

## SYMPOSIUM: THEN, NOW AND INTO THE FUTURE: A CENTURY OF LEGAL CONFLICT AND DEVELOPMENT

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### FOREWORD

With this issue the *Indiana Law Review* commemorates the Centennial of Indiana University School of Law—Indianapolis with the publication of scholarly papers presented at the School of Law in a Symposium entitled: “Then, Now and Into the Future: A Century of Legal Conflict and Development.” This Symposium is an exchange of observations and ideas on a wide range of topics reflecting upon the law and legal education over the past one hundred years and projecting those reflections into the twenty-first century.

These papers present a rich array of historical scholarship in several methodologies, ranging from local archival research to comprehensive analytical overview. Two of my colleagues will relate some of the local history; the beginnings of this law school; and the contributions of the school over the years to legal education, law, and society. They will present narratives on the evolution of Indiana University School of Law—Indianapolis through its predecessors, and several of the people who have helped shape the identity and character of the law school across the years.

Other presenters will broaden the perspective and generalize the subject matter. In the context of various fields of law they will discuss principles of logic, policy, and precedent—of fairness, equality, efficiency and justice—in personal and shared interactions with past events. They will present their observations about and analyses of those principles as they were articulated just before the turn of the twentieth century and as they impinged upon our society at that time.

The presenters will discuss the law of property, families, evidence, and the Constitution. They will examine, in their turn, the legal profession, legal philosophy, educational technique, the judicial process, and, simply, “the law” in American life. They will present their analyses of the development of the law as it has come to be shaped through transactions, disputes and conflicts, deliberative assemblies and adversarial litigation.

If the law can be visualized as a thread made up of those many strands of principles in the various fields of law, it can be imagined that along the length of that thread, the texture, the strength—perhaps even the function—of the law changes as the composition of the strands change and as the strands are spun together in different ways in the various fora in which it is constructed. Examine the end of the thread closest at hand and it can be seen that it is still being fashioned today. To peer down its length along with

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Professors Polston and Harvey in their contributions to this Symposium reveals that this Law School, its faculty and its graduates have been helping to spin that thread and weave it into the larger fabric of society for one hundred years.

The other presenters offer their observations of that thread of law and the changes it has undergone in those one hundred years by examining some individual strands. Their presentations are not merely interesting descriptions of momentous occasions, movements, or interactions in dispute resolution—though they surely are that, each in its particular detail—but more importantly they contain critiques upon which we can reflect and from which we can draw *further* insights. From those insights we can build new ideas about how we can interact with the law individually; about who we are collectively as a society; and about how we want to continue to evolve in both realms.

To return to the metaphor: as we hold the developing end of the thread of law in our hands today and imagine it stretching out across the *coming* century, what do we want it to look like, what texture would we want it to have, what functions would we have it perform? In posing these and other questions in this Symposium, the presenters propose that, as they have done, the reader adopt an interactive, participatory approach to considering these papers. They propose that the reader will project your interaction with them into the future as together we continue to spin and weave that fine thread of law.

The occasion that this Symposium commemorates is the beginning of the first academic year of the predecessor of this school, Indiana Law School, in the fall of 1894. In those early days of our institutional forebears' labors to establish a new law school in the Midwest, they carefully articulated their vision of the school as a link between past and future. Poised at the close of the century and contemplating the mission of their new educational enterprise, they saw their mission as in conflict with the established, apprenticeship, model of learning the law that was dominant in the region. They wanted to offer an academic alternative that would expose students to opportunities for a wider range of legal studies, using modern methods of instruction, and to offer those resources closer to home. The Indiana Law School faculty expressed their idea and objectives this way:

The successful school today must be modern in all respects. The old doctrines must, to a great extent, be laid aside and such a plan of instruction be adopted as will bring about the best results in this later condition of professional and business affairs.<sup>1</sup>

Products of their own times, those founders recognized the value of “office training” as an important tradition and were sensitive to the significance of the *break* with tradition to which they had committed themselves. Acknowledging the apprenticeship model as providing good legal education “in a practical way,” they posited that such training alone would not adequately prepare the law student. Cognizant of the demands for legal services that the forces of change had already brought to bear upon lawyers, and would continue to bear upon their graduates in the new century, they wanted to offer their students a richer experience in learning. In their words again, they concluded that:

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1. INDIANA LAW SCHOOL, CIRCULAR OF INFORMATION, FOR THE YEAR 1894-95 at 8.

The need of comprehensive legal training is greater now than ever before. The day is past when a student could obtain adequate legal instruction in the office of an attorney in active practice. With the rapid growth of the country and the consequent complication of business affairs the demand for thoroughly equipped law schools has greatly increased.<sup>2</sup>

The faculty wanted to offer their students “an opportunity to acquire a more thorough and systematic knowledge of the law than has heretofore been afforded them.”<sup>3</sup>

It has been said that Mark Twain wrote that history does not repeat itself, but it rhymes.<sup>4</sup> Not quite a century before the founding of the Indiana Law School, Sir Walter Scott wrote: “A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect.”<sup>5</sup>

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2. *Id.* at 7.

3. *Id.*

4. Attributed by Allen D. Boyer in *Activist Shareholders, Corporate Directors, and Institutional Investment: Some Lessons from the Robber Barons*, 50 WASH. & LEE L. REV. 977, 977 (1993), who saw the attribution in ROBERT SOBEL, PANIC ON WALL STREET 431 (1988). Professor Sobel saw the attribution some time ago in an editorial column in the *New York Times*, the author of which he cannot recall. He has consulted with several Twain scholars across the country, and all agree that the quotation sounds very much like something Twain would say, but none seems able to find the actual words in Twain's papers. Telephone conversations with Allen D. Boyer and Robert Sobel, March 3, 1995 and March 7, 1995. It is somewhat ironic that this quotation cannot be definitively traced to Twain, whose energies were spent in great measure to protect his rights of authorship.

