A Program for the Expansion of the Yale School of Law

INTO A

"School of Law and Jurisprudence"

The schools of law now in existence have always been almost wholly professional schools. Their object has been the training of young men to make their living by practice at the bar. They have indeed tried to attain this object by scientific methods of instruction; and they have been moved by the firm conviction, one that beyond question is sound and true, that they were rendering a great public service by giving the best possible training to the members of a profession that plays so large a part in the affairs of life. But the opportunities and responsibilities with regard to the broader and greater service which present day conditions are demanding of our universities have been recognized by few, and fully met by none, of the law schools of this country. Of the few, the Yale School of Law has for nearly half a century been one. It is therefore appropriate that the time should be now to further develop, and the Yale School of Law expanded into a school of law and jurisprudence with equipment adequate to render a greater public service and with purposes even broader than before. These purposes are as follows:

First,—professional: the training and instruction of lawyers for the practice of their profession. Second,—civic and cultural: the education of non-professional college students and, indirectly, of the public at large in the character of our law and legal institutions and their influence upon life. Third,—scientific and constructive: the study of law and its evolution, historically, comparatively, analytically, and critically, with the purpose of directing its development in the future, improving its administration and perfecting its means of operation.

It is suggested that the present name of the School of Law should be changed to "School of Law and Jurisprudence" chiefly with the object of accentuating in the public understanding the enlarged purposes which the new school will have before it.

I. General Recognition of the Need of a School of Jurisprudence

The necessity of instruction and research along the lines described above is already recognized by legal scholars, sociologists, judges, and statesmen. Dissatisfaction with our present legal and social system is everywhere expressed, and the remedy is recognized as requiring a deeper and more scientific study of our laws and legal institutions.

William H. Taft in his "Popular Government," chapter IX, entitled "Public Need of Educated Lawyers and Judges," said, in 1913:

"I have spoken little to my purpose if I have not made clear the necessity for broadening the qualification of the general body of our judiciary to meet the important and responsible requirements that the changing conditions of our community have thrust upon them. Their coming duties call for a basic knowledge of general and sociological jurisprudence, an intimate familiarity with the law as a science, and with its history, an ability to distinguish in it the fundamental from the casual, and constructive talent to enable them to reconcile the practical aspirations of social reformers with the priceless lessons of experience from the history of government and of law in practical operation."

Only by broadening the knowledge and studies of the members of the legal profession...

President Wilson said in an address before the American Bar Association in 1910:

1 [This programme was prepared some months ago by a Committee of the Faculty, of which I was a member, in consultation with the students of the School. With the recent additions to the Faculty the first step has been taken toward carrying it into effect. Further development in accordance with this plan will be made as soon as endowment for the purpose can be obtained.]

Society is looking itself over in our days from top to bottom; is making fresh and critical analysis of its very elements; is questioning its oldest practices as freely as its newest; scrutinizing every arrange ment and motive that has ever been accepted as anything less than a radical reconstruction, which only frank and honest counsels and the forces of generous cooperation can hold back from becoming a revolution.

Elihu Root, in a public address delivered early in 1915, said:

"Now that we have new relations between masses of organized capital and organized labor, and the vast extension of international commerce, we have passed beyond the ordinary slow growth of custom on which the old English and American law was based; and someone must be busy building up a new science of jurisprudence. The legislatures have been proceeding with great velocity, but without system; they have been hitting heads when they saw them; and there have been so many decisions that I don't know what is to become of the old principle of stare decisis. A new science of jurisprudence must be created."

Mr. Justice Holmes, of the United States Supreme Court, said, in an address delivered some years ago:

"An ideal system of law should draw its postulates and its legislative justifications from science. It is now, we rely upon tradition, or vague sentiment, or the fact that we never thought of any other way of doing things, as our warrant for rules which we receive with as much confidence as if they embodied revealed wisdom. Who here and elsewhere reasons of any different kind for assenting that half the criminal law does not do more harm than good? Our forms of contract, instead of being made once for all, like a yacht, on lines of least resistance, are accumulated by accident and are the first to concern which the learned dispute. How much has reason had to do in deciding how to arrest the growth of crime? In matters as small as all, it is so practical that the domestic relations? And so I might go on through the whole law.

