

entist through the trackless wilderness of fact and of official action with the smooth road of the law teacher, whose way was made clear, he laughingly asserted, when he had found the appropriate key number.

He lived to see the day when the emphasis in the law teaching world had shifted to the methods advocated and practiced by him fifteen years ago. And it was typical of his scientific mind that he then found himself on the defensive, distrusting the movement's high-pressure salesmanship, with its blare and its extravagant pretenses. He lived to see the Congress and most of the American state legislatures come to accept gratefully the services of legislative drafting agencies, only to regret that more of the draftsmen were not as expert as they were expected to be. He lived to see law school courses and the literature in Statutes gradually multiply, and suffered because for the most part his young colleagues in the field proved incapable of seeing the woods for the trees. Ernst Freund was one of the great juristic pioneers of America.

THE WORK OF ERNST FREUND IN THE FIELD† OF LEGISLATION

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LAPSE of time is a condition precedent to the proper evaluation of the contributions of Ernst Freund in the field of legislation. In his case as in the case of any great scholar and creative thinker, years must pass before that which is of enduring value and significance in his work can with certainty be determined. The judgment of one who for several years enjoyed the great privilege of collegueship with him could scarcely escape the influence that the power and originality of his mind and the charm of his personality inevitably exerted. It seems safe to assert, however, that his influence lives after him. A brief enumeration of his activities and contributions in the field of legislation and allied fields will serve to indicate how extensive and varied they were.

In a life unusual for its great diversity of interests legislation and administrative law were the deepest and most enduring. Partly this was due to the character of his training, for he came into the law through the gateway of political science and with the background of a German university training. Partly it is attributable to an originality of mind and freshness of point of view which made the exploration of new fields more congenial to him than the further pursuit of beaten paths of legal scholarship. Moreover, his deep interest in social, economic and political data and points of view no doubt contributed to the focusing of his interests in public law, which has so many points of contact with the social

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sciences. He early came to realize the dependence between mastery of legislative technique and understanding of social science data in the legislative process.

Dean Van Hecke has paid felicitous tribute to Professor Freund's outstanding gifts as a teacher, to the importance of his contributions in his chosen fields through the products of his creative scholarship, and his success in winning a place for Administrative Law and for the systematic study of the legislative process along with the judicial process in the curricula of leading American law schools. In addition some mention should be made of his long period of service as a member of the National Conference of Commissioners on Uniform State Laws. His distinguished service as a member of this body continued from his appointment by the Governor of Illinois in 1908 until his death. During this long period he missed not more than four or five of the rather lengthy annual meetings and participated actively in both the proceedings and discussions of these conventions and in the work of the committees. While he served as chairman or member of a number of committees, his services in connection with three of them are deserving of particular mention. The first of these was the Committee on Scope and Program, to which he belonged from 1915 to 1927. This committee has a determining voice with regard to questions of policy, particularly the topics which shall be considered for uniform legislation. His broad knowledge of law and his studies and experience in statutory work and in the administration of law combined to assist this committee materially in reaching wise conclusions. The authorship of the report dealing in an exhaustive fashion with the future development and policy of the Conference, presented to and adopted by it in 1923, was largely his. From 1915 on, save for one year, he was also a member of the Committee on Legislative Drafting. In this connection he formulated rules governing questions of form and style in the drafting of uniform acts. These rules were adopted by the Conference and are printed annually in its Handbook for the guidance of future draftsmen.

Professor Freund's principal contribution in the actual drafting of legislation arose out of his many years of service as a member of certain committees in the Social Welfare section of the Conference, in connection with acts relating to marriage and divorce, the guardianship of children, child labor, and narcotic drugs. He drafted an act intended to improve materially the legal position of illegitimate children and procured its adoption by the Conference in 1922, after defending it successfully against vigorous criticism at several meetings. This Act has now been enacted, with some slight changes, in eight states. In the drafting of this legislation Professor Freund worked in close co-operation with the Bureau of Child Welfare and other social agencies. He was likewise keenly interested in the Divorce Jurisdiction Act which he prepared and presented. Since its approval by the Conference in 1930 it has been enacted into law in at least one state. In addition to the above activities, he served at various times on such committees as Banks and Banking, Taxation, and Compacts and Agreements between States.

Professor Freund was unremitting in his efforts to procure adoption of various uniform laws by the Illinois legislature. That his efforts, ably supplemented by the work of other members and friends of the Conference, were fruitful is indicated by the fact that fourteen of the uniform acts have been enacted into law in this state, thirteen of them since he became a member of the Conference.

Among his other public services which are worthy of note were the leading part which he played in the preparation of a new charter for the City of Chicago in the year 1905 and his participation in the work of the constitutional convention of 1919-20 as an adviser on constitutional law. In this latter connection he drafted provisions which would have brought to the City of Chicago a large degree of autonomy in local affairs. These sections were adopted by the Convention only after the most vigorous and at times bitter attacks by various politicians and interested groups who sought to convey the impression that they were the work of an impractical idealist and academic theorist. By his success in repelling these attacks Professor Freund proved, if proof were needed, that his feet were upon the ground and that he was not lacking in a keen perception of the realities.

If only time can fully reveal the extent of his influence and the enduring values in his work, none will doubt the freshness and the stimulating qualities of his mind, the thoroughness of his scholarship, his high professional ideals, his strong sense of public responsibility, and his passion for social justice. When shall we see his like again?

ECONOMIC ILLUSIONS UNDERLYING LAW

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THE ultimate sanction of law making¹ rests upon the establishment of facts. The evidence presented in a court may or may not support the judgment entered; but if law making is to be effective, the judgment itself should be a fact. The judicial conclusion that Jones owes ten dollars to Smith may be founded in error. But the judgment will establish as a fact the indebtedness of Jones to Smith. In the higher realms of legislative and judicial law making, it becomes a matter of grave importance that legislators and judges shall not declare that to be a fact which is not a fact, or declare that to be fixed and established which is uncertain and unpredictable.

These preliminary observations may serve to introduce a brief criticism of the efforts of legislatures and courts to write economic illusions into law. There is, for example, hardly anything more difficult to determine than the "value" of property. But there is hardly any illusion more common than the notion that

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¹ "The true view, as I submit, is that the law is what the judges declare . . ." Gray, *Nature and Sources of Law* (1st ed. 1909), § 602.