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STATE WIDE STUDIES IN THE ADMINISTRATION OF JUSTICE*

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Toward the close of the sixteenth century there occurred an exceeding important event in the history of human thought. A young man still in his twenties, by the name of Galileo Galilei, carried to the top of the Leaning Tower of Pisa a large cannon ball and a smaller one and dropped them simultaneously over the edge of the tower. They reached the ground simultaneously or so nearly so that the difference was negligible. From the astonished and antagonistic crowd which had gathered, angry mutterings arose and Galileo was charged with sorcery. This dissatisfaction of the onlookers had several sources. One was that the result violated the "common sense" conclusion that a heavy weight must necessarily fall more rapidly than a lighter one—witness that a piece of paper flutters to the ground more slowly than a stone drops. This "common sense" view had been taken by Aristotle and had been treated as correct ever since. Now, to question the authority of Aristotle in the sixteenth century was scientific and philosophical heresy and not to be tolerated. And here we come to the deeper significance of the disagreement between Galileo and his contemporaries. His idea was that the right way to find out the law governing the fall of bodies was to observe how bodies fall under different circumstances, whereas most of his contemporaries thought that the right way was to read authoritative works of Greek philosophers, more particularly those of Aristotle. Now this difference is a fundamental one, and marks the distinction between the modern scientist and those who preceded him. We are today, of course, all familiar with the idea which underlay Galileo's simple experiment, namely, that the way to find out how things act is to observe them in action rather than to speculate about them or to rely blindly upon so-called "common sense" or the writings of supposed authorities. Perhaps, however, not all of us fully appreciate how much a part of modern science is in conflict with the conclusions of so-called "common sense." Indeed, it

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is probable that only the experts in the fields of physics, chemistry and astronomy fully realize this conflict between the everyday view of the ordinary man and the technical outlook of modern science. "Common sense" tells man that the earth is flat; science that it is round; "common sense" tells him that the earth is at rest and the sun moves; modern science, that both statements are true for some purposes but not for others. "Common sense" tells him that this floor on which I am standing is solid; modern science, that it is largely empty space, filled by small particles moving about with extraordinary velocity, and that it is the impact of these particles on the soles of his shoes which keeps him from falling.

An eminent scientist recently put the matter as follows:

"The learned physicist and the man in the street were standing together on the threshold about to enter a room.

"The man in the street moved forward without trouble, planted his foot on a solid unyielding plank at rest before him, and entered.

"The physicist was faced with an intricate problem. To make any movement he must shove against the atmosphere, which presses with a force of fourteen pounds on every square inch of his body. He must land on a plank travelling at twenty miles a second round the sun—a fraction of a second earlier or later the plank would be miles away from the chosen spot. He must do this whilst hanging from a round planet head outward into space, and with a wind of ether blowing at no one knows how many miles a second through every interstice of his body. He reflects too that the plank is not what it appears to be—a continuous support for his weight. The plank is mostly emptiness; very sparsely scattered in that emptiness are myriads of electric charges dashing about at great speeds but occupying at any moment less than a billionth part of the volume which the plank seems to fill continuously. It is like stepping on a swarm of flies. Will he not slip through? No, if he makes the venture, he falls for an instant till an electron hits him and gives him a boost up again; he falls again, and is knocked upwards by another electron; and so on. The net result is that he neither slips through the swarm nor is bombarded up to the ceiling, but is kept about steady in this shuttlecock fashion. Or rather, it is not certain but highly probable that he remains steady; and if, unfortunately, he should sink through the floor or hit the ceiling, the occurrence would not be a violation of the laws

of nature but a rare coincidence." (From "Science, Religion and Reality," by A. S. Eddington.)

It is an interesting fact that only recently have we begun to attempt to apply the methods and point of view of modern science to the study of man himself and of his relation to his fellow-men. Only within the past generation has psychology set itself up as an experimental science and begun to divorce itself from speculative philosophy, and only still more recently have real attempts been made to apply a truly scientific method to the study of man in his relation to his fellowmen. So recent, indeed, is the latter development that even today the words sociology or social science are regarded by many laymen as merely new-fangled names for Socialism or something worse —a conclusion perhaps justified by the conduct of many who call themselves sociologists or social scientists but who in truth persist in formulating speculative theories without adequate supporting facts.

