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AMERICAN LEGAL REALISM IN RETROSPECT

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It is now a full generation since the placid current of juristic speculation in the United States was stirred by the advent of legal realism. For a brief while, the discussion of this development in legal thinking focused attention on basic questions of legal science, but all too soon these were overshadowed by a succession of cataclysmic events—the Great Depression and the New Deal, World War II with its aftermath of military occupation and reconstruction, and now the Cold War, punctuated by a series of crises in Berlin and Budapest, in Korea, Indo-China, and Tibet, in the Middle East, the Congo, and the Carribean—all of which, directly or mediately through the United Nations, have involved the United States. After all this, a reference in retrospect to American legal realism can make no great pretensions; the glasses through which memory peers are dimmed by time, biased in a degree by personal preconceptions, and blurred by the epochal occurrences since 1930. On this understanding, nevertheless, since in this changing world the basic concerns of science and philosophy are most relevant to discern the relations of circumstance to destiny, it may be useful for an erstwhile participant observer to recall the issues posed by realism in legal science. For this purpose, it is not necessary to recount in detail biographical and bibliographical information elsewhere available, nor is it feasible to review other current ideas and controversies also of interest that anticipated or paralleled the declaration of American legal realism. More simply, the following remarks relate to the occasion, the argument, and the significance of this episode in the history of legal ideas, announcing an attitude, if not a coherent philosophy, that has influenced legal thinking in the United States for more than a generation.

I

American realistic jurisprudence, also commonly referred to as legal realism, received its baptism in a notable polemic. The first installment was a paper presented at the meeting of the American Association of Political Science in December 1929, by Karl Llewellyn, then of the Columbia Law School Faculty, and subsequently published under the title, "A Realistic Jurisprudence—The Next Step."[1] In this illuminating but argumentative contribution it was pointed

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1. 30 COLUM. L. REV. 431 (1930).

out that the traditional analysis of legal problems in terms of remedies, rights, and interests, conceiving law as a body of rules, is "a block to clear thinking about things legal"; it generates ambiguity in triplicate. First, to center discussion on the rule, a verbal formulation, avoids reference to the facts represented by the words; second, this brings confusion of meanings—a rule of law ambivalently means a prescription of conduct or the description thereof, the latter in relation to the conduct either of officials or of the "people"; third, the inveterate tendency of traditional doctrine to simplify the rules compounds the effects of these sources of obscurity in legal thinking. In this part of the argument, consideration was given, with appreciative acknowledgement of his prestige, knowledge, and insight as the leading figure in American jurisprudence, to the position of Roscoe Pound as exemplifying the current preoccupation of jurisprudence with verbal formulations. In consequence, it was proposed, premising that the most (not the only) significant aspects of the relations of law and society lie in the field of behavior, that legal science should concern itself with deeds not words (except as these constitute or influence conduct), or in other words with law conceived as human *behavior* instead of the traditional body of rules and concepts. The conception of human behavior as the subject matter of social science, Llewellyn was quick to observe, was not novel; it was the accepted principle of ethnology and other disciplines, and had been suggested in the field of law. What he insisted on as the next step in jurisprudence was to apply the principle systematically to legal problems.

The answer to this proposed reorientation of legal study appeared in the March 1931 issue of the *Harvard Law Review,* celebrating the ninetieth birthday of Mr. Justice Holmes. Here between exquisite tributes from distinguished contributors and reprints of four early articles, prefaced by Felix Frankfurter who was to follow on the Supreme Court, lies an article entitled "The Call for a Realistic Jurisprudence."[2] It was, whether by chance or by design, a peculiarly fitting offering to the "prophet of the law," who in 1881, fifty years before, had written on the opening page of *The Common Law*: "The life of the law has not been logic; it has been experience." In this article, Roscoe Pound benevolently recognized legal realism as the philosophy of the coming generation of legal scholars in the United States, enumerated and criticized the tenets of the new school, and proposed a program of relativist-realist jurisprudence "as it might be."

