twentieth Century Business?, 22 WASHBURN L.J. 1 (1982).

199. E.g., Conard, Amendments of Model Business Corporation Act Affecting Dissenters’ Rights (Sections 73, 74, 80, and 81), 33 BUS. LAW. 2587 (1978); Conard, Changes in Model Business Corporation Act Affecting Dissenters’ Rights, 32 BUS. LAW. 1855 (1977); Conard, Response: The Meaning of Corporate Social Responsibility: Variations on a Theme of Edwin M. Epstein, 30 HASTINGS L.J. 1321 (1979); Conard, Reflections on Public Interest Directors, 75 MICH. L. REV. 941 (1977).


202. E.g., Vining, Justice and the Bureaucratization of Appellate Courts, 2 WINDSOR
biography, legal education, legal history, legislation, natural resources, practice and procedure, property, pub-

Y.B. ACCESS JUST. 3 (1982).


209. E.g., Lempert, A Right to Every Woman's Evidence, 66 IOWA L. REV. 725 (1981); Lempert, Trial Type Ceremonies and Defendant Behavior, 1 LAW & HUM. BEHAV. 343 (1977); Lempert, More Tales of Two Courts: Exploring Changes in the Dispute Settlement Functions of Trial Courts, 13 LAW & SOC'Y REV. 91 (1978); Lempert, Strategies of Research Design in the Legal Impact Study, 1 LAW & SOC'Y REV. 111 (1976); Lempert, Modeling Relevance, 75 MICH. L. REV. 1021 (1977); Martin, Restatement (Second) of Judgments: An Overview, 66 CORNELL L. REV. 404 (1981); Martin, Personal Jurisdiction and Choice of Law, 78 MICH. L. REV. 872 (1980); Reed, Editor's Corner, 18 INT'L SOC'Y BARRISTERS Q. 315 (1983); Reed, The Future of Evidence Law or, Some Prophecies About Proof, 12 INT'L SOC'Y BARRISTERS Q. 323 (1977); Reed, Light-Hearted Thoughts about Discovery Reform, 3 REV. LIT. 215 (1982).

210. E.g., Sax, Some Thoughts on the Decline of Private Property, 48 WASH. L. REV. 374
lic law, real property, regulated industries, taxation, torts, wills, estates, and probate.

In the area of international legal studies, William W. Bishop, Jr., John H. Jackson, and Eric Stein continued their contributions in the fields of comparative law and international law.

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Within the “new frontiers” category, publications appeared in the following fields: children and the law, consumer law, ethics and the law, language and the law, law and economics, law and social science, legal philosophy, legal scholarship, psychiatry for lawyers, and science and the law.


224. E.g., Conard, Overdoing Civil Justice, 4 DET. C. L. Rev. 1111 (1983); Lempert, From the Editor, 17 Law & Soc’y Rev. 233, 401, 541 (1983); Lempert, From the New Editor, 17 Law & Soc’y Rev. 3 (1983).


227. E.g., A. Watson, PSYCHIATRY FOR LAWYERS (1978); Malmquist, Roth & Watson, Evaluating Competency to Stand Trial, 3 Am. College Psychiatry Update, No. 4, 1983,
During calendar 1984, in the area of domestic law, there were publications in the fields of antitrust, bankruptcy, constitutional law, corporations, criminal law and procedure, labor law, legal biography, legal education, natural resources, negotiation, practice and procedure, real property, restitution, securities, taxation, torts, wills at 1; Watson, On the Preparation and Use of Psychiatric Expert Testimony: Some Suggestions in an Ongoing Controversy, 6 AM. ACAD. PSYCHIATRY & L. BULL. 226 (1978).


243. E.g., Kahn, Comments on Tax Neutrality Between Equity Capital and Debt, 30
and estates and probate. International legal studies—as before—had publications in comparative law and international law. Within the “new frontiers” group there were contributions dealing with economics and the law, judicial administration, law and psychiatry, law and social science, and legal philosophy. Considering these contributions to legal literature from another viewpoint, thirty-one faculty members published one or more articles, books, pocket parts for books, casebooks, supplements to casebooks, reports to federal agencies, book reviews, notes, and comments.

