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THE PRESENT AND THE FUTURE OF JURISPRUDENCE IN THE UNITED STATES

EDWARD JAMES WOODHOUSE*

Ignorance of Jurisprudence is one of the greatest weaknesses of this Nation. Jurisprudence is the Science of Law. All students of Jurisprudence are in as complete agreement on this general definition of their subject as they and all others using the terms are in disagreement and uncertainty in answering the next questions, namely, what is science and what is law. Workers in the Natural Sciences, especially in those known as the Experimental or Laboratory Sciences, have resented and protested the use of the term Social Sciences to designate History, Economics, Political Science or Government or Politics, Sociology and allied studies, and have insisted upon known laws, certain and susceptible of objective and mathematical proof, predictability, possibility of experimentation or other characteristics as necessary to a real science. Many followers of the Social Sciences have meekly yielded to this arrogant claim without examining its validity. It is very doubtful that such a narrow definition of the word "science" can be justified either from its derivation or from the usage of it by the majority of careful and well qualified persons speaking and writing in the English language. *Scientia* meant knowledge, and there seems no good reason for restricting its English derivative "science" to a narrow kind of knowledge. Very little of our human knowledge in any field is so certain and definite as to be undisputed by a large and respectable minority, so why should seekers for maximum approximations to the truth in any field be intolerant of the seekers in any other field merely because their methods happen to be different? Does not "scientific" by its derivation and by the best usage have reference more to honest search for the truth without prejudice and with an open mind rather than to any special details of method? At any rate, the Social Sciences are very generally so designated and will continue to be, and Jurisprudence is one of them.

Professor James W. Garner of the University of Illinois has very well said,¹ "For our purposes a science may be described as a fairly

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¹ Garner, *Introduction to Political Science*, 17.

unified mass of knowledge relating to a single subject, acquired by systematic observation, experience, or reason, the facts of which have been coordinated, systematized and classified. The scientific method of examining facts is not peculiar to one class of phenomena nor to one class of investigators; it is applicable to social as well as to physical phenomena, and we may safely reject the claim that the scientific frame of mind belongs exclusively to the physicist or the naturalist." Karl Pearson has said,² "The classification of facts, the recognition of their sequence and relative significance, is the function of science."

But what is the Law, of which Jurisprudence is the science? What is this subject about which we in Jurisprudence wish to acquire knowledge, to be classified, systematized, coördinated, unified into a science? One distinguished Law teacher has given this definition and explanation relating to Law,³ "A law is a rule concerning human conduct, established by those agents of an organized society who have legislative power. These agents may be a king, a council, a court, a legislature composed of a few representatives, or the entire mass of voters. When a rule of law has been reduced to words it is a statement of the legal effect of operative facts (operative fact: any fact the existence or occurrence of which will cause new legal relations between persons. . . . Operative facts have also been described as 'investitive,' 'constitutive,' 'causal,' and 'dispositive.' The 'extinguishment' of a legal relation is necessarily the creation of a new one.); that is, it (a rule of law reduced to words) is a statement that certain facts will normally be followed by certain immediate or remote consequences in the form of action or non-action by the judicial and executive agents of society. Whenever any such operative facts exist, the persons who will be affected by the stated consequences are said to have a legal relation each to the other. When we state that some particular legal relation exists, we are impliedly asserting the existence of certain facts, and we are expressing our present mental concept of the societal consequences that will normally follow in the future. A statement that a legal relation exists between A and B is a *prediction* as to what society, acting through its courts or executive agents, will do or not do for one and against the other."

² Pearson, *Grammar of Science*, 6.

³ Arthur L. Corbin, *Legal Analysis and Terminology*, 29 Yale Law Journal 163, 164.

It may be said, then, that the law of a community or organized society of human beings is the set of rules set up by the community through its legislative agency, to regulate the relations of the members to each other and as far as lies within its power, their individual and collective relations to other communities and their members. Dean Pound has indicated views as to the nature of Law similar to these suggested definitions by saying,⁴ "As a means toward the administration of justice, jurisprudence is to that extent the science of justice; not of justice in general, however, but of justice applied to the relations of men with each other, of men with the state or society, and of states with each other, so far as it may be so applied by tribunals in organized societies."