The Italians have begun to work upon the notion that the founda tions of the law ought to be scientific and, if our civilization does not collapse, I feel pretty sure that the regiment or division that follows us will carry that flag."

Justice Francis J. Swayne, for many years a member of the highest court of New Jersey, said in 1915, in a Commencement address at Yale:

"The law is a living, vital, growing, and therefore a changing organism. It must continue to live, to grow, to change, but it is not changed by change; it is not changed by the processes of growth and not by the processes of destruction. The scientific advance must come from the schools of law. The time may come, perhaps at no distant time, when our law schools shall attain the high distinction of the medieval schools of Bologna and Bursche."

Professor Orrin Kip McMurray, of the University of California, said in an address delivered in 1915:

"I venture to say that when the law schools raise their ideal from that of equipping practitioners to that of training jurists, public opinion will be found ready in support. Juristic science was the parent of the medieval university; the revived study of the Roman law in Bologna not alone created the university but opened the way to the new humanism; the juristic faculty will again take its position by the side of the other sciences when it recognizes that it, too, is teaching a science, a subject fraught with the utmost importance in human affairs, a subject which demands to be studied with scientific aims, with scientific method, and with the broadest background of culture."

President Frank J. Goodnow, of Johns Hopkins University, said in an address before the American Bar Association, in August of this year:

"It is greatly to be regretted that in our system of legal education there would appear to be, at the present time, no place for the serious study of these and similar legal problems. What seems to be needed is that somewhere in the United States, preferably in connection with some of our universities, there should be established a school or department not for the education of lawyers for the practice of the law, but for the study of jurisprudence, in which greater attention might be paid than heretofore to the solution of these many legal and political problems which the great changes in our economic and social life are with increasing emphasis bringing to our attention.

The founding of a new school of jurisprudence with broader purposes than those of existing law schools is already under way. What is the step toward whose purpose is the law school to be founded? There is no doubt whatever that if Yale does not take the leadership in this development, it will be assumed elsewhere."
II. The Public Service to be Rendered

A. PROFESSIONAL EDUCATION

Let it be understood at once, and emphasized strongly, that this service is to include, as of old, the professional training of lawyers. The practical goes hand in hand with the scientific. Nothing is truly scientific that is not practical, and those who have discovered that it is highly impractical not to be scientific.

The administration of justice requires not only a reasonably definite set of legal rules; it is absolutely necessary that they should be constantly applied to the broadest practical purposes. The lawyer, moreover, is of the highest, and whose knowledge, both of the substantive law and of the rules of procedure, is as great as possible.

It will be the function of all the members of the present faculty to devote their chief efforts to the attainment of this first object. Moreover, for this first purpose alone, some additions to the faculty will be necessary. The professional training of lawyers and judges has been and will continue to be public service of the utmost importance.

It will, however, be one of the chief purposes of the School to enrich the professional curriculum from the scientific side, so that we may send men to the bar who, instead of supporting the legal writing on a finished product, will be trained and ready to direct changes and to welcome improvements. If professional instruction of the past has been narrow, it will be our privilege to broaden it scientifically.

Justice, for many years a member of the highest court of New York, said:

I would not say, as they [the committee of the American Bar Association] did, that our whole system of study should be overthrown and in its place be put the study of law as a science and not merely as an art; but I do say that it is a shame to graduate a lawyer ignorant and absolutely ignorant of the history of his own profession; and that it is entirely possible with a better preparation and a longer course to parallel the liberal arts in the examinations of students both as to their general knowledge and the story of the law’s share in the progress of civilization. If there were no other reason for the required extension and lengthening terms of study, I should deem it an all-sufficient one that the change will furnish opportunity for and open the way to a study of the science of jurisprudence, and will tend to make our young men, not merely technical practitioners, but strong, intelligent, scholarly lawyers, and, what is equally needed, strong, intelligent, and scholarly men.... They are to be our leaders, our civic rulers, our law makers.

