

Profile:

Emeritus Professor Willard Hurst

William Moore

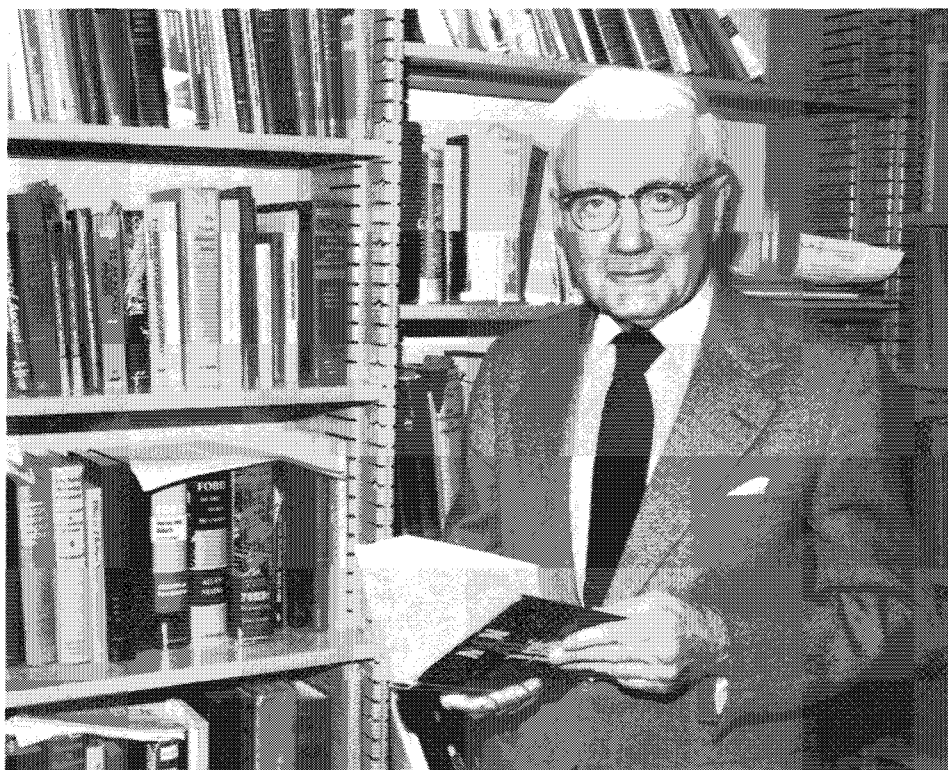
In the recently published Vol. III, History of Wisconsin, Professor J. Willard Hurst's name is frequently mentioned. This work calls Prof. Hurst the outstanding historian of the lumbering industry in Wisconsin. It is appropriate, then, to refer to him here with a lumbering phrase: a Grandfather Pine among legal historians. In some areas, trees were "clear-cut," every mature tree removed without thought for the future. Even in the era of the lumber barons, however, a few were wise enough to leave one Grandfather Pine to provide the seed for the next generation of timber. So it has been with Willard Hurst. Generations of legal historians have looked to him for scholarly leadership and inspiration. With great pride we present our distinguished Emeritus Professor J. Willard Hurst.

Two years after retiring from the Law School faculty, Emeritus Professor Willard Hurst is busy pursuing his interests in legal history and his studies in the field of law and the modern corporate bureaucracy.

His interests in social science-related issues of the law stem well back to his work in economics and history as an undergraduate at Williams College. This background, he says, "supplied me with some theory to try to organize some chaotic facts" as a student at Harvard Law School.

His most recent undertakings in the area of law and modern corporate bureaucracy are inextricably linked to what long ago emerged as his long-range interests in the legal history of the American economy: what he calls "the history of the law's role, for better or worse, in the development and growth of the American economy."

The emeritus professor received his law degree in 1935. From 1935-1936, he served as a law clerk to U.S. Supreme Court Justice Louis Brandeis. A year later he joined the law faculty at Wisconsin.



New Trends in Legal History

When Hurst graduated from law school, he was "at the threshold of the Realist Movement," which began in the 1920s, but did not gain widespread credence or acceptance until the 1930s. The Realists "followed the line that there was something beyond the announced doctrinal arguments in what courts did." That is, if one looked for underlying meaning, one could find some economic-functional or other-functional operation in court decisions.

Hurst and others took this idea further and applied it to the history of law. Hurst

also began to look at legal history as a phenomenon both affecting and affected by economics.

Legal history had, up to that time, consisted primarily of what Hurst calls the "quite narrow history of the development of agencies" which tended to treat law as if it were a "self-contained reality in society without any connection to anything except legal institutions and lawyers."

The young professor, indeed many lawyers, wanted to break away from this prevailing, self-contained view of the law and its history. Hurst approached the undertaking from two angles.

On the one hand, he initiated a case study to investigate the way in which law and economic behavior interacted in the nineteenth century. *Law and Economic Growth: The Legal History of the Wisconsin Lumber Industry* probes the legal order's effect on the rise and fall of the industry which, Hurst says, "could have been a major long-term asset of the society with large implications for the tax base in the state."