It would be presumptuous to try to review the compact and subtle critique of legal realism in this two-edged accolade. But the out-

2. 44 HARV. L. REV. 697 (1931).

standing points seem sufficiently clear. First, that there is no absolute reality, only significance, which must be for or in relation to something; the fault of realism is to concentrate legal science upon portrayal of the behavior of judges and others concerned in the administration and creation of law, thus de-emphasizing other significant elements and among these conspicuously ignoring the ideals, values, and authoritative doctrinal rules, concepts, and techniques that are vital for understanding of the legal order. Second, that the tendency of realism is to ascribe exclusive significance to particular methods or techniques: to statistical observation, or the formulation of exact propositions analogous to those of physical science, or to some special brand of psychology, or to the individuation of the unique single case without consideration of the common elements in judicial decisions, or to an entrepreneur conception of law as a body of devices for business and not general social ends. In sum, it was charged that legal realism is incomplete; "in the house of jurisprudence there are many mansions."

This characterization of legal realism, it was thought, called for reprisals, and in short order the third and final installment in the polemic appeared, "Some Realism about Realism."[3] In this article, "responding to Dean Pound," Llewellyn, assisted by the late Jerome Frank, gave a faithfully detailed account of the writings of twenty "representative men," designed to show that the specific features of legal realism which had been criticized were not representative. With earnest moderation, it was fairly demonstrated that, judged by a considered analysis of expressed views, the critique was misdirected. The writer, who was invited to furnish excerpts from his writings for the purpose but who abstained out of deference to a revered preceptor, still marvels at the painstaking care with which the literature in question was analyzed and reported.

This left open the question: What really is American legal realism? In answer, it was pointed out that this was no new school of jurisprudence, but represented rather the complementary efforts of a number of individuals in various fields, with varied techniques, and with diverse predispositions, to extend the knowledge of law by critical or factual investigation. Among these, however, several common points of departure could be discerned: the conception of law and society in flux, with law typically behind; the notion of judicial creation of law; the conception of law as a means to social ends, and the evaluation of law by its effects; insistence on objective study of legal problems, temporarily divorcing the "is" from the "ought"; distrust of legal rules as descriptions of how law operates

3. 44 HARV. L. REV. 1222-64 (1931).

or is actually administered, and particularly of their reliability as a prognostic of decision; insistence on the need for more precise study of legal situations or decisions in narrower categories, and for sustained programmatic research on these lines. In short, the program implicit in legal realism was detailed, objective study of law as an instrument to achieve desired ends and in the context of a changing society. The survey of the works of those thus classified as realists is impressive and detailed; it gives a sympathetic, comprehensive, and instructive picture of the more creative products of American legal scholarship thirty years ago.

II

This polemic in which American legal realism was baptized concerned issues that we trust have been sufficiently sketched to suggest their significance for legal science. As is not uncommon in such discussion, there was truth on both sides, but viewed in different frames of reference. From the vantage point of his magistral knowledge of legal philosophies, Pound apparently looked to legal realism, which projected some of the ideas that he himself had espoused as the leader of sociological jurisprudence, for a well-rounded or, as Jerome Hall might say, an integrative program; instead he perceived an enthused congeries of individual students of law, some quite naive in legal theory, each with his little candle pursuing a more or less limited and novel type of investigation, disturbing gleams of disorder in a supposedly well-ordered legal world. But to Llewellyn, who, through firsthand investigation of customary law and widening interest in the relation of law to society, had contracted the attitude of social science, the little candles were more than disparate, fluttering points of light; together they cast a promising glow over the obscure landscape of the law. In the essentials, the writer did and still does share the Llewellyan view of the scene, but from a somewhat different perspective and with certain qualifications.[4] These may be described as follows: to simplify the statement I shall immodestly use the first person.

First, the name. This for my part I disclaimed, since the original device, "realistic jurisprudence," is technically—that is in a philosophic sense—inappropriate and in any event obscure in both its parts. Granted that a rose by any other name would smell as sweet, in

4. Cf. my articles: *The Rational Basis of Legal Science*, 31 COLUM. L. REV. 925 (1931); *The Implications of Legal Science*, 10 N.Y.U.L. REV. 279 (1933); *Legal Science and Reform*, 34 COLUM. L. REV. 207 (1934); *Jurisprudence on Parade*, 39 MICH. L. REV. 1154 (1941); *Jurisprudence and Metaphysics—A Triangular Correspondence*, 59 YALE L.J. 273 (1950); *Comparative Law and Humanism*, 7 AM. J. OF COMP. L. 493 (1958).

intellectual discourse the name should highlight what it denotes. This leads to the more significant question of what was denoted.

