

PROFESSOR ARTHUR L. CORBIN

DOUGLAS ARANT†

THE Yale Law School experienced a rebirth in the period which began about 1913 or 1914. In that vital era in its history Arthur L. Corbin played an especially significant and enduring role; and more than any other individual perhaps he was a central figure in its development for almost half a century. He joined the faculty in 1903 when he was less than thirty years old and in a few years he established a wide reputation not only as a stimulating and inspiring teacher but also as a creative legal scholar of great promise. Under the leadership of Thomas W. Swan, who came as Dean in 1916, Professor Corbin was an active and influential participant in assembling a remarkable faculty.

In 1919 Professor Corbin edited a new edition of *Anson On Contract*.¹ This may be regarded as the forerunner of his comprehensive treatise on the law of contracts.² In the "Preface" to that edition he set forth his conception of the nature of law which he has reiterated and developed in his subsequent teaching and writing. The student, he said, "should be warned that the law does not consist of a series of unchangeable rules or principles. . . . Every system of justice and of right is of human development, and the necessary corollary is that no known system is eternal. In the long history of the law can be observed the birth and death of legal principles. . . . The law is merely a part of our changing civilization. The history of law is the history of man and of society. Legal principles represent the prevailing *mores* of the time, and with the *mores* they must necessarily be born, survive for the appointed season, and perish."³

He expressed in the same place his conviction of the necessity for accuracy and clarity of terminology to the end that "fundamental legal conceptions be described in definite terms without a shifting connotation." He called attention in that connection to the notable articles on "Fundamental Legal Conceptions as Applied in Judicial Reasoning" published a few years earlier by Wesley Newcomb Hohfeld who came to Yale as professor of law in 1914 and remained until his death four years later in 1918.⁴ Those articles unquestionably had a profound influence upon Professor Corbin's own thinking and writing and upon his growth and development as a teacher and legal scholar.⁵ In 1923 he gave a remarkable seminar in the Law School on "Legal Analysis and Termi-

† Member, Alabama Bar.

1. ANSON, LAW OF CONTRACT v (Corbin ed. 1919).

2. CORBIN ON CONTRACTS (1963).

3. ANSON, *op. cit. supra* note 1, at v.

4. 23 YALE L.J. 16 (1913); 26 YALE L.J. 710 (1917).

5. See Corbin, *Legal Analysis and Terminology*, 29 YALE L.J. 163 (1919); H. W. Arant, Book Review of ANSON, 29 YALE L.J. 134 (1919).

nology" — an unforgettable intellectual experience for the students who elected to take it.

In those days most students on taking up the study of law anticipated that their task would be to commit to memory legal propositions clearly and succinctly stated in a text — perhaps in bold-face type — and that the principal problem with which they would be faced in the practice would be to apply those propositions to varying factual situations as they arose. They thought the law was definite and certain and they expected the teacher to "lay down" the law. Soon after they entered upon the study of contracts under Professor Corbin, however, they learned that the certainty for which they sought did not and could not exist. He gave them at the outset and reiterated from time to time in forceful language the substance of the observations later expressed in the following passage by Judge Benjamin N. Cardozo, in his lectures on "The Nature of the Judicial Process" given at Yale in 1921,⁶ to which Professor Corbin referred ten years ago on the occasion of his eightieth birthday: "I was much troubled in spirit, in my first years upon the bench, to find how trackless was the ocean on which I had embarked. I sought for certainty. I was oppressed and disheartened when I found that the quest for it was futile. . . . As the years have gone by, and I have reflected more and more upon the nature of the judicial process, I have become reconciled to the uncertainty, because I have grown to see it as inevitable. I have grown to see that the process in its highest reaches is not discovery, but creation; and that the doubts and misgivings, the hopes and fears, are part of the travail of mind, the pangs of death and the pangs of birth, in which principles that have served their day expire, and new principles are born."⁷

In Professor Corbin's course on contracts, the student was made acquainted with great books on legal history and with the legal philosophy of great English and American judges and teachers whose opinions and writings were not taken as the final word but were subjected to study and analysis under his masterful interrogation and guidance.⁸ One particularly interesting incident comes to mind. In 1921 Judge Cardozo, while at Yale to deliver his lectures on "The Nature of the Judicial Process," visited the class in contracts. On opening the class Professor Corbin called upon a student to state the case of *DeCicco v. Schweizer*,⁹ a leading case dealing with the doctrine of consideration in which Judge Cardozo had delivered the opinion a few years earlier. During much of the hour the student was kept on his feet responding to searching questions by Professor Corbin while the opinion was subjected to exhaustive and critical analysis and discussion. Professor Corbin always insisted upon

6. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 166-67 (1921).

7. Corbin, *Principles of Law and Their Evolution*, 64 *YALE L.J.* 161, 163 (1954).

8. See "Developing Ethics" and "The Right to Strike" by Professor Corbin in the December, 1922, issue of *The Yale Law Journal*, a Comment upon an article by Moorfield Storey on *The Right to Strike* and an article by Donald R. Richberg on *Developing Ethics and Resistant Law*, published in the same issue. 32 *YALE L.J.* 99, 109, 157 (1922).

9. 221 N.Y. 431, 117 N.E. 807 (1917).

the necessity for free and open inquiry with respect to a principle of law regardless of its age or its source, tempered always with innate modesty on his part and with tolerance and consideration for the views and opinions of others. William Graham Sumner's *Folkways* to which he made frequent reference served as a constant reminder that the law is a part of changing civilization and that the history of law is the history of man and society.¹⁰

This statement in the first paragraph of Holmes' *The Common Law* became under Professor Corbin's stimulus a vital and enduring element of the student's attitude toward the law: "The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed."¹¹

An essential objective in Professor Corbin's teaching was to stimulate and encourage the student to acquire a background and method of analysis that would enable him to formulate his own opinions and conclusions and never to accept any statement of a legal principle without critical analysis. He recognized the need for a philosophy of the law to mediate between the conflicting claims of stability and progress. He kept the student constantly on guard against the erroneous notion, often entertained, that the law is a fixed and invariable system.

It is impossible to think of Professor Corbin other than as a vibrant and vital force, whether in the classroom or in a tennis match with Professor William Lyon Phelps or in his active and vigorous life elsewhere. His devotion to the study and teaching of law and to the welfare and development of the Yale Law School as a place for free and open and honest minds has been wholehearted and complete since his graduation in 1899. No one has served it so long or with greater wisdom and vitality and to no one does it owe a greater debt.

10. SUMNER, *FOLKWAYS, A STUDY OF THE SOCIOLOGICAL IMPORTANCE OF USAGES, MANNERS, CUSTOMS, MORES AND MORALS* (1907).

11. HOLMES, *THE COMMON LAW* 1 (1881).