Strangely enough, there has been and still is a disposition on the part of students of Government or Political Science in the United States to exclude Private Law so called from their field though they accept Public Law as within their jurisdiction. And so, while Contracts, Torts, Property, etc., are left exclusively to Law Schools, Constitutional Law, International Law, Administrative Law, have been generally studied as Political Science, and Criminal Law has been reluctantly admitted and occasionally counted for credit in Arts courses as Political Science. Municipal Corporations is seldom given as Political Science. Criminology has been well established as a proper subject of study for Sociologists and may in time come to be admitted as among the fields of Political Science. Jurisprudence, though seldom taught in Arts or Law Schools, is an eminently respectable member of the Political Science family provided it is confined chiefly to theory and studied and taught from the older books such as Austin's, Salmond's, Holland's and from more recent theoretical ones like the volumes of the Continental Legal History Series. Historical Jurisprudence or Historical-Sociological Jurisprudence has had little attention in this Country. A very few students and writers have been interested in the social backgrounds and histories of the various systems of law in Western civilization, but they have had few followers in that interest.

Jurisprudence, then, is recognized as a part of Political Science but not much known or taught in Political Science Departments. It receives recognition but probably less attention in Law Schools, and the writer knows of not one separate department of Jurisprudence

⁴ Article on Jurisprudence in McLaughlin and Hart's *Cyclopedia of American Government*.

in any educational institution in the United States. Some Law Schools incorporate the word in their title but make little difference on that account in their curricula. Political Scientists are justified in thinking that they have more than enough to do in attacking the dense ignorance of this Nation on other phases of Political Science,⁵ but after all, there is much to be said in favor of devoting most effort where the greatest need lies.

If the lack of interest of Americans in politics is disappointing and their ignorance thereof discouraging, the condition of legal knowledge in this nation is probably the very worst in all of American intellectual life. This is a true but strange thing to say of a people who were characterized by Edmund Burke before the American Revolution as a nation of lawyers.⁶ The average citizen devotes at least some attention to politics, spasmodic and emotional as that little is apt to be, rather than constant and intellectual as it ought to be. But law, the favorite study of most educated men in Revolutionary America, has been labelled technical and vocational, and laid aside for the exclusive attention and control of professional lawyers. The American people, though claiming to be the most independent, most individualistic, and most self-governing people in the world, have entrusted their great system of legal institutions, one of their greatest inheritances, to one class of business men, for American

⁵ The general indifference to government and ignorance of it is discussed by the writer of this article, in the *South Atlantic Quarterly*, volume XXV, 223-239 (July, 1926), under the title "The Challenge to Training in Politics."

⁶ Burke said: "Permit me, Sir, to add another circumstance in our colonies, which constitutes no mean part towards the growth and effect of this intractable spirit. I mean their education. In no country perhaps in the world is the law so general a study. The profession itself is numerous and powerful; and in most provinces it takes the lead. The greater number of the deputies sent to the Congress were lawyers. But all who read, and most do read, endeavor to obtain some smattering in that science. I have been told by an eminent bookseller, that in no branch of his business, after tracts of popular devotion, were so many books as those on the law exported to the plantations. The colonists have now fallen into the way of printing them for their own use. I hear that they have sold as many of Blackstone's Commentaries in America as in England. General Gage marks out this disposition very particularly in a letter on your table. He states that all the people in his government are lawyers, or smatterers in law; and that in Boston they have been enabled, by successful chicane, wholly to evade many parts of one of your capital penal constitutions. . . . The study renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources. In other countries, the people, more simple, or of a less merciful cast, judge of an ill principle in government only by an actual grievance; here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance, and sniff the approach of tyranny in every tainted breeze." Burke, *American Orations*, edited by A. J. George, Boston, 1898, pp. 107-8.

lawyers long ago ceased to be predominantly professional public servants and became one of the most ardent wealth-seeking classes.⁷ Lawyers and laymen agree in shrouding the law in deep mystery as if it were an occult science the key to which is divinely granted to all those who call themselves lawyers, rather than what Sir Frederick Pollock calls "the sense of justice taking form in peoples and races."⁸ People talk learnedly of "the legal mind" as if it were an endowment with which one were born rather than the result of training and habits of thought on any good mentality.