Second, both Pound (who however spoke of a school of neo-realism) and Llewellyn agreed that American legal realism was not a school of jurisprudence in the usual sense, which seems sufficiently obvious. For Pound it signified certain tendencies among the coming generation; a "ferment" for Llewellyn. In substantial agreement with the latter, my preference was to characterize it as a scientific epidemic among the so-called realists, an infiltration, and not the first one, into the legal world of the long humanistic quest for knowledge. This is the very spirit of science.

It is something of a mystery why this was not candidly acknowledged. Possibly, and this is but a gness, the word science was avoided on account of the scruples of the very active silent partner on the side of realism, Judge Frank. His studies and experience in appellate and trial practice, influenced by exposure to psychology and psychiatry, had led him in 1930 to publish a work of unusual influence, *Law and the Modern Mind,* which expressed his conclusion that the certainty of law is an illusion, a fictitious, unconscious pretense to satisfy the infantile craving of the public for security. Believing that there must be a wide margin of uncertainty in the administration of justice, he at least felt that to call law a science would give a false color of certainty to its results. To my mind, this conclusion was inspired by two invalid presuppositions; namely, that the model of Euclidean geometry is the only scientific mode, and that the scientific character of a particular technique varies in proportion to its precision rather than its objectivity. Possibly also, he was infiuenced by another notion, *i.e.,* that the scientific quality of studies in a particular subject matter is determined by the scientific or ascientific quality of the subject matter. Of these things more will be said below.

Third, and in this account must be taken of elements not mentioned in the polemic, American realism was the next step in the study of law because by all the signs the time was ripe. It gave a slogan to what was in the works. The First World War had shaken both Europe and America out of their Victorian complacency. And as happens when the world is shaken, the mind of man once more was stirred to reform the evils that humanity had made and suffered and to create conditions that would ensure prosperity. In the optimistic decade of the 1920's, the League of Nations was established to conserve democracy and peace, science and invention made remarkable advances, and the economy of the United States, stimulated by improved means of transportation and the concentration of capital in vast national enterprises, bloomed with the expansion of the

automobile and other industries. In the field of thought, among other prodigies, the accepted doctrines of physical science were overturned by the theory of relativity, while in areas more nearly related to law, wide acceptance of the pragmatic philosophies of William James and John Dewey, and the upsurge of the social sciences, gave comfort to the apocalyptic discovery that even the world of reason did not stand still and exalted the humanistic faith in progress through scientific inquiry. Small wonder that even law, the most conservative of disciplines, whose basic function is to keep peace and order, should also share the common and convinced hope of the time in the possibility of constructive change. Indeed, this was the cardinal motive in the Benthamite tradition then most influentially expressed in the sociological jurisprudence of Roscoe Pound.

This was the faith that in a short decade inspired a variety of notable efforts to improve the administration of justice and even the system of legal education. Among such efforts, to mention only a few, the more conspicuous were the establishment of the American Law Institute to enlist the leaders of the legal profession in the acadamies of law, on the bench, in practice or in office, in a major effort to reform and simplify the common law through its restatement; the creation of judicial councils in a number of states to expedite the administration of justice and to recommend needed changes in the law; the institution of a number of surveys following that in Cleveland in 1921 to study the courts in action and to reduce the costs of litigation; and various benefactions to improve legal education and to promote research, notably to the Law School at Ann Arbor and to Columbia University to found the Parker School. In the faculties of law themselves, the intensive study of the curriculum by the Columbia faculty in order to relate the law taught in the schools to life touched off a variety of related efforts in rival institutions, including the short-lived venture at the Johns Hopkins University to foster legal research by the establishment of an Institute for the Study of Law. The central motive in these developments was not alone to extend the knowledge of law by investigation of legal phenomena but also in so doing to improve the legal system.