This tendency of the human mind to rely upon "fundamental principles," to assert the existence of fixed and immutable principles which have somehow been discovered by human beings, upon the basis of which by mere reasoning man can reach solutions of his problems, seems to be the greater the more complex the situation. If the problem is one of physical science or engineering—say the ventilation of a new type of tunnel under the Hudson River—the experts realize that, the problem being novel, additional facts may need to be gathered, and so perhaps they build a small experimental tunnel and observe how an experimental system of ventilation works. In other words, they rely upon the scientific method of trial and error. If, however, the problem is one in economics, government, or law, where the number and complexity of the factors to be considered are almost infinitely greater, the tendency of the average man is to fall back upon his stock of "fundamental principles," and to try to solve his problems by mere reasoning. It is perhaps for this reason more than any other that only within the most recent years it has been suggested that it may well be that the same methods of careful study and observation of actual events which have been so fruitful in other fields will yield worthwhile results if applied to our legal system. In what follows we shall attempt to discover some of the things that can be said in support of such a proposition. If we assume—

as I think we must—that human law is a device which society uses to regulate human conduct, to promote those types of conduct deemed desirable and to prevent those deemed undesirable, it would seem well worth our while to make an effort to find out how much of our legal system really does accomplish the purpose for which it is supposed to exist. Obviously, this will be no easy task and one which will never be finished, for in a sense we shall be studying a moving picture filled with innumerable details. Moreover, we shall be dealing with matters which frequently touch the quick of human emotion and about which it is therefore difficult to think or write with the detached and dispassionate attitude of the physical scientist.

Nevertheless, in spite of the difficulties in the way, the authorities of The Johns Hopkins University have concluded that the attempt shall be made, and the Institute of Law of the Johns Hopkins has come into being. Some of the considerations which have led to this action may be stated briefly as follows: A large part of our law is rooted in the conditions which existed in a far simpler civilization. Owing to the introduction of modern power machinery, the aspect of society has greatly changed, indeed, is still changing, with great rapidity. In recent years there has taken place—or perhaps we should say, is still taking place—what may fairly be called a second industrial revolution, involving not merely mass production but also mass distribution of the products of industry. Modern methods of transportation and communication have, for the first time in history, mobilized the peoples of the world as well as brought about the great concentration of human beings in our huge cities. In America these developments have produced the "melting pot." The children of the immigrant go to our public schools and there acquire habits, customs, and moral ideals at variance with those which they find at home. In this way parental authority is weakened, and with it the influence of the church. For these reasons, and many others, the family as the fundamental social unit is undergoing great changes before our eyes. Confronted by these and many other radical changes in social and economic organization, our courts are more or less consciously or unconsciously struggling to adapt to the needs of the urban, industrial civilization of today a judicial organization and rules of law which were evolved to fit a civilization chiefly rural and agricultural. There results necessarily not merely uncertainty in the law and conflict of decision, but also many

failures to meet the needs of present day society, needs which therefore call forth much ill-considered legislation.

In the belief that the application of methods similar to those which scientists in other fields have so fruitfully used will yield a rich harvest in the legal field, the members of the Faculty of the Institute have attempted to plan the work of the Institute for the immediate future. They have assumed that the fundamental purpose of the Institute is to study as scientifically as may be law in action; to seek to determine whether or not our legal system is accomplishing the purposes for which it exists, and to the extent that the conclusion is that it is not, to ascertain both what the reasons for the failure are and what may be done to remedy the resulting evils. Notice that a fundamental assumption is—and here recall Galileo's experiment—that the only way to find out what anything does is to observe it in action and not to read supposedly authoritative books about it, or to attempt by reasoning to deduce it from fundamental principles assumed to be fixed and given. The consequences of this assumption are that only a small part of the work of the staff of the Institute will be with books in libraries; by far the larger part will be concerned with the difficult, time-consuming, and expensive task of gathering and interpreting the facts concerning the operation of our legal system.

All this is very general. Let us try to make the matter clearer by dealing more concretely with the work now under way at the Institute. Naturally I can do little more than outline some of its main features in the time at my disposal.