In his address as President of the American Bar Association, in August of this year, Elihu Root said:

The only way to clarify and simplify our law as a whole is in reaching the lawyer in the making and mold his habits of thought by adequate instruction and training so that when he comes to the Bar he will have learned to think not in terms of law but in terms of jurisprudence. The living principle of the case system of instruction in our law schools is that the student is required by a truly scientific method of induction to extract the principle from the decision and to continually state and restate the formula of the law evolved from its history. He is thus preparing not merely to accept formal dogmatic statements of principles, but to receive and assimilate and make his own the systematic thought and learning of the world in the science of jurisprudence. With a Bar subjected generally to that process of instruction, the more general systematic study of jurisprudence would follow naturally and inevitably, and the influence of that study would be universal; and from that condition would evolve naturally the systematic restatement of our law, by men equal to that great work. Pour sand slowly upon the level ground; the conical pile produced will have a fixed relation between the area of its base and the height of the cone. It is so with human society. We must broaden knowledge and spirit to build up and we must build up to broaden.

President Macchesney of the Illinois State Bar Association said in October of this year:

No law school which confines its instruction to the formal technical study of the law is doing its duty to the community, or is fitting its graduates for constructive service to the nation; and the practitioner who fails to see that this is so in his career will live to feel a sense of futility in his professional life, and to resent the lack of opportunity in the field of truly constructive work, if his attention had been directed that way by his legal training.

For this purpose it may become necessary in the future to lengthen the term of law study to four years. Such a change is already being advocated by leaders in legal education and is now being considered by the American Bar Association.

B. CIVIC AND CULTURAL SERVICE

Another highly practical object of a School of Law and Jurisprudence will be the furthering of the civic and cultural study of our legal institutions by non-professional college men and the gradual development thereby of sound public opinion.

The School of Jurisprudence should organize in collaboration with other departments of the University the instruction in law of those who do not intend to become lawyers. Every voter should know the machinery of legislation and practical administration; every business man should be taught enough of the rules of his business to know when to consult a lawyer; every individual should know the processes of justice upon which his property, his happiness, and his life depend. There is an opportunity for leadership and for important practical results in this field.

Not all of our citizens attend college, but it is obvious that the large numbers that do attend and take degrees tend to become in later life leaders of public thought and action—great centers of influence both direct and indirect. As editors, as educators, as teachers in universities and high schools, as preachers, as novelists and as periodical writers, as public officials, as members of social clubs, and commercial organizations—all these ways our college men are coming to have a constantly increasing influence in that guiding public opinion, and hence, in directing the votes of the masses toward definite results. It follows, therefore, that a vital school of jurisprudence and law cannot fail to include this branch of activity in the civic and cultural education of non-professional college men.

Senator Borah, in an address on "The Lawyer and the Public" before the American Bar Association, in August of this year, said:

We must mold public opinion which makes the law, direct public opinion which enforces it. We must perform our duties as the molds of citizenship before we condemn for insufficiency the institutions under which we live.

In this connection may it not be time to realize how intimate is the relation between law and war? The only substitute for war is international law, and the only way in which the latter can be effectively developed and enforced is by creating among the masses at large a spirit of respect for law. The ideal of international peace is worthy of the highest efforts of man; but here, as elsewhere, it will be vain merely to scratch the surface. For substantial and lasting results we must attend to the deeper causes of human events.

C. SCIENTIFIC AND CONSTRUCTIVE SERVICE

One of the truly great national needs is the development of experts along scientific and constructive lines. Not only must we have lawyers and judges capable of leading in the legal development of the future, we must have a third group of workers—lawyers broadly trained for service in many fields of useful and far-reaching activity. Our universities should be training expert advisers in legislation of all kinds, skilled draftsmen, competent men for revision and codification, and men able to retort and simplify the common or unwritten law in all its various fields. This need can be met nowhere else than in a School of Jurisprudence. The statement below, concerning the equipment necessary, will show in more detail the character of the work to be done.

Professor Josef Redlich, of the University of Vienna, who was called by the Carnegie Foundation to make a survey of American law schools and a criticism of their methods of teaching and courses of study, in his report, issued in 1915, states the problems before us as follows:

Herewith, I believe, however, that the two great problems are recognized whose solution develops upon the creation of a scientific system of the common law, and a reform of the current law in the direction of that movement which is becoming more and more pronounced among the people of the United States in favor of a simplification, a greater efficiency and improvement, of substantive as well as of civil and criminal procedure; and, of course, not be produced by statutory decree alone. In my opinion, this can only be reached only through sound and fruitful labor on the part of all elements of American legal life, the judges, the attorneys, the university law schools, and the legal scholars of the country.
In the address before quoted, as President of the American Bar Association, in August of this year, Elihu Root said:

We cannot fail to see that our country would be made stronger if we could change some characteristics in our administration of the law. There is great economic waste. . . . There is unnecessary expense, waste, and ill service in the system. The severe criticism of the bar and public spirited lawyers have been for some years urging the organization of a definite and specific movement for the restatement of our laws. . . . There is a demand for a Corrupt Judge. They are quite right. It ought to be done. But who is to do it, and how shall he be recognized as a prophet?