In this perspective, in the fourth place, American legal realism is to be characterized as a phase of humanistic, or in other words scientific, inquiry in the field of law. It would not be inappropriate to consider the movement an offspring of sociological jurisprudence that purported, in closer conformity with contemporaneous relativistic theories developed in other fields of science and philosophy, to represent more truly the trend of the time to understand the law by objective investigation of legal phenomena, not merely in themselves but in relation to their social context, as the necessary basis of reform.

It held the faith that not only the legal system but also the traditional apparatus of legal study could be improved.

This was the basic humanistic motive of American legal realism. Accordingly, I should list the characteristic hypotheses, the chief lines on which the movement proceeded, as follows:

(1) *In primis,* the conception of law as a means to certain ends, an applied science. This imported, on the one hand, consideration of the ends to be subserved by the legal order, or in other words the policies and values that it comotes, and on the other hand, examination of its technical efficiency and more especially its effects.

(2) The conception of law in society, a part of life. This corollary of the preceding conception obviously and vastly enlarged the materials pertinent to the study of legal problems. In particular, it prompted consideration in such study of the theories, methods, and findings of other branches of social and natural science.

(3) The conception of change in both law and society. This premise was employed chiefly to justify critique of the traditional rules by study of their relations to the social context, both to ascertain how law was formed and to measure its appropriateness under modern conditions. The further implications of this seminal conception as a motive for historical and comparative research were imperfectly realized, as will appear below.

(4) The conception of legal research as a scientific enterprise. This contemplated (a) detached, objective description of detail deemed relevant to legal problems and accurate formulation of the results, (b) the usual critical scepticism of science with respect to the accuracy of statements of or about the subject matter, in the case of law especially as respects rules, doctrinal conceptions, or theories resting on tradition or authority, and (c) the use of appropriate techniques, *e.g.,* judicial statistics, to obtain pertinent information.

This is a more synthetic summation, with less detail, of the movement baptized in 1930 as American legal realism, than that stated by Llewellyn in responding to Dean Pound. But in substance it includes the same specifications, except that the distinctions between word and deed, "is" and "ought" are omitted for reasons that deserve brief mention.

The first of these distinctions between legal formula and official behavior, in variants such as law in books and law in action, what

courts say and what they do, and the like, implying that behavioral facts are real rather than their verbal representations, apparently passed current among the realists. But the distinction was open to the criticism of Pound and Morris Cohen that facts are observed in terms of preconceptions and for given purposes and that to consider the operation of law as human behavior without reference to the concepts in which it is perceived and the ideas by which it is motivated leaves out the distinctive vital factors in law. Apart from this, the distinction is supposititious. Is speech or writing not a fact, a species of behavior? And pantomime or the playing of one of Chopin's nocturnes not a form of communication like speech? Hence to avoid such potential objections it is preferable to recognize that the essential distinction, which indeed is a distinction of degree rather than in kind, is between the generalized concept or proposition and the more detailed items perceived that it purports to represent. If such perceptions are termed facts there is no objection, except the possible ambiguity in what is meant.

Second, the distinction between "is" and "ought" was conceived by Llewellyn as a temporary divorce, necessary to secure objectivity in the study of human conduct, separating the observation of what conduct occurs in actuality from consideration of what such conduct ought to be. This is reminiscent of the distinction in Hans Kelsen's pure theory of law between *Sein* and *Sollen*, with, however, radical differences. The pure theory of law is a divorce permanent and absolute of law conceived as a sanctioned system of hypothetical norms, not merely from what "is" but even from nonsanctioned philosophic or moral ideas. Thus legal realism is chiefly concerned with precisely what Kelsen's pure legal science would exclude. But even as a temporary expedient, the distinction was criticized by Pound on the ground that faithful portrayal of official behavior without reference to the ideas, values, and technical preconceptions by which it is motivated excludes significant actualities of the legal order. More or less contemporaneously, Morris Cohen also attacked the study of law as human behavior on the grounds that such descriptive empiricism is nominalistic and, since it does not relate to legal norms, consequently is not "normative." These latter criticisms I endeavored to answer at the time, the first principally on the ground that the validity of a scientific investigation is not dependent on the epistemological preferences of the scientist and the second, since among other things apart from confusion in the meaning of "norm," the circumstance that law is "normative" does not signify that the scientific study of law should be normative. While the points in Cohen's attack seem factitious, that made by Pound, *i.e.*, that ideal factors are not to be excluded in the study of official behavior, was

right. The only satisfactory answer is to abandon the distinction between "is" and "ought" for the purposes of legal science, as indeed I proposed, and at the same time to insist that the function of legal science is scientific, which is to say descriptive, and not to be confused with that of the "normative" art practised by the judge and lawyer. This simple point is not generally understood.