Even the average so-called educated man or woman has, and attempts to have, no understanding of the Anglo-American legal institutions, and most lawyers know little more of them than a few formulas for use in their business of the practice of Law. They

⁷ Dean William Draper Lewis of the University of Pennsylvania Law School, said before the section on Legal Education of the American Bar Association in 1906: "The function of a profession as such is to perform some service vital to the well being of the community. The function of the legal profession is to administer justice. . . . Though the answers to the tests of the way in which the legal profession is performing its service to our communities are not all unfavorable, taken as a whole, the word *failure* predominates. Disguise it as we may, our profession is not administering justice with efficiency.

"If we look more closely at the lines along which these failures occur, we will find that the lawyer is found wanting in the performance of his public duties rather than in his private duties. . . . The public duty is a duty which cannot be performed by the individual lawyer in the course of his practice, but must be performed, if at all, by associate action. . . . In short, in a world marked for increasing efficiency in organization, the lawyers of our country exhibit the anomalous spectacle of a body of persons apparently incapable of efficient coöperation for public ends. . . . The lawyers of the United States fail to perform what I have called the public duties of the profession, while the English lawyer and our brethren of the medical profession to a large extent perform their public duties, because they have, and we have not, an idea that we have such duties. . . . From the professional point of view, the need of the hour is a body of lawyers who know something beyond the practice of their profession; who are interested in the administration of justice in its broadest sense; who can turn with effect to those legal problems which call for their solution on associate action."

⁸ Mr. Justice Andrew A. Bruce, of the Supreme Court of North Dakota, formerly Dean of the Law School of the University of North Dakota, has said: "Law is after all merely applied political economy, applied sociology, applied social ethics. . . . In a great democracy, where every man is presumed to know the law, the rules that control society and the principles on which they are founded are worthy of investigation and of study (by others than professional lawyers); . . . admission to the bar as a practicing lawyer has nothing basically to do with graduation from, nor is the education of practicing lawyers the primary function of, the American law school." At the same time, he spoke of the law school as "an important part of a state educational system," and as "an agency which is valuable if not absolutely necessary for the training of an intelligent citizenship in a country where law governs and every one is presumed to know the law." Reports of the American Bar Association, 1906, section on Legal Education, pp. 17-18.

understand these formulas no more than the average plumber understands the chemistry and physics of the methods which he uses or misuses in laying pipes, mending leaks, setting up heating systems and performing other plumbing operations. The great system of the Common Law, which has been slowly and painfully developed by our ancestors, through the efforts of hundreds of years, in the very gradual evolution so characteristic of the most fundamental and important human institutions, which is inseparably interwoven in our civilization with our highest moral and religious beliefs, is carelessly and destructively changed by ignorant lawyers and legislators, not one in a thousand of whom has an adequate conception of the stupendous human heritage which they are trying to improve.

American colleges and universities have almost universally left this important branch of the study of Government to the professional treatment of Law schools and to the superficial treatment of business colleges. Thus we have lacked in this part of the field of politics the benefit of even the inadequate academic study devoted to the origin, development, framework and operation of the other parts of our government. Why should American citizens and future voters study in their college courses our National, State, and City Government and not study the Common and Statute Law, the great nerve system of our entire government, supplying intelligent correlation and sensory and motor powers to those institutions that make up our machinery for social control?

The American people have always been governed by lawyers. Burke's well-known remarks before the British Parliament on the legal trend of the American mind were fully substantiated by the sale in the Colonies before the American Revolution of nearly twenty-five hundred sets of Blackstone's Commentaries on English Law, almost as many as were sold in England during the same time.⁹ Blackstone and other legal works continued to be the preparatory instruments of most of the men who controlled the National and State Governments up to the Civil War.