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Concurrently, he began to pursue in his studies the general theme that "there is great interplay or interaction between laws and institutions in society, like the market, the family, the church, etc." Hurst began to "develop a theory of cause and effect relations between legal and non-legal institutions in society."

This theme has led Hurst to follow up with a "string of related studies," and from many of those have come nearly a dozen books and many articles.

Theories on the Corporation

One such related study that has sprung from Hurst's search for a broad theory for the cause and effect relationship between law and society concerns the question of what has made the business corporation "socially acceptable" to American society.

The corporation, the professor points out, was originally regarded by society as a "potentially socially dangerous thing." Americans have traditionally been "very concerned about large scale group action in the economy."

Yet by the 1880s or so, in its strictest sense, the corporation "became a taken for granted business instrument." Corporate status, Hurst notes, could be attained with the minimum of legal formality.

Society's view of the corporation has followed a course marked by ambivalence. For while we have feared, as Hurst says, "that the corporate form of organization could provide the base and structure for the growth of great power centers through which the few could control the many," at the same time, we have been generally reluctant to react by tightening the law of corporation.

Instead, regulatory law has proliferated which impinges on the business corporation, but not corporation law proper. That we have chosen to regulate in this fashion—without affecting terms of incorporation—manifests our strong affection for economic growth and increased production,

and our realization that the "corporate structure has made, and is making, a major contribution to the productivity of the economy."

The end result of regulatory efforts, Hurst says, is that "one cannot understand anything about large-scale business operations without taking into account the law of labor relations, the law of corporate finance and the great network of regulatory controls," which to come full cir-

cle, and to return to his broader theme, are not part of corporation law as such, but are necessarily part and parcel of corporation management. Once again, law and economics come face to face, each being almost incomprehensible without knowledge of the other.

Legal Education Pioneers

If the emeritus professor was an innovator in relating law to something other than itself, then this achievement went hand-in-hand with his contribution to a revolution in legal education. For the new attitude which changed the course of legal history also touched legal education.

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In his work as a lawyer, historian, and economist, Hurst has come to believe that the law and the market are the two dominant institutions in American society. The interaction between these two institutions he views as a dynamic process which shapes every dimension of society.

But as a law student he was told differently. Although Hurst attended law school in the very depths of the Great Depression, he says he doesn't recall "hearing more than two or three references to it in three years of law school. I was pretty much given the notion that the law was as much as a separate and distinct piece of reality as, let's say, astronomy."

It was his earlier work as an under-

graduate that told Hurst otherwise. And a growing dissatisfaction in academia with law schools' frame of reference had begun to produce a mood ripe for change in legal education.

The changes in the thinking in legal history initiated by the Realist movement in the 1920s had begun to modify the approach to legal education. Later, the Great Depression greatly influenced the thinking behind standard law school curriculums.

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Along with that idea emerged a "band of lawyers who had been plunged into the thick of the new style of government." Many of those lawyers entered teaching. The result: a generation of lawyers "who, as a fact of life, expected government to do something and expected it to be a normal part of the practice of law to be involved in dealing with various facets of government." Hurst says this phenomenon affected the teaching of law profoundly, "particularly in this functional emphasis."

Wisconsin has been a "pioneer in relating law to the social sciences," he says, "ahead of most universities."

Already in the early 1920s, Professor John R. Commons, Dean Harry Richards, and others had begun to promote the concept of "law in action" in the Law School's curriculum. The notion was expanded and enhanced under Dean Lloyd Garrison and Professors Nathan Feinsinger and Jacob Buescher. When Hurst joined the law faculty in 1937 he "joined the effort to redirect the focus of legal studies."

Present Obstacles, Future Challenges

Hurst's law school experiences in the 30s—when virtually no clinical exposure was available to students, "unless," he says, "one wanted to join the local legal aid society"—stands in stark contrast to today's attempts to provide some form of ordered, guided practice experience as a part of a three year law course.

The interdisciplinary seminar is one tool schools have employed to provide law students with some sense of the broad nature of the law. More recently, clinical programs, what Hurst calls "the nearest equivalent to practice experience," have expanded this effort.

Clinical programs have now taken their place alongside the broad gamut of interdisciplinary courses offered at the Law School.

Opportunities for clinical experience have included programs offering legal

assistance to institutionalized persons, and public intervenor work, to name just a few. The Center for Public Representation furnishes similar opportunities.

Hurst naturally applauds these additions to Wisconsin's law program. But he is troubled by financial constraints which have limited the Law School's ability to expand the programs further.

The emeritus professor has a son who is a lawyer and law professor, and a daughter who is a doctor. What he observed of the training of a doctor stimulates him to a wry comparison. He

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believes that law schools in general have been denied the financial support given medical schools. "People are much more worried about competent doctors than they are about competent lawyers," he says, "and we spend just a tremendous amount more dollars turning out an M.D. than we do a J.D."