If accurately attributed, this statement reflects an attitude from which Twain departed in his later writings. But even as late as 1894, the same year the faculty of the Indiana Law School issued its statement, Twain penned a retrospective on civilization in America that paralleled the optimism of the faculty. Twain wrote (about civilization in America), “It is a large word and stands for a large thing—in these latter days. A hundred years ago it was a small thing and simple: now it is vast and complex in its makeup.” ROGER B. SALOMON, TWAIN AND THE IMAGE OF HISTORY 31-32 (1961) (citing one of Twain's unpublished manuscripts entitled “Have We Appropriated France's Civilization?,” contained in a collection assembled by Bernard DeVoto). Twain's listing of the contributions of and to that civilization that made the lives of its citizens “easier and freer and pleasanter than it was before, and less mean and bitter and hampered,” appeared in the following order: political liberty, religious liberty, reduction of capital penalties, equality before the law, women's rights, application of anesthesia to surgery, rational patent laws, development of patents, the cotton gin, and a number of technological devices. *Id.* at 32.

5. SIR WALTER SCOTT, GUY MANNERING 259 (J.M. Dent & Sons Ltd. ed., 1906) (1815). The words were uttered by the character Paulus Pleydell, a lawyer in Scott's story, referring to his books: “[T]he best editions of the best authors, and, in particular, an admirable collection of classics.” *Id.* It is interesting that nearly one hundred years before the founding of the school those who would reform the law were concerned with such matters as the use of the pillory as a corrective device, and the destruction of one's home as an eviction method. Scott, a lawyer himself and Clerk of the Court of Sessions, was involved in efforts to reform the law at about the time that he wrote this passage. GRAHAM MCMASTER, SCOTT AND SOCIETY 81-82 (1981). But as a reformer, Scott was also sensitive to the lessons of the past and in his story warned against precipitous destruction of values that were strongly rooted in custom. One of the most poignant parts of the *Guy Mannerings*

In some ways then, this Symposium is intended to “rhyme” with that convocation of legal educators who breathed the first breaths of intellectual life into our institution. We cast our thoughts to our past, not content simply to observe the accomplishments of our predecessors, but to learn from them so that we might offer “a more thorough and systematic knowledge of the law than has heretofore been afforded.” Those who would venture to call themselves architects in the law can use these ideas as they fashion the blueprints for the interactions of law and society in the twenty-first century.

story is thought to have been based upon a famous case about which Scott doubtless knew, in which the defendant was charged with having become too exuberant in ejecting some recalcitrant tenants.

The [complaining] witness described how Sellar [the defendant] had come to his home in June 1814, nearly two years before, with twenty men besides four sheriff officers, who had pulled down and set fire to the house and its barns. His mother-in-law, Margaret MacKay, was still in the house when it was set on fire, for she was a hundred years old and bed ridden though she was not ill.

*Id.* at 159 (quoting IAN GRIMBLE, *THE TRIAL OF PATRICK SELLAR* 5 (1962)).

Scott wrote of a landlord who, despite the warnings by old servants against taking action against an ancient settlement of “gipsies” on his estate, was determined to exercise his newly-acquired authority as a magistrate and clear the land:

The Laird had, by this time, determined to make root-and-branch work with the Maroons of Derncleugh . . . and violent measures of ejection were resorted to. A strong posse of peace-officers, sufficient to render all resistance vain, charged the inhabitants to depart by noon; and, as they did not obey, the officers, in terms of the warrant, proceeded to unroof the cottages, and pull down the wretched doors and windows,—a summary and effectual mode of ejection still practiced in some remote parts of Scotland, when a tenant proves refractory.

SCOTT, *supra*, at 62.

The narrator of the story muses:

The race, it is true, which he had thus summarily dismissed from their ancient place of refuge, was idle and vicious; but had he endeavored to render them otherwise? . . . [A]nd ought the mere circumstance of his becoming a magistrate to have made at once a change in his conduct towards them? Some means of reformation ought at least to have been tried, before sending seven families at once upon the wide world, and depriving them of a degree of countenance, which withheld them at least from atrocious guilt.

SCOTT, *supra*, at 64.

Shortly after having his men perform the eviction, The Laird met a caravan of the refugees from the posse’s “root and branch” work. The leader of the clan, one Meg Merrilies [Margaret MacKay in literary reincarnation?], uttered a curse upon the Laird:

“Ride your ways,” said the gipsy, “ride your ways, Laird of Ellangowan—ride your ways, Godfrey Bertram!—This day have ye quenched seven smoking hearths—see if the fire in your ain parlour burn the blyther for that. Ye have riven the thack off seven cottar houses—look if your ain roof-tree stand the faster . . . There’s thirty hearts there, that wad hae wanted bread ere ye had wanted sunkets, and spent their lifeblood ere ye had scratched your finger. Yes—there’s thirty yonder, from the auld wife of a hundred [Margaret MacKay remembered again?] to the babe that was born last week, that ye have turned out o’ their bits o’ bields, to sleep with the tod and the blackcock in the muirs!”

SCOTT, *supra*, at 65. *See also*, EDWARD WAGENKNECHT, *SIR WALTER SCOTT* 70-71 (1991).