**CONCLUSION**

In 1977, St. Antoine, in his capacity as Dean, noted that “the bibliography of the Michigan faculty is its own best testimonial . . . .” The statement remains accurate. Yet the law faculty bibliography for the past century and a quarter testifies to more than the capabilities and scholarship of the individual writers.


245. E.g., L. WAGGONER, MICHIGAN WILL MANUAL (Supp. 1984).


This list of titles reflects a shift in the pattern of subjects chosen for scholarship—individual research decisions that reflect, on occasion unwittingly, surrounding societal forces. Further, the bibliography demonstrates the genesis and evolution of the perception of the relationship between research and instruction in law.

During the School’s early decades, then known officially as the Law Department, publications tended to be expository and descriptive, appearing in the form of textbooks. The publications reflected the didactic approach to law school teaching, employed concurrently with the widely held belief that the law was relatively static, complete in itself and separate from society. The subjects chosen often grew out of teaching assignments; the books produced were bought by students not only for coursework but also as manuals for practitioners’ law libraries.

As methods of instruction relied less on lectures and textbooks and more on discussion of cases, analyses of principles appeared with greater frequency throughout the law faculty’s publications. Even so, the subject matter of faculty publications typically—although not uniformly—remained closely tied to a professor’s course offerings. Professors experienced no pressure to engage in research or writing. Yet, despite the total absence of incentives for productive research, the output by Floyd Mechem (1892-1903), Edson Sunderland254 (1904-1944), and Joseph Drake (1906-1930) was remarkably high.

Bates, who became Dean in 1910, altered the faculty’s attitude toward legal research. He persisted in believing that legal research was a prerequisite to effective legal instruction, despite a few faculty members’ reluctance. The breadth and richness of the faculty’s continuing contributions illustrate his success.

Accepting research as a prerequisite to effective instruction had long-run consequences, beginning with increasingly enriched instructional materials. Legal analysis, demanded by the case method, received greater stress. Wider knowledge in individual areas of course offerings brought a willingness to experiment with other teaching techniques, such as the use of carefully designed problems or seminars with required term papers.255

254. Sunderland’s contributions to legal literature did not end with his official retirement in 1944. See E. Brown, supra note 1, at 892-93 for illustrations of his post-1944 publications.

255. Earlier in the School’s history, each graduating senior was obliged to present a so-called “senior paper.” Those that have survived, deposited at the University of Michigan’s Historical Collections, evidence a remarkable facility in presenting certain basic premises with a number of supporting citations. Because comparison or analysis are conspicuously absent from these papers, they follow the pattern of lecture notes taken during the same period.
Non-legal materials began to be incorporated into casebooks. The faculty began to recognize the value to law students of an acquaintance with other disciplines, resulting in a broader range of courses. All these developments were reflected in the subjects that faculty members selected for individual research and writing, in casebooks or other instructional materials, articles, games, treatises, and book reviews.

A definitive bibliography of Michigan's contributions to legal literature is beyond the scope of this study. However, the following table illustrates the continuity of subjects chosen for writing and the thrust, during the past quarter of a century, into newer areas, the "new frontiers." To facilitate use, references to the subjects of the several publications, arranged in alphabetical order, are presented under seven different time periods: the School's first century, 1859-1959, 1960-1965 (Dean, Allan F. Smith), 1965-1966 (acting Dean, Charles Joiner), 1966-1971 (Dean, Francis A. Allen), 1971-1977 (Dean, Theodore St. Antoine), 1977-1984 (the first seven years of Terrance Sandalow's deanship).

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For twenty-nine areas of law, publications appeared in only a single time span, nineteen of these during the School’s first century. For the other areas, publications have appeared in two or more time periods. While the subjects chosen for contributions to legal literature vary widely across these periods, they demonstrate the faculty’s continuing attention to prime areas of domestic law: criminal law and procedure, contracts and business relationships, practice and procedure, taxation, and torts. International legal studies have also received continuous attention. At the same time, the faculty has never hesitated to select new and developing areas for research and writing.

Continuity and change have affected the nature and scope of Michigan’s scholarly contributions to legal literature during the past century and a quarter, reflecting the development of the law and legal institutions during that time. Holmes’s statement that the “life of the law is not logic but experience” may be paraphrased: experience not logic influences the choices of subjects by the individuals contributing to legal literature. Their work constitutes the intellectual history of the University of Michigan Law School.