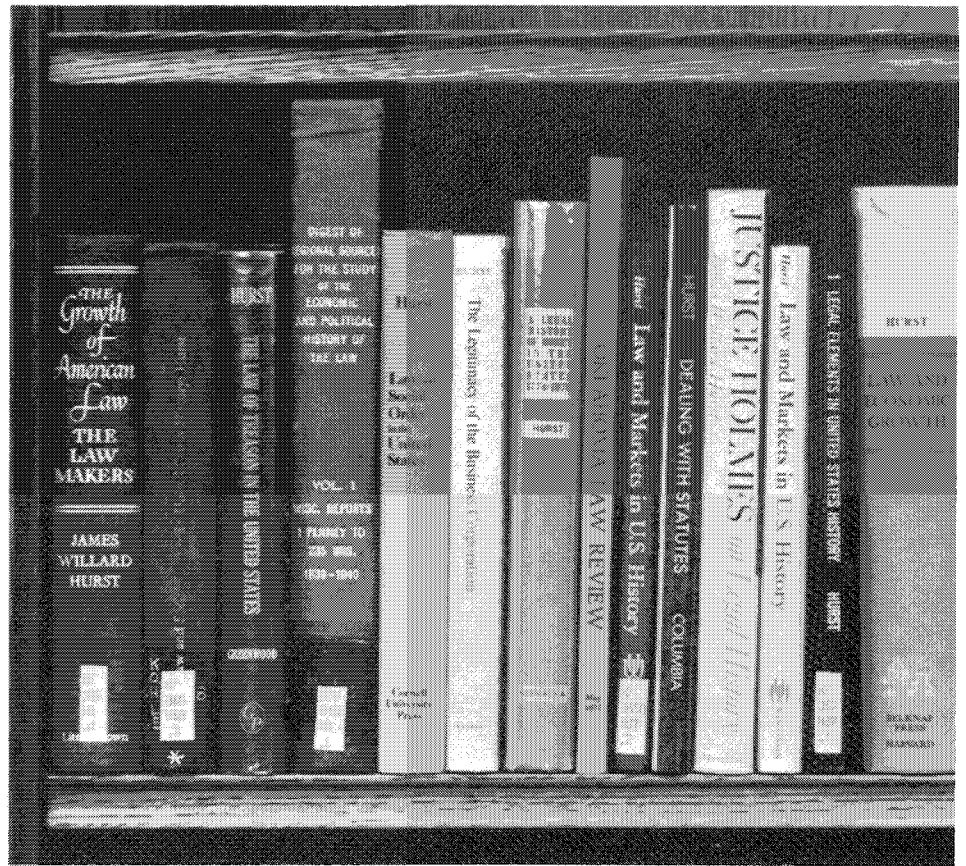
And the ratio of students to instructors in medicine is far smaller than that found in law schools. "Because of the limited number of faculty available in law schools," he says, "there cannot be any very large amounts of anything like the clinical instruction compared to what fledgling doctors get."

Hurst stresses that it is easy to overlook the fact that limited monitoring of practical experience "may turn out bad lawyers with bad practice habits if they are not well supervised." And good supervision, he says, calls for relatively few students per instructor. That is expensive.

Law schools have had to counter this problem by "being cautious on how much they try to do in that field, so that they don't outstrip their limited supervisory resources."

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Budget restrictions also limit funds for legal research. Hurst would like to see greater investment here, investment similar to that allotted for medical research and experimentation. But, again, "society has not been willing to allocate to legal education resources remotely comparable to those in medical education."



All of this adds up to deep frustration, Hurst says, but "in part, that frustration stems from good things: from the concern that we've got broader, more challenging notions of what we ought be doing than what we once had. We are no longer simply teaching the logic of formal legal doctrine."

Hurst does note that some state budget restrictions have been overcome by a major fund raising drive which seeks to increase private endowments for the Law School.

Its success thus far has enabled the School to, for example, expand the number of Bascom Professorships awarded, which can provide faculty members with summers for research, writing, or funding research assistants—all of which make a contribution to the well-being of the Law School and its students.

Despite budget limitations, Hurst believes that the UW Law School offers one of the finest legal educations available.

"Without sounding complacent, the present program offered here is a good, basic one. A very vital element to the School is that its been very receptive to allowing its faculty to open up new fields. The School has been generous to allocate faculty time and resources to the development of new courses. Until recently, this

could be said of only a small number of schools."

The School's ability to continue this trend is key to its premier standing and to its general vitality.

Teachers and Students

In his many years of teaching, Hurst says that students haven't changed much. But he remembers post World War II students the best. They were "soberly career conscious," he recalls, and had a "keen and urgent sense that they were making up for lost time." Their attitude made for a "very stimulating atmosphere."

Today's students, he says, are similar in their "serious, career oriented approach" to law school.

Yet, in any case, for Hurst it seems that teaching has always been a pleasure.

"There have always been certain students around who made it fun to be in the business," he says. "Students can be exasperating, but also very stimulating. One gets the constant sense that one is continually being refreshed by successive waves of newcomers who bring their own ideas and interests to the Law School."