In the solution of these problems the university law schools have a very large part to play. The law schools now have practically all of our legal education in their hands. To them the people must look for a supply of trained lawyers, judges, and jurists with the capacity to make intelligent use of their experience. It is largely to their faculties that we must look for men competent to draft and create a "scientific system of the common law."

Judge John F. Dillon, in delivering the Storrs Lectures at the Yale School of Law some years ago, said:

There is . . . room and need for all. The institutional writer, the law teacher, the philosophic student, the scientific jurist, the experiencer of life, but nowhere has the legal poet said his place. They are not repellent and antagonistic agencies, but allies and co-laborers in the noblest work that one engages the attention, and draw forth and exemplify the highest powers of the human intellect. ("Laws and Jurisprudence of England and America," p. 347)

Without the cooperation of university-trained jurists the results must be merely provincial and temporary, and will continue to be unorganized, inconsistent, inharmonious, and piecemeal, just as they have been in the past. It is a condition, and not a theory, that now confronts us in legal administration, and it confronts us because in the past we have trusted too much to mere practical experience and have failed to develop a scientific theory. Even the un instructed public is becoming aware that they must pay an enormous price for faulty law-making and that in the absence of system, certainty, simplicity, and promptness of procedure, justice is difficult and expensive, or even at times wholly lacking.

III. Yale's Traditions and Opportunities for This Work

It is singularly appropriate that a School of Jurisprudence, adequately equipped and endowed, should be established at Yale. It is not merely because the thousands of loyal Yale men would take pardonable pride in leadership of this sort, laudable though it may be, but rather because it is an opportunity to appeal with special force to men who are loyal to Yale as an institution; but others of more general appeal are found in the history of Yale.

The Yale School of Law was the first in this country to establish a graduate department and to offer therein courses in Roman Law, International Law, Comparative Law and Historical and Analytical Jurisprudence. This work was begun as early as 1875 under the inspiration and leadership of Professor Simeon E. Baldwin, who for many years, and long before the driving necessity for the new development had been so generally recognized, had the wisdom and vision to appreciate the benefits to be gained by the study of these subjects. From this creative work of his, this great revolution has been done. It is, for example, a matter of pride that the most scholarly and generally used English translation of the German Civil Code was made by Wang, a native of China, who received his degree of D.C.L. from the Yale School of Law in 1904. The first volume of an edition of Bracton's classical work by Dr. George E. Woodbine, long a student and teacher in Yale University, and now a student in the Law School, has been completed. The approval of the greatest legal scholars in England and America have seen. Nine men have studied in some department of Yale, a full bench, have been Justices of the United States Supreme Court. "Kent's Commentaries," "Benjamin on Sales," "Woolsey on International Law" and "Wharton on International Law" are among the greatest legal works published in this country. The revision of the laws of Hawaii by a commission of four Yale graduates is also noticeable.

In view of the more general appreciation at the present time of the value of work in these broader fields, it is believed that future endowment of endowed professorships should now be obtained, so that there may be gathered together at Yale a sufficient number of the foremost scholars of the world in the field of law and jurisprudence to place Yale clearly at the head of this field. This is the very capability of procuring such an endowment and of establishing a school of this character at Yale was clearly recognized by President Theodore Dwight Woolsey. In an address delivered by him in 1874 on the fiftieth anniversary of the founding of the Law Department at Yale, he said:

At this point, I cannot help offering to my hearers a view of a law school which, although only ideal and possible at present, deserves to be looked at with attention. It is, moreover, one which harmonizes well with the whole circle of study pursued at Yale College, and could be realized in such a place as this, where some of the chairs already founded could be made to contribute to the carrying out of the ideal, and where a still larger fund might be found, which would make it possible to give the idea to our hearers, because I believe it to be eminently needed as a reality in the United States. Let the School, then, be regarded no longer as simply the place for training men to plead causes, to give advice to clients, to defend the interests of clients, but let it be a place of instruction in all the sound learning relating to the foundations of justice, the history of justice, and the doctrine of government, so that all those branches of knowledge which the most finished statesman and legislator ought to know in order that he may be trusted with the rule of the institution would be of vast service. Such an institution, if it could be set on a large scale, could not be self-supporting and certainly men from every class of society ought to share its advantages, so that the best talents of the poor as well as the rich might be cultivated for the benefit of the country; as small amounts of funds, therefore, would be needed; but I present the idea in the hope that some man who can estimate the value of great and useful plans, and has the means to effect them, may be disposed by the generosity of his heart, or others hereafter may see better, to turn the idea into a reality.

It goes almost without saying that scientific research and production can best be carried on at a great university. There are to be found the quiet and seclusion necessary for intensive application and ripe thought. There are the library facilities and the atmosphere of scholarship. There are the other already well-organized departments of research—History, Anthropology, Economics, Ethics, Psychology, Sociology, and many others—of which Jurisprudence is most closely related. These departments can and must see their essential unity, and aid each other to the utmost in attaining great results. Above all, it is at a great endowed and independent university that can be found the necessary detachment from all interest independent of thought and expression, and the ideas and historic traditions that maintain high institutional standards.

The members of the present faculty of the School of Law have always been filled with sympathy with the aims and ambitions of Governor Baldwin and President Woolsey. In 1912, in a paper read before the Association of American Law Schools, Professor Wesley N. Hohfeld of the Yale faculty outlined in great detail the work to be done by a vital school of jurisprudence. This paper aroused much discussion and has received wide attention among the law teachers of the country. By the introduction of the case method of study, by the requirement of a college degree for admission to the School, and by the recent addition of new professors who stand high as teachers and scholars, the foundation has been laid at Yale upon which may be erected a genuine School of Jurisprudence. The School therefore appeals for the necessary endowment out of the total belief that its history and development justify it in doing so.

The School has already received in recent years a considerable endowment from donors convinced as to the public service which it renders. In addition to earlier funds, the gift of $125,000 was the endowment by the ownership of Equity and the Justus S. Hotchkiss bequest of a third of a million have made a substantial beginning toward the desired end.

The statement below will show opportunities for aiding in the further establishment of Prosperous School, as indicated by President Woolsey in the address referred to, by the endowment of professorships or the gift of funds to be used for library or building purposes.
IV. The Equipment Necessary for the Proposed School

The matter of equipment is reducible to problems of Men and Money. Faculties must be enlarged. Constructive thinkers must be recognized and gathered together.

A. SUBJECTS OF INSTRUCTION AND INVESTIGATION

The following list of subjects shows in very general form the program of instruction and investigation for which endowment is desired. Several of the topics mentioned are now being taught by various members of the faculty who hold the present position of the special and general funds of the School of Law. But special endowments are highly desirable for such professorships as well as for the new professorships, both for the sake of releasing the general funds for other purposes and in order to give each important general subject the dignity of a specially named professorship. While it is planned ultimately to give adequate instruction in the whole field outlined below, this will be done only as men who are capable in their chosen fields can be obtained. A gift of the funds necessary to bring to Yale every one of these men would enable the School to take another important step forward in the development of its plans as outlined, and as a memorial gift would be most worthy and dignified.

1. Pleading and Practice, including pleading at common law and under the codes, court practice and procedure, office practice and the drafting of instruments.

2. Criminal Law and Procedure, and Criminology. An adequate and systematic investigation into the actual working of our present criminal law and procedure and our methods of dealing with the criminal after conviction has never been made. In this respect we are far behind the continental universities.

What have we better than a blind guess to show that the criminal law in its present form does more harm than good? I do not stop to refer to the effect which it has had in degrading prisoners and in plunging them further into crime, or to the question of whether fine and imprisonment do not fall more heavily on a criminal's wife and children than on himself. I have in mind more far-reaching questions. (Mr. Justice Holmes, in an address entitled, "The Path of the Law")

3. Commercial Law, including Bills and Notes, Sales, and Partnership.


5. The Law of Real and Personal Property.


7. International Law, public and private. The name of Woolsey has twice adorned this subject at Yale and a short course in Public International Law is now being offered by Professor Taft. Recent world developments convince the humblest citizen of the necessity of an intensive and scientific development of this subject. There can and must be established a strong sentiment for justice according to law in international affairs.