Lawyers make and administer our law today. It is almost impossible to over-estimate the political influence of the one hundred and twenty thousand lawyers in the United States, of the more than seven thousand Federal and State judges distributed with fair

⁹ About one thousand sets of the first English edition and about fifteen hundred sets of the first American printing were sold. Warren, *History of the American Bar*, 178.

uniformity throughout the land and interpreting, and thereby to a certain extent making, the law for the remotest districts inhabited by the American people. And lawyers are nearly always foremost in drafting statutes passed by Congress and by the state legislatures. Lawyers and judges, then, have throughout our history construed, declared and enforced in the length and breadth of our country the Anglo-American Common Law as adopted and modified by our legislatures and have, in those legislative bodies, determined the character of statutory changes to be made in that law. As the most important single class of political leaders among the American people, lawyers merit special attention in the education planned to guarantee our democratic institutions. Even if they were to be continued in their virtual monopoly of the study of law, the character of that study would be a matter of the utmost importance to the whole nation.

But is it wise to leave the law so exclusively to lawyers? Will they not degenerate as a result of such undisputed ownership of this field and of the lack of intelligent criticism from outside the legal profession? This demoralization and deterioration has in the past attacked every well-defined group left for any considerable length of time in exclusive control of any part of the government of any people. Has not this decline in political quality already taken place to an amazing extent among American lawyers? Is not this decay or lack of public spirit and effectiveness in these social servants to whom the American people have so completely and trustingly committed the most important part of their government the justifiable cause for the steadily increasing volume and intensity of criticism and protest against the unsocial character of American Law? The members of the American Bar are not entirely to blame for this state of affairs, though they must bear a large share of the responsibility, since they have most decidedly failed to preserve and advance the traditions of leadership and public service left to them by their predecessors of the Jeffersonian period. The whole people must bear the responsibility, as they must bear the consequences; they have allowed one of their most fundamental and most important institutions to depart from the basic principles of democracy by falling into the hands of a distinct and self-perpetuating group, and have failed to compel these leaders, these trustees with the tremendous trust of the American Law in their hands, to manage their

stewardship and to account for it in such ways as to advance rather than to retard the progressive evolution of democracy.

However, it is not the purpose of this paper to apportion praise or blame, but rather to diagnose a condition of the body politic and to suggest possible remedial treatment. What is to be done to make American Law fulfill in the highest possible measure its ideal purpose as an instrument of democratic government? Some general requirements may safely be stated. It must be forged in the fire of the most constant, most intelligent, most general and most searching discussion and criticism and must embody the wisdom resulting from the highest and clearest thought and best-considered will of the whole people. Our Law must be socialized by being confirmed and strengthened in the qualities and traditions derived from its folk-law origin and in the best additions received from the Roman Law, by being brought more completely into the conscious, collective and individual thought and action of all citizens, by being more closely related and more carefully adapted to actual social conditions, and by being made the subject of study of the best minds of each generation. It is not enough that the masses of average and comparatively untrained thinkers should expend their strongest thought and will-power on their law, as they have not done in the past and are not doing now. Nor is it sufficient that a few, or even a great number of the abler and better-trained minds should devote their powers to studying and improving our jurisprudence. The two processes of able and high-minded leadership and of popular participation, support and control must be combined in a powerful national effort toward the end of giving our law its maximum usefulness as an instrument for the promotion of the general welfare.