When the Faculty of the Institute looked over the broad field which confronted them, they were at once impressed with the fact that in not a single state were there adequate records of what goes on in the courts. How many cases were annually passed upon in each of the courts of Maryland? Of other states? What kinds of cases were these? Which kinds were causing that congestion of litigation about which we hear so much complaint? How long on the average did it take for each kind of case to come to a conclusion? How long for cases tried by juries as compared with cases in which juries were waived in favor of court trial? In how many cases did juries disagree? How many steps in each case did the attorney's take? To what extent did technicalities of procedure operate to delay and obstruct justice? And so on and so on. Adequate figures were lacking. Reformers of all kinds were advocating all kinds of

remedies for supposed ills. No one knew the facts. Not long ago the National Economic League took a nation-wide vote on the relative importance of the problems confronting the American people. According to this vote the paramount problem confronting us in this country today is the administration of justice. Next in order came prohibition, lawlessness, crime, and law enforcement—all phases of the same problem; with world peace, farm relief, and taxation following in descending order. This analysis of our contemporary ills is not reported here as being sound, but merely with a view to pointing out that adequate judicial records and statistics are lacking by means of which the correctness of the diagnosis can be tested. The Institute therefore approached its problem in the spirit of the remark of Mr. Justice Holmes, to the effect "most even of the enlightened reformers that I hear or read seem to me . . . to become rhetorical just when I want figures."

How get the figures—that was the problem, or better one of the problems, confronting the Institute. It was not an official body; it had no power to invade the offices of clerks of court and demand the collection of the needed data. At the critical moment there appeared in Baltimore the Chairman of the Judicial Council of one of our leading states—Ohio. As you doubtless all know, a growing realization of the need for improving the administration of justice has led to the establishment of Judicial Councils in over one-third of the States. These councils are charged with the duty of studying the judicial system of the states, their organization, operation, and effects, and of recommending to the legislatures needed improvements. These Judicial Councils, as you doubtless also know, are composed of members of the Bench and Bar whose time is fully occupied by their daily work as judges and practicing lawyers. They thus lack the time and energy needed for the kind of work which must be done if dependable facts are to be gathered and interpreted. In addition, in most of the states they are not provided with the funds needed to employ a staff which might act as a fact-finding agency for them. The need for just such a fact-finding agency was obvious. It seemed clear to the Faculty of the Institute that here was precisely the opportunity for which they were looking, and accordingly they welcomed the suggestion of the Ohio Judicial Council that they cooperate with that Council in its work. In this way the Institute became for the time being the fact-finding or research agency of the

Judicial Council of Ohio. A little later the Governor of Maryland and the President of its Judicial Council made a similar suggestion for a study in that state. This invitation the Institute also eagerly accepted, as, if its studies were to be really useful, it would be necessary to have comparable figures from two, or preferably, several states. Lack of funds has, alas, prevented the Institute from responding to tentative suggestions from other states of cooperation with the Councils in those states, as is desirable, indeed almost necessary, if worth while figures are to be secured. It is hoped that with the improvement in business conditions, which is perhaps even now beginning, these further steps in the development of the Institute's program can be taken. In the meantime it is carrying forward, so far as it can with the limited funds at its disposal, state wide studies in the administration of justice in Ohio and Maryland. Curiously enough this more or less accidental selection of states for study has given us two states which differ markedly, both in economic and social conditions and in the systems of legal procedure. For example, Ohio has code procedure, with its so-called fusion of common law and equity; Maryland has substantially common law procedure, with (in Baltimore) separate courts of common law and equity, or (in the counties of Maryland) with law and equity cases kept distinct, using substantially common law pleading on the law side and equity pleading in equity cases.

First, as to the administrative organization of these studies: in each state the direct administration of the study is carried on by a small number of directors. In Ohio this consists of four persons: the Chairman of the Judicial Council, who is also Chief Justice of the State; a representative of the State Bar Association, and two members of the Faculty of the Institute. In Maryland, the directors are two in number: the President of the Judicial Council, who again is also Chief Justice and one member of the Faculty of the Institute. In both states the Bar Associations have appointed cooperating committees. In both states steps have been taken to enlist the cooperation of the faculties of the local schools of law, departments of government and other fields of social science, as well as those in charge of research organizations of all kinds in fields related to law and its administration.

