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A LETTER TO THE LAWYERS CLUB

By WILLIAM W. COOK*

THE scope and purposes of the law schools will in my opinion rapidly expand. And the first expansion will be the inauguration of legal research. You have led the way. You have the first and so far the only research professorship. Professor Sunderland has blazed the trail and is hewing a road through the wilderness. And I think he is laying out the right route.

The American Law Institute is doing invaluable work. It is formulating the nucleus of the law. To render this useful, annotations are needed. Already this is being done, each state by itself. Michigan took the lead and so the Institute calls those state annotations "The Michigan Plan." I have before me the annotations prepared by the Cornell Law Faculty on Contract Law, as formulated by the American Law Institute. These annotations are clear and complete and will be of great value to New York practitioners. Of course the work of the American Law Institute is fragmentary and does not as yet cover all departments of law, nor attempt to give the authorities and variations in the various States. But it is a great thing to have such a highly organized and choice selection of learned professors and experienced jurists to bring order out of chaos, even though they may not cover the whole field of the law. That will come later because what the bench, bar and law schools need is one set of books giving all of the law. Later your research department may wish to join with the American Law Institute in producing a complete and authoritative encyclopaedia of American Law, if the Institute cares to go that far.

The Johns Hopkins Law Institute, established in 1928, seems to be to train investigators of the social and economic phases of law. It is not a law school. Apparently it is a branch of sociology (whatever that may mean) and bears much the same relation to law that the so-called philosophy of history bears to history itself.

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However, any and all experiments in legal research are welcome. They can do no harm and may do much good. The spirit of legal research is abroad in the land and it is well.

But I wish to utter a word of warning. A few years ago it was the fashion to attack the Constitution, decry American historical characters, and undermine American ideas. The purpose was to change our institutions and social organization. The government was to have a free hand with less constitutional limitations, and the Supreme Court was to be shorn of its power. Due process of law and validity of contracts were to be weakened. Some of these theories crept into the law schools. That is no place for them. Our law has been built up by the centuries, based on a few fundamentals, such as individual liberty, private property, the family, and limitations on government. If it is proposed to enlarge the functions of government we are doing that rapidly enough already, and our method is the old Anglo-Saxon plan of experiment, compromise, a practical solution of practical problems as they arise, and a distrust of metaphysical theories. There are forces and influences enough criticising our institutions and jurisprudence without the legal profession joining in the attack. Radicalism is worse than ultra conservatism. The legal profession should avoid both.

The Lawyers Club at Ann Arbor has not stopped to discuss but has leaped headlong into action. No sooner was Professor Sunderland appointed Research Professor than the State itself requisitioned him to take the laboring oar in a statutory commission to consider procedure and formulate new methods. No one in the country is better qualified. I have read his address before the Bar Association of Lansing a few days ago and it shows what a tremendous field legal research covers and how that field has been neglected. His description of research in every department of life except law is brilliant. That address should be published as a comprehensive contribution to the subject.

The chief obstacle to legal research is lack of funds. The American Law Institute has money for only two or three years more, but I hope further funds may be obtained to continue its organization and work. The Johns Hopkins Law Institute has money for only five years. But assuming that the University of Michigan may have a large endowment fund for legal research, the

question will at once arise—what is legal research and in what directions should the work be pursued? Legal research is a new and in fact a very recent term. To my mind it means the study and statement of the law; also the study and statement of the influences which are changing or should change the law. All this involves

(1) A comprehensive statement of all of the law. That is a colossal and never ending undertaking. No wonder that the American Law Institute shied at it. And yet it is the only way of stating American jurisprudence. Some day it will be undertaken, the same as was done for England by Lord Halsbury. Heretofore we have left that work to Encyclopaedias and the results are not satisfactory. I discussed that in May, 1927, in the American Bar Association Journal and hence merely refer to it here.

(2) Study and advocacy (oral and printed) of improvement in criminal and civil procedure. This includes a comparison of procedure in the different states and foreign countries. Quick and sure justice has been a dream ever since Magna Charta. It is a very bad dream in the United States today.

(3) Legal articles, pamphlets and text books on important questions of the day, bringing to bear the jurisprudence and experiments of all the states.

(4) Commissions and their gradual absorption of minor legislative, executive and even judicial functions.