Leaders of thought are not produced in any field unfertilized by the richness of mass-thought. Every lighthouse of human wisdom reared by the giant mind occurring so seldom among any people, every other guiding structure raised above the plain by the mind of more than average powers, must be based on the solid foundation laid by collective and individual efforts of these and of the ordinary human kind. Just as the surest guarantee for securing the best government and the most devoted and most efficient public officers is established by basing that government on the general will, by giving the maximum political training to the popular mind and by selecting public servants from the whole wide circle of possessors of ultimate sovereignty, similarly, the most complete assurance of a jurispru-

dence and of jurists prepared for the maximum approximation to the highest aims of democracy consists in the broadest and deepest development and the widest dissemination of legal knowledge and thought. A most important but little-mentioned phase of democratic control is the necessity for sufficient knowledge among the voters to enable them to advise, criticize, support and hold to strict accountability all of their public servants. In the present state of popular ignorance of law, even among so-called educated people, how much reality is there in the theoretical responsibility to the voters, of elected judges and public attorneys and of those elected officers who appoint such legal officers in States having the appointive system? What do the voters know as to what constitutes a good judge or a good prosecuting attorney or other public counsel? The recommendations of bar associations constitute very necessary aids in such judgments, but these recommendations or disapprovals come from professional associates and cannot take the place of the objective judgment of the voters themselves, provided said voters have sufficient basis for their judgment; and real democracy demands that the capability and the practice of such objective judgments be developed among the people outside of the legal profession.¹⁰

If we assume, then, that the development of leaders in juristic thinking and writing, the training of the people for checking and controlling these leaders and the general socializing of the law can be best attained by making legal education as general as possible, by what methods ought this legal study, if undertaken by all colleges, to be carried on? All study, teaching and writing worth while in the social sciences is based on History, and this is just as true of Jurisprudence as of the others.

Law should be studied from the historical and evolutionary viewpoint, especially for the public purposes heretofore laid down in this paper, but also for the greatest success in the private practice of law. Our law, the law of any people, is not a body of unchanging principles to be discovered and established once for all time by scientific study, just as are mathematical rules, but a changing, growing institution, interrelated with the other institutions, economic, religious, political, social, of the people at every stage of their development. Systems of law and of courts are merely some of the results of the stages in the social evolution of the peoples to whom

¹⁰ See in agreement the statement of Mr. Justice Andrew A. Bruce quoted in note 8, *ante*.

they belong, and are subject, as are all other institutions resulting from this evolution, to be changed by all other stages through which these peoples may pass. All social institutions are, not absolute, but relative to the times, places, peoples and other conditions to which they belong. It ought not to be necessary to say this twenty years after publication of William Graham Sumner's "Folkways," but law teachers, lawyers, judges and laymen go on treating our law as if it were a body of pre-existing and unchanging principles that could be used as the major premises of many syllogisms and would thus yield as conclusions the answers to any legal problems involved in actual cases, provided always the existing principle applicable to a particular case has been discovered when the case arises. It has been readily admitted that legislatures have made, and still make, further rules to add to the body of rules known as the Common and Statute Law; but it is strenuously denied that judges make law in deciding cases. In actual fact, judges do make law in laying down new rules in cases "of first impression," and they reason by analogy, ostensibly to find out the common principle running through analogous cases and the case before the court, really to determine the line of new policy to be laid down in deciding the case.

This illusory thinking and writing very materially reduces the efficiency of the legal profession even for purposes of private gain, and enormously reduces the social value of our whole legal and judicial system. No people can afford to deceive themselves as to the nature of their political processes, but such deception in a democracy is more dangerous than under any other form of government. The body of the people must know the actual nature and operation of their legal and other political machinery or there is no real democracy. Measured by this standard, we Americans are very, very far away from our ideal of democracy. "Ye shall know the truth and the truth shall make you free," is receiving painfully slow application and realization in American legal and political thinking and our progress in the evolution of democratic government and democratic life is correspondingly slow.

Law studied sociologically in its historical evolution or sociological legal history is very much worth while even for the lawyer interested chiefly or wholly in commercial success in his profession. Many questions already raised and discussed but not yet settled in present day legal decisions and many more to be raised in the future

depend for their final settlement more upon facts, conditions and conceptions in the historical development of our law than upon any other single factor except present social conditions. For example, practically all statutes use words with long histories in the evolution of Anglo-American Law, and hence depend very much for their meaning and effect upon historical ideas.