The next problem which confronted us was, of course, the selection of the points of attack. We were planning a compre-

hensive, thoroughgoing, state wide study in each state, to occupy from three to five years. What facts should we gather first, and how should we gather them? Our thinking centered about the lack of adequate records and statistics of what goes on in court. These must first be supplied; and—we concluded—some plan must be worked out whereby a permanent system of such records and statistics could be offered for adoption. Obviously the clerks of the various courts occupy in this field the strategic position. Fortunately in Ohio, in which we first began our work, the Statute creating the Judicial Council specifically provides that the clerks of the various courts shall give the Judicial Council such information as the Council may call for. We therefore prepared what we call data sheets, one of which was to be filled out by the clerk for each case as it went through the court in question. You will find samples of these data sheets in the pamphlets which have been distributed. (Of course the actual sheets are much larger than the reproductions of them in the pamphlet.) In Ohio we began our study with civil cases in the courts of general original jurisdiction—the Courts of Common Pleas—excluding from our first sheet the divorce and alimony cases, as requiring separate treatment. The study began January 2d, 1930. As each case was filed, the clerk started a sheet, completing it as the case came to a conclusion in that court, and sending in all completed blanks on the first of every month. This first series covers all cases filed for the first six months of last year. Beginning on July 1st similar sheets were begun for all divorce and alimony cases, and all criminal cases, instituted during the second six months of the year.

The Maryland study was started six months later, and is following similar lines. In both states studies have also been started of the work of other courts, such as the municipal courts of Columbus and Cleveland; of the Peoples Court of Baltimore City (the small claims court), of the magistrates courts, of the Supreme Court of Ohio, etc., etc.

Most persons who see these data sheets think them much more formidable than they really are. One supposedly intelligent critic reported that we were "asking hundreds of questions about each case." Nothing could be farther from the truth. If you will examine one of the sheets you will see that the appearance of complexity is due to the fact that we have written down all possible answers to the questions we are asking of the clerks. For example, on the Maryland Common Law blank

under Origin of Case—one question, be it noted—are listed ten possible answers, only one of which can be given. All the clerk does in answering is to check with a cross the appropriate answer. The bank actually therefore asks about twenty or twenty-five questions about each case.

Can the clerks fill these blanks out? We were told they could not, even if willing. Our answer has been: We do not know. We are going to find out. Many of the items we were reasonably sure every clerk could answer if he would; others were more doubtful. Now that a large number of blanks are in we are having field workers re-check samples in each county, and where the margin of error is too large, all the blanks in that county. One of our first investigations, therefore, has to do with what kinds of data clerks of court in Ohio and Maryland can and will keep accurately—a very important item of information if we are to look forward to the introduction of an improved and adequate system of judicial records and statistics. At the same time we are obtaining data which are going to enable us to make, we hope, the first state wide analysis ever made in this country of the current operations of a judicial system as a whole.

If you will glance once more at one of these data sheets, you will see that all the items are numbered. These numbers correspond to columns on a statistical card, and to the numbers in the columns. After the sheets have been checked for accuracy, the data on them are transferred to the statistical cards, by punching in each column the appropriate number. Then by means of automatic sorting machines an accurate count can be made of the number of answers of each kind to each question asked. In addition, a basis is furnished for careful studies of particular problems, as by means of the cards it is possible to determine the exact location of every case of a certain kind for the period covered by the study. For example: In Maryland a large percentage of the cases at common law are "confession" cases, judgment being entered by the clerk of court on the basis of a "judgment note." There has been considerable discussion at times of this system and of possible abuses, as well as argument —even holdings in some states—that the notes violate the usury law. No study of the actual operation of the system has, so far as I know, ever been made. Our data sheets will, we expect, enable the first steps in such a study to be made cheaply and expeditiously. The names of parties and attorneys, docket num-

bers, county where judgment was entered, etc., in all such cases can be ascertained with little labor; also the amount of the judgment. Field workers with relatively small expense will be able to find out to what extent these judgments are paid; or if not paid, enforced by execution. Other data could be obtained. I am merely suggesting, rather than completely outlining, the kind of study possible.