III

It is now 1960, and the time is ripe to ask: What price American legal realism? In a way, the question is unfair. For it has been the tragedy of the past generation that so much human energy, so much travail, so many lives have been expended in readjustment to the political and economic tensions of the time, in a succession of revolutions and wars in which all quarters of the globe have been involved. In consequence, the realist movement that seemed in full bloom thirty years ago had but a little space of time to mature its fruits in peace. We may recall that, in contrast, it took German legal science, the most concentrated renascence of scientific effort in modern times to understand the law, most of the Nineteenth Century to reach its apogee in the *Bürgerliches Gesetzbuch*. Too soon after 1930 the epochal occurrences to which reference was made at the outset absorbed attention; leaders in the realist program were drafted into public service, while those in the coming generation who might succeed them were called to spend precious years away from intellectual pursuits in military or related services. In consequence, the movement of American legal realism lost the momentum that energies elsewhere spent should have sustained, and never since has been in position to realize its full possibilities.

Despite this, the attitude towards legal problems, characterized as realistic jurisprudence in the polemic of 1930, has dominated legal thinking in the United States during the past generation, even to the point of becoming commonplace. How much or how little this is attributable to the polemic or to the symbolic device that it successfully advertised, 'twere indeed difficult to estimate. Perhaps not too much, since in other places where the presuppositions of realist philosophy were not acknowledged, analogous trends in dealing with legal problems could be discerned. There has been, in the first place, a prodigious development of legislation as the efficient means to secure the national interest, to control the economy, and to readjust the political and social constitution as conditions change. Legislation has become the instrument of reform, and in consequence of its volume and complexity has absorbed the attention of those concerned with law; indeed on this account, the positive prescriptions of the

national state, and not the common sense of justice of its people, are envisaged as the law. Moreover, the application of law, or in other words of the enacted rules and regulations currently in force, is no longer conceived as an automatic procedure of deductive logic. In the modern state, many vital social functions are administered or controlled by administrative rather than judicial agencies; the administration of justice itself is conceived as a creative function, the decisive stage in the legal order where legal rules are concretized for individual cases. Both in administration as such and in adjudication, it is recognized that the application and interpretation of law is directed by a more or less extensive component of discretion operating within a traditional continuum of practice.

Implicit or explicit in this proliferation of formalized regulations and their flexible application, in the industrialized national state of modern times, lie the avowed conceptions of legal realism: that law is a means to social ends, a vital part of life in society; that law and society change; and that scientific research, utilizing whatever may be deemed the best techniques of inquiry, is requisite to provide the understanding needed to accomplish reforms in the legal order. In other words, we live in one of those exhilarating periods in history, when the mutations and perplexities by which we have been encompassed challenge the creative human quest for knowledge to resolve the problems that are posed by the exigencies of the time.

In retrospect, so much is clear. But the fair price of American legal realism is not to be set alone by its acceptance in the prevailing market of legal ideas. Consideration should also be given to certain features of the legal scene since 1930 which were congruent with, if not inspired by, the realist attitude. Basically, these features are attributable to the assumption, to which pragmatic philosophy is congenial, that, law being a practical enterprise to achieve desired social ends, the study of law should be practical. Hence comes the usual confusion, to which reference was made above, of law as science with law as art, a confusion apparently so ingrained that almost always it goes unchallenged and even unperceived. This was common ground in the polemic of 1930 reported above.