8. Roman Law. Yale has for more than fifty years maintained courses in this subject. The lectures delivered here by James Hadley have long been a classic. The Albert S. Wheeler Library established here by the bequest of Professor Wheeler is one of the best collections on the subject in the United States. An adequate endowment is absolutely necessary for the successful continuance of this work.

One of the most useful results of our recent territorial expansion has been the comparative study made necessary of the two great systems of law—the Roman, or Civil Law, and the Anglo-Saxon, or Common Law. (Wm. H. Taft in a Commencement Address at Yale.)

9. Historical Jurisprudence, systems of law, ancient and modern; also the history of particular common-law doctrines and forms.

10. Comparative Jurisprudence. The field is large enough to require the services of two, or even more, professors. It includes French, German, and other continental codes and systems, and Spanish-American law—the last-named being a subject that is assuming an ever-increasing practical importance. Each of these includes all of the numerous branches, such as Constitutional Law, Administrative Law, Commercial Law, Criminal Law, and the like.

11. Formal or Analytical Jurisprudence. The analysis of fundamental legal concepts. Conceptual work is necessary in exact definition; in the improvement of terminology; in determining the relations among Common Law, Equity, Admiralty, Ecclesiastical Law, and other historical sub-systems; in establishing their net legal result; and in re-classifications along logical and historical lines of the classifications of the law.

It is well to have an accurate notion of what you mean by law, by a right, by a duty, by malice, intent, and negligence, by ownership, by possession, and so forth. I have in my mind cases in which the highest courts seem to me to have floundered because they had no clear ideas on some of these themes. (Mr. Justice Holmes, in the address above mentioned.)

12. Teleological and Functional Jurisprudence. The evolutionary adaptation of legal rules to human desires and the other facts of life; the critical consideration of the ends to be attained and the means by which we try to attain them; the improvement of judicial machinery.

We are only at the beginning of a philosophical reaction, and of a reconsideration of the worth of doctrines which for the most part still are preserved for granted without any deliberate, conscious, and systematic questioning of their grounds… A body of law is more rational and civilized when it acts in accordance with the rule it contains in reference to the end which it pursues and definitely to an end which it subserves, and when the means for desiring that end are stated or are ready to be stated in words. (Mr. Justice Holmes, in the address quoted above.)

13. The Science and Art of Legislation. The jurisprudence of legislation in all its phases, both judicial and statutory, involving problems of interpretation, stare decisis, codification, and improvement in the forms, processes and machinery of law making.

There is a useless law suit in every useless word of a statute; and every loose, sloppy phrase plays the part of the typographical error. (Eliahu Root in an address before the American Bar Association in 1914, entitled "The Layman's Criticism of the Lawyer.")

B. ENDOWMENT

For professorships of the sort described, no man should be called unless he is an acknowledged leader either in the United States or abroad. This will in each case require the payment of a salary equal to that paid by the best law schools in the United States. The standard salary now paid by our leading schools of law to their professors of the first rank is $7,500, and a further increase is practically certain. A fund of $50,000 would be at the least would be required for the full endowment of a professorship.

Large additions must be made to the law library if the very highest type is to be done, and provisions made for the maintenance of the library and the constant purchase of books in the future. An annual fund of at least $250 could be used with advantage. A new building is desirable, with adequate facilities for the library, with the most convenient arrangements for students, and with a series of professor's offices so located and furnished as to afford the easiest access to the books and the greatest mechanical aid in dealing with the ever-growing mass of material. A suitable building would cost not less than $500,000...

Complete to carry out the plans as outlined would require ultimately, in addition to the funds already in the disposal of the School, an endowment of at least $2,500,000, and probably more. It is, however, as previously indicated, not proposed to wait until the whole sum is available before carrying out the program as outlined; and the gift of funds towards the endowment of an individual professorship, the construction of an adequate building, or the enlargement of the library, would enable the School to take important steps in the realization of the ideals above set forth.