The division preserved by the Federal Constitution, statutes and judicial decisions between common law and equity proceedings in the Federal courts makes it most necessary that any lawyer with practice before those courts should know the history of the parallel development of Common Law and Equity in the Anglo-American system. Then, too, accurate historical knowledge of equity is necessary in those States that have not abolished and even in those that have abolished, or say they have abolished, the distinction between common-law actions and suits in equity, since remedies are often granted according to the common law or equitable jurisdiction under which the cause of action fell before the distinction was abolished.

But is it necessary, desirable or even worth while to stop and consider special situations, phases or doctrines of Anglo-American Law as constituting reasons that make it commercially profitable, to put the question on the lowest basis, for the average lawyer to study legal history, as well as professionally desirable from the standpoint of public duty and responsibility or rather to study law sociologically and historically? Does not the central and most characteristic principle of the Common law, the doctrine of *stare decisis*, make of every legal problem presented to a lawyer in active practice a problem of historical and sociological research, and thus render his mastery and use of the maximum knowledge of legal history a matter, not of choice, but of self-preservation and necessity. Reduced to these simple terms, it seems ridiculous to argue that the legal practitioner ought to study, and will profit by studying, in the broadest and most thorough manner possible, the history of the rules of law with which he seeks to coordinate his clients' business, for it is difficult to see by what possible other method one can effectively practice law. Unless he is fortunate, or unfortunate, enough to find a statute covering the point of law presented for his consideration, advice or action, he can not otherwise than by historical research make even a beginning of learning the rule of law itself. He must, at the very least, find the last case in that jurisdiction deciding the point, or the nearest analogous case; and, unless this last case exactly covers the point,

his full duty to his client would involve careful study of every statute and every case in the particular jurisdiction, and in as many other jurisdictions as possible, bearing directly or indirectly on his problem. And enlightened, scholarly, thorough study of statutes and cases would involve, of course, the most nearly complete understanding possible of the social conditions surrounding, causing, conditioning, resulting from, or in any way connected with, the legislative acts and the judicial decisions.

These suppositions seem reasonable and logical, but they are almost entirely contrary to the facts of American practice of law. Not one lawyer in a thousand sets such a course before himself, even as an ideal. Any lawyer would readily admit that such an ideal, if generally followed, would cause each generation of lawyers to be more scholarly, more thoroughly masters of the law, and, theoretically perhaps, more able to serve their clients and thus to succeed in their profession. But almost all would say American conditions render success nearly irreconcilable with such study and deliberation. Business is moving too rapidly to tolerate such slowness; the competition is too keen. For the practice of law is no longer a profession in the United States; it is a business, and conforms to the practices of other American businesses. The most successful lawyer is, not the one who knows the law most thoroughly, but the one who can get the most business and make the most money; this is the same standard to be found in any other business. A successful lawyer does not have to know the law; for, if he can get much business, he can hire many who know the law better than he does but who have not attracted so many clients of their own. And so American lawyers, as a class, are having less and less time to study their subject, and are becoming less and less scholarly.

American law schools have yielded to the tremendous business pressure in the legal profession and have become more thorough in training, not for the public profession of the law, but for the business of the law. Most law teachers have in the past concerned themselves, and still concern themselves now, with what the rules of law are, rather than with why they are; what they are rather than with what they ought to be. Some of them have, it is true, been so independent as to work out their theories of law as bodies of philosophic doctrine and have stamped as "local aberrations" the departures of judicial decisions from those philosophies. This is a curious result of one kind of historical study of the law, a very nar-