Now, on this assumption it seems obvious on its face that, if law is a practical art of creating and administering the means to control conduct for given purposes at a given time and place, the legislation of that time and place in the context of the social conditions in which law operates must quite as obviously be the subject matter of a legal science that seeks to be practical. This conclusion has further consequences. Given the prolific volume, complexity, and constant alteration of the positive legislation of the given time and place, which (especially if considered in relation to the even more complicated

social conditions then and there existing) is more than enough to exhaust a battalion of legal scholars to digest, the relevant subject matter of legal science is the law as it is, and especially the myriad decisions, judicial or administrative, in which law is applied to specific cases. The very volume of the legal materials increasingly induces the science of positive law to move in the fiat plane of modernity. Likewise, with this conception of the relevant law, legal science to be practical must first devote itself, or in other words almost exclusively devote itself, to the legislation of the given place. For this reason, a practical legal science, whether described as legal realism or by another name, tends to move within the geographical frontiers of the legislation in question. This is not all. A practical legal science, more or less exclusively focused on the positive legislation of a given time and place, is not in position, save by grace of intuition, to determine whether the legal phenomena to which attention is devoted have more than ephemeral significance. It has no basis of comparison in time or in place upon which to establish more general perspectives in the light of historical experience or by comparison with that of other countries. In short, legal realism, with its subject matter thus temporally and spatially circumscribed, is incompetent to distinguish, in the passing scene with which it is preoccupied, the trivia from aspects of more general import. In this sense, the imputation by Pound in the polemic of 1930 that legal realism in its critical examination of individual decisions tends to disregard the common elements in the judicial process was quite justified.

In a third respect, also properly impugned by Pound, namely its depreciation of critical systematic study of the body of legal rules, the position of legal realism was by no means typical, even for the United States. Indeed, the outstanding enterprise of American legal science in recent years, the American Law Institute, was founded expressly to improve the common law by systematic restatement of the principles to be extracted from the enormous, confused, and constantly expanding mass of reports. The interest in this grand project to clarify and simplify the basic common law by a species of private codification should be sufficient in itself to evidence the practical bias of legal science in the United States; after all, nothing is more gratifying to those concerned in or with legal practice than improved facilities to find the law. In any event, the scepticism and even disdain of various realists for systematic simplification of legal principles as such was doubtless influenced by their major premises that law is a superstructure of society and that both law and society evolve in variable tempos, and is quite understandable in view of the fascinating wildernesses into which these conceptions lead. At the same time, such avoidance, if only for the time being, of the practical

need for economic statement of the law in general terms was neither necessary nor even appropriate. It flew in the face of the facts that theoretical speculation has proved essential in the advance of science, that communication by general concepts and rules is indispensable in law, and that the most important technique in the adaptation of law to new needs has ever been critical systematic examination of the rules of law by expert jurists. The original program of the American Law Institute—from which until recently it deviated, not merely to restate the law as it is but, where indicated, to state it in conformity with social needs—was more reasonable than that of the realists in question. They disputed the validity of the existing general rules and in exchange offered to undertake research the products of which were not warranted as scientifically valid.

In the interest of clarity, the foregoing observations on the realist attitude are of course overdrawn, the last perhaps to excess. Indeed, the realist movement was very possibly hatched in critical contemplation of doctrinal formulations that seemed no longer appropriate; in any event, the contributions of those counted as realists to the critique and reformulation of legal principles have been numerous and notable—it is enough to instance Walter Wheeler Cook's explorations in legal logic and Karl Llewellyn's achievement in the preparation of the Uniform Commercial Code. But the exceptions to the antihistoricism and insularity of American legal realism, typical of the time, are clearly exceptions. Except for a select few among their number, there was a common disinterest in serious historical or comparative research. While the learned tradition of the nineteenth century in legal history has been perpetuated by a handful of investigators, for the most part not in the realist group, in general the attitude of recent American legal scholarship has shared Pound's view that the day of the historical school of jurisprudence was long since done. It has not been duly realized that human behavior is another word for human experience and that the positive laws of today are already part of history. Except that for certain techniques of investigation such experience can be studied only while it is in the making, the recent preoccupation of modern legal science with the law that is, irrespective of its origins and the vicissitudes in its evolution, has no apparent rational justification.