(5) Free confidential legal advice to judges, high and low, when requested in difficult cases. Practically all of the higher judges and many in the lower courts even now have secretaries to assist them in looking up the law in pending cases. And then there are legislative committees, the Attorney General and even the Governor himself. The assistance of a disinterested, learned, and highly intelligent research staff would be acceptable and appreciated. Many a judge would be glad to avail himself of such advice, if given willingly, cheerfully, confidentially, and without charge. This is new and capable of great development and will be very useful if (as is hoped) the judges go to Ann Arbor to work out difficult decisions at the new Legal Research Building, which will have ample research rooms for them with convenient access to the books. This means that a legal research staff may become a most useful agency

for effective co-operation with the courts. It will also bring the law schools into close contact with the courts.

(6) When we come to *investigations* of economic problems with a view to finding solutions there is a limit to such a wide field. The Yale Law School a few weeks ago announced that it will investigate the social and economic causes of business failures and the effects thereof and how to prevent them. This is highly commendable but can it be called *legal* research? To my mind legal research for the present at least might better be limited to the five fields mentioned above. Those are plenty broad enough to tax the time, study, resources and energies of the law schools, law professors, and the profession generally without sweeping out too far into the limitless domain of the other sciences. Moreover legislative committees, commissions and special investigations by all kinds of organizations are sometimes more competent to pass on economic ills and needed legislation than are law professors. In England a Royal Commission is appointed when some important economic problem arises and calls for a solution. In the United States we have Cabinet officers—Secretary of Commerce, Secretary of Labor and Secretary of Agriculture—to investigate and report. Germany has gone still farther and created an "Economic Council" to assist in grappling with economic problems. As Professor Brinkman of Heidelberg says, this Economic Council, "has up till now no analogy in constitutional law. Practically, it might be said that a parliamentary body like it, composed of delegates of the official Chambers and other representatives of agriculture, industry, commerce, the professions, and the consumers, and with legally rather limited rights of initiative and advice as to economic legislation, at best comes to what traditional political parliamentarism reaches in a less circumstantial way by its system of parliamentary committees, be they internal meetings of more or less specializing and expert members of the Legislature or external and possibly mixed commissions charged with the conduct of public enquiries."

He also says, "In different countries the separate powers of government, legislature, executive and judiciary, will probably have contributed their own very different parts to the solution of the problem, but when all has been said, it is quite possible that new governmental machinery will have to be devised to continue and

finish the process. So the leading part, played in America and elsewhere, by communal administration on the one and the law courts on the other hand may perhaps have to be supplemented by the creation or evolution of other instruments of a more general and less casual description. And some of these, I am convinced, will lie in the direction indicated by economic parliamentarism."

This is all very well but I place the fundamentals—individual liberty, private property, the family, and limitations on government—ahead of economics. The world is getting enough of economics without subjecting government to them. Economics already has too much instead of too little power. In fact, one of the great problems of today is how to control economics. Here the legal profession is invaluable and the research professor much needed. I have no patience with the idea that legal research shall undermine our Constitution, the Supreme Court, due process of law, and the prohibition against impairing the obligation of contracts. During the past ten years we have had too much of that kind of talk. Better no legal research at all than research for socialistic purposes. The bar is and should be conservative. Changes in governmental structure are certainly going on, especially in the creation of commissions and new departments of government but whether this is being done and will be done wisely depends chiefly on the legal profession and that in turn on the leadership and learning inculcated by the law schools.

Grave responsibilities rest on you. You soon will have to take the laboring oar. My idea is to organize the machinery, not merely for the present, but to turn out year by year law graduates who will furnish the leadership and learning required by this great country of ours.

Moses Coit Tyler, under whom I studied at the University, lamented that the legal profession absorbed many who otherwise might have been noted literary men. In one of his books he refers to us as "a worldly and stormy profession." He speaks of it as "a profession which, in America, has thus far been the receptacle and the tomb for much talent that under other conditions would have found a more congenial and a more illustrious employment in literature." I don't know about that. Professor Tyler was a brilliant literary artist but failed to feel the need of leaders of the people

and failed to see that the legal profession has furnished and must continue to furnish those leaders. I prefer the statement of De Tocqueville who said that in America the legal profession is an intellectual aristocracy. To my mind there are three great things for the law schools to accomplish: (1) to furnish leaders for this Republic; (2) to produce competent, honest lawyers; (3) to state American jurisprudence. Leadership I place ahead of everything. By leadership I mean character, force and broad views. First of these, please take notice, I put character.