row kind. It is very strange that some of the very students and teachers of the Anglo-American Law who have insisted most strongly upon the historical study of it by the case method have allowed themselves to become so engrossed in minute examination of judicial opinions largely separated from their historical background and considered as isolated phenomena, that they have read into judicial language degrees of systematic philosophical thought and of abstract theory foreign to the intentions and beyond the reach of the abilities of the judges delivering those decisions. In spite of the great superiority of the case method of legal study over the old method of memorizing alleged rules of law worked out by a few masterly writers such as Littleton, Coke, Chitty, Blackstone, Story, Minor, Wharton, Parsons, the study of chronologically-arranged collections of cases, however admirable the selection and however able the judges delivering the opinions; is only the first step toward the understanding of cases decided by courts of last resort and of the rules of law laid down therein, as one form of expression of the complex social forces contemporary therewith. It is not possible to know the relations of the warp of legal thought and action to the whole fabric of human life by studying even microscopically the warp threads apart from the woof. Our recent American study of the master threads of legal development has been admirable in spite of the tremendous handicap of the unnatural isolation attempted. It is truly remarkable that such results have been attained by treating one current of the ocean of human life as if it were unaffected by the many other currents. Undoubtedly this legal current is one of the most powerful in the whole broad sea, but it is not the only current or the whole sea, and the only thorough way to study this or any other social force is in connection with all other forces in any way affecting it. Anglo-American Law, then, must be studied with the widest possible comprehension of the other expressions of Anglo-American civilization. And the same is true of any other law.

What has been done and is being done to remedy this condition of a deplorable lack of scientific study and knowledge of American Law and of its allied subjects? There are, and have been for a number years, signs of some progress but comparatively little. All committees, associations and commissions formed to improve our legal system have been so tremendously handicapped by their ignorance that they have not been able to realize how little we know and to see the need for knowing their subject vastly better before

beginning to reform the Law. We recognize the evils very clearly but we know little of the causes. In consequence, we have done a vast amount of talking of legal reform but have not gone far toward real reform. Mr. Chester I. Long, President of the American Bar Association, in his presidential address in Denver last July said,¹¹ "The public has lost faith in the efficacy of the courts and their results in the enforcement of the criminal law. . . . The dissatisfaction with judicial procedure in its relation to the enforcement of criminal laws also finds its counterpart in the loss of confidence by the public in the courts with relation to civil procedure." This is a striking admission to come from one of the leaders of the National Bar, and it really constitutes a repetition of the indictment of the legal profession by another leader, Dean Lewis of Pennsylvania, just twenty years earlier.¹²

Have the study and recommendations of the Judicial Councils in some states, the work for thirty-six years of the Conference on Uniform State Laws, the forty-nine years of the American Bar Association, the many years of the bar associations of the various states, the teaching of the one hundred and twenty-four Law Schools in the United States, the work of the one hundred and twenty thousand lawyers, accomplished so little that the people of this Nation have, by the admission of the leading lawyers themselves, lost faith in their Law and their Courts?

The explanation of this situation is much less complex than the Law men have made it, and perhaps the solution also is simpler though much slower and not easier than those efforts which have heretofore effected so little compared to the need. Dean Pound has been quoted above as saying that the function of Law is to promote the administration of justice in the relations of men with each other. Is it possible to do that unless those making and administering the Law understand very fully those human social relations in connection with which the Law is to do justice? Do law teachers, law students, lawyers, judges today know much, if anything, of what has been discovered during the past twenty-five years in the study of human relationships? Sociology concerns itself with all human social relations; History has long dealt with some and is now dealing with more and more of those relationships as they have affected the development of the human race; Political Science concerns itself with the origin,

¹¹ Report of American Bar Association, 1926 (vol. LI), 159-161.

¹² Quoted in note 7, *ante*.

development and operation of those agencies of society collectively designated as Government, and those agencies, as we have already seen, make the rules or laws for regulating the human relationships in organized societies. Economics deals with the origin, development and operation of those groups of human beings and those relations having to do with making a living or with securing food, shelter, clothing and the other things that people want. Do law students know much, if anything, before beginning their study of Law, about what these allied studies have discovered? Do they learn much History, Sociology, Political Science or Economics from their Law teachers? Do the Law teachers know much of these subjects that they can teach their students incidentally, along with the Law, to explain the basis of the legal rules? How many law teachers in the United States have a respectable knowledge of even one of these subjects dealing with the basis of Law? How many teachers of History, Political Science, Economics or Sociology have enough knowledge of Law to show its connections with their subjects and thus to prepare the students for their study of Law? If neither the teachers in the Social Sciences nor those in Law know the relations between Law and the Social Sciences, where is the Law student to get the understanding to enable him to help administer justice in the relations of men with each other? Does he have to "major" in all four of those subjects and in some other Social Sciences dealing with other human relations before he takes Law, in order to connect the ideas of justice taught him in Law School with the human relations to which Law attempts to apply justice? Or should the teachers of the Social Sciences be required to know something of Law and the teachers of Law to know as much as possible of the Social Sciences, in order that they may enable the student to get the greatest reasonably possible understanding in the least possible time of these subjects so vital to him in his future career as a lawyer, judge or other public officer? Should not real courses in Historical-Sociological Jurisprudence, given in Academic or Arts Departments as well as in Law School, do much for the student in this preparation so important for his business success as well as for his effective citizenship, in relating his conceptions of justice to the actualities of human relationships of the past and the present?