Much the same may be said of so-called comparative law. A few there were in the 1930's who at least recognized the value of comparative studies and at times considered foreign laws in their research, but for practical purposes American legal science until recently has been self-sufficiently preoccupied with the more than abundant legal materials of the United States, primarily envisaged from a national viewpoint. There was little systematic study of other

legal systems, even of those in the British orbit, such as developed on the Continent of Europe, and still less a general understanding of the basic importance of comparison as an essential method of all science, including that of law. To this legal realism in the United States was relatively blind, not merely because it accentuated the study of law in terms of current local practice but perhaps also because it was affected by the notion already mentioned that such study should not be characterized as scientific since the phenomena to be considered are too nonpredictable. It was doubtless symptomatic of this facet of legal realism that one of the stimulating papers of Judge Frank, published shortly before his untimely death, stressed the significance of the differences rather than the similarities in foreign laws.[5] The impressive development of growing interest in international and comparative legal studies since World War II is not attributable to legal realism, but rather to political events, as recognized in the cultural relations program of the Department of State and the appreciation by the foundations of the need to develop these studies in view of the world-wide expansion of the interests of the United States.

The significant achievement of American legal realism has been to imprint in legal thinking the concept of relativity in the adaptation of positive law to social change. In this as well as in its practical bent, its assumed anticonceptualism and accentuated modernism, and its provincial preoccupation with the particularities of existent law, the realist movement was the child of its time. As such, its role has been essentially critical rather than constructive in a scientific sense; it came to prepare the way for the more adequate humanistic legal science that we hope may succeed. It would be improper to hold legal realism ultimately accountable for its limitations, if only since it had no time to outgrow its childhood.

It would not be just to conclude this brief retrospective sketch of American legal realism without reference to the system of legal education which it has profoundly influenced, if only since the responsibility for the advancement of legal science in the United States rests primarily with the law schools. It is now five years since I ventured to suggest that the prospect of comparative legal research in the United States is in a degree conditioned by the conception of legal practice, regarded by most lawyers as an honorable trade rather than a learned profession; that this view of law has been fixed by the legal curriculum, which for a hundred years has been dedicated to professional legal training; that efforts to introduce humanistic studies in the curriculum invariably have been shunted into special pro-

5. Frank, *Civil Law Influences on the Common Law—Some Reflections on "Comparative" and "Contrastive" Law*, 104 U. PA. L. REV. 887 (1956).

grams for relatively few students; that the present need to provide instruction and research for domestic and foreign students in international and comparative law offers a golden opportunity not only to satisfy the immediate need but in doing so to raise the level of legal education, and thus eventually of the bar, by developing the study of law as a humanistic and not merely vocational discipline.[6]

It were otiose to repeat the arguments for this submission, except to note that the conception of law as a practical art rather than a science, characteristic of legal realism, has also been the fundamental premise of the typical professional curriculum. Hence the ultimate question posed by the realistic movement in American jurisprudence is whether the practical conception of legal study and instruction as projected by legal realism, is really practical. There are two considerations among others which suggest that it is not, whether for training or research. The first is that the volume of existent law of any modern industrialized state is too vast and complicated for the human mind to master in all its technical detail and specialization during the brief time allotted. The second is that, even if this were possible, since the legal materials of the time and place are subject to constant change, there is no assurance that such knowledge will be useful in the future. If these obvious points are admitted, the next step in jurisprudence must be, not to abandon the critical achievements of legal realism, but also to develop on more constructive lines, including particularly those that realism tended to ignore. This would necessarily involve a humanistic conception of legal science, with due attention to systematic analysis of legal theory and to historical and comparative legal research.

Meanwhile, the scene is brightening. The leading law schools are alive to their responsibility not merely to provide adequate legal training but also to extend the knowledge of law by research. The horizons of legal interest have been greatly extended as a result of the progressive development of interest in international and foreign law, which will necessarily broaden the basis of legal studies and import the stimulus of new ideas for comparison with what is already known. In short, the stage is set for a development of legal science in the United States, which, conducted in the humanistic spirit of inquiry that inspired American legal realism and extended to encompass the integrated affairs of the modern world, will liberalize the study of law and provide knowledge that is much needed not merely to maintain but to adjust the legal order to current needs.

6. *Cf.* my articles: *Comparative Legal Research—Some Remarks on Looking Out of the Cave*, 54 MICH. L. REV. 899 (1956); *Comparative Legal Studies and the Mission of the American Law School*, 17 LA. L. REV. 538 (1957).