Merely to gather these data sheets, code them and transfer them to the statistical cards, requires a large expenditure of time and money. In Ohio alone annually more than half a million cases are tried, covering criminal cases, divorce cases, business cases, juvenile cases, etc. In sampling these, we hope adequately we shall secure perhaps 30,000 business cases, 11,000 divorce cases, 12,000 criminal cases, 25,000 cases in the municipal courts, 3,000 in the Appellate Courts, 1,300 in the Supreme Court, without mentioning probate courts, justices of the peace, and the administrative commissions. If to this you add the more concrete studies of individual problems and of the social and economic situations out of which the litigation arises, you gain some idea of the size of the task we have undertaken.

It is our hope to get, first of all, masses of objective data from each state, in such form that the data from one state can be compared with those in the other—or others if later we are able to work in still other jurisdictions. Secondly, we hope these data will be sufficiently representative of the underlying situations so that significant and important conclusions can be reached as to the working of the legal system in these states. Thirdly, we hope that we shall be able to interpret our figures so that their meaning will stand out, their significance appear. Figures in and of themselves do not mean anything; they merely fill columns in useless tables of statistics. I am frequently asked, what do you expect your figures to show? My answer is that I do not know. If I knew that a large part of our work would be done. In scientific work more often than not the scientist knows only at the end whether the facts he has collected have a meaning or significance, and if so, what it is. This is not to say that he collects facts entirely at random; certainly not. But often his choice follows what the man in the street calls a "hunch" and the philosopher "trained intuition." In a new field, such as that of the Institute perhaps "hunch" would be the better term.

It is our hope that during the coming year some of the first fruits of our labors will be available. In order to expedite this, in Maryland we have conducted our divorce study entirely by means of field workers, which enable us to go back and take the year 1929, i. e., to collect the facts about cases already closed. The data for Baltimore City are all in and are being analyzed; those from the counties will soon be in. We have also taken by means of field workers three samples, two each of one month, and one of six weeks, of the small claims court (the Peoples Court) in Baltimore City—the court which takes the place of the justices of the peace in civil litigation. These data are now being coded and transferred to the statistical cards, and in the fall we hope to find out what we can make of our figures. We have completed tentative drafts of studies of the expenditures of public money in the administration of justice in both Ohio and Maryland. These drafts are being submitted to advisory experts—accountants, statisticians, and others—for criticism and suggestion. They will then be revised and published.

We have under way a complete study of the work of the Public Utility Commission of Maryland, and a similar study in Ohio; and other concrete studies which I have not time to mention. We propose to take time enough in all these to make as sure as is humanly possible both that our data are reliable and that they at least allow of the interpretation we place upon them. For this reason it is to be expected that the output of the Institute in its early years will not be large. We believe we have had enough of superficial surveys and suggestions for reform. We hope not to add to their number.

A year ago, speaking before the Maryland Bar Association, my colleague, Dr. Leon C. Marshall, thus summed up the objectives of these state wide studies:

"1. To study the trends of litigation and to ascertain its human causes and effects.

"2. To study the machinery and the functioning of the various agencies and offices which directly and indirectly have to do with the administration of law.

"3. To learn reasons for delays, expense and uncertainty in litigation.

"4. To institute a permanent system of judicial records and statistics which will provide automatically information now secured after great labor.

"5. To detect the points at which changes in substantive law would contribute markedly to social justice.

"6. To do all this in close co-operation with the practical workers in the field and to turn the results over to practical administrators for utilization."

Before I close, may I add that the Institute is in no sense a reformatory body, nor does it intend to engage in propaganda. It does hope to be able to present from year to year scientific studies, setting forth what the staff of the Institute believes to be the facts relevant to the particular part of our legal system —or possibly of some foreign system—under investigation, and to indicate the bearing of these facts upon attempts to improve the administration of justice. We hope that the Judicial Councils and those who are charged with the duty of legislating or of recommending legislation may find these studies helpful in their attempts to improve our legal system.

In closing, let me bespeak your co-operation in the work of the Institute. If our efforts are to accomplish their purposes, we shall need constantly not only the sympathetic understanding but the active aid and support of those who are engaged from day to day in the administration of our law.