This paper has attempted to establish the following conclusions:

1. That Law, the great nerve system of the body politic, and the part of government of which the clearest and fullest possible

knowledge is most necessary to the citizenry of a democracy, has suffered much more than other part of the American political system from the indifference, neglect and ignorance of the great mass of American citizens, and has been committed wholly and blindly to the care of lawyers, in violation of the fundamental principle of democracy forbidding the investing of any class with permanent control of any part of democratic government;

2. That lawyers, as a group, partly on account of this irresponsible and oligarchical control of the most important part of government, partly on account of the remarkable American business expansion, and partly, no doubt, on account of many other factors less easily understood and described, have sold their birth-right for a mess of pottage, change their profession into one of the most commercial of businesses, have, by the admission of many of their own number, failed miserably even to maintain, much less to extend and strengthen, the sense of public responsibility, or professional *noblesse oblige* that dominated the legal profession in the last part of the Eighteenth Century and the early part of the Nineteenth;

3. That few lawyers and judges of today are prepared to wear the mantles of such pioneers and moulders of American Law as George Wythe, Chancellor of Virginia and First Professor of Law in the United States, and his brilliant group of law students at William and Mary, including Jefferson, Marshall, Spencer Roane (Marshall's rival for the leadership of the Virginia Bar and later Chief Justice of Virginia), Benjamin Watkins Leigh (able editor of Virginia Reports, of the remarkable Code of Virginia of 1819, and United States Senator), and of such other distinguished Fathers of American Jurisprudence as St. George Tucker, editor of the first American edition of Blackstone, John Adams and John Quincey Adams, Alexander Hamilton, Edward Livingstone, James Kent, Joseph Story, Theophilus Parsons, David Dudley Field and others.

4. That we know almost nothing of what Dean Pound has said are the problems of Jurisprudence, namely, "(1) the nature of law; (2) the scope of effective legal action in adjusting human relations and regulating human acts; (3) the modes of effective law making, or, as it is put usually, the sources from which legal rules are drawn and the forms in which they are expressed; (4) application and enforcement of law."¹⁸

¹⁸ *Op. cit.*, note 4.

5. That the leadership in American legal thought rests at least potentially and perhaps actually, as does the leadership in the other phases of political thought, in the hands of the college and university teachers;

6. That these law teachers, by dealing almost exclusively with the strictly legal material of statutes and judicial decisions, have too narrowly confined their study and teaching and have thus failed to understand or explain at all adequately the sociological evolution and present status of law as a social institution inextricably bound up and interwoven with all other social institutions in any way touching it;

7. That, therefore, the thorough historical and sociological study of the law is yet to be undertaken in this country, and that this method is absolutely necessary to any real understanding of this greatest of our political heritages;

8. Finally, that such enlightening historical and sociological study of our law should be made available to the highest possible number of citizens, laymen as well as lawyers, as the most effective and most certain means of securing real responsibility of those most frequently and most directly dealing with the law, to the ultimate possessors of political power, the whole mass of the people, and that this end requires the most extensive and intensive teaching of Law in the liberal arts curricula of all colleges and universities and the marshalling of all the resources of the Social Sciences in aid of academic and professional study of the Law. Only thus can any system of law be made a real instrument of democratic government.