

UNDERHILL MOORE

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My earliest recollection of Underhill Moore is of an occasion when he stopped me in the halls of Columbia, where I was on a visiting teaching assignment about a quarter century ago. I did not know then how piercing was his humor or how devastating his approach to all contemporaries. His purpose was to invite me out to his Englewood home to dinner. When I expressed regret because of a previous commitment to one of his colleagues, he said, "Oh, but that will be such a dull evening!" I was then young enough to find this departure from the usual law school chauvinism arresting. And, as I found, an evening with him and his most charming wife, who became in later years a dear family friend, was anything but dull. Later my first duty as prospective dean at Yale was to convince Moore that his seduction from Columbia by the youthful and dynamic Hutchins should still stand notwithstanding the latter's impending departure for Chicago. Just as soon as news of the change at Yale reached him, Moore came to New Haven for a thorough survey of the situation. As a matter of fact that day-long interview took place two months before I actually took office; but what a fine initiation into administrative machination it was! I shudder now to think of all the promises I then made, which Will properly never allowed me to forget. I believe I justified at once all that picture of degradation commonly associated with the transition from teacher to administrator.

Moore came to Yale in 1929. From that time on we were not only colleagues and friends, but, what was yet closer, neighbors. For all but the last year of his New Haven life, he owned and lived in a hillside house next door above mine. As in winter he worried over the snow, which he naturally dumped downhill, and in summer nursed the grass and grew his flowers, I watched with envy not quite sharp enough to force me to emulate his industry. But even a minor approach to outdoor activity was enough to establish a pleasant excuse for extensive philosophical and other discussions in our mutual backyards on a warm Sunday morning, and I listened with interest and amusement to the expression of the most outrageous political and governmental opinions, obviously designed to stimulate and shock. As I well understood, these were by no means a complete revelation of his inner beliefs. I knew of his warm and loyal support of and affection for former students who had gone into the service of government, as well as of industry; and I was intrigued, though not altogether surprised, later in wartime to find him engaged in sitting on governmental boards and panels in the adjudication of difficult labor cases.

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As I have tried to suggest, he was not averse to the teaching advantages accruing to personality and color. He loved to shock, and even a large and stately dinner group might be devastated by a series of frank and uninhibited comments emanating from his side of the table. About such a teacher stories always grow. In his case many were quite true, as I knew. I recall now when one football ace had strayed into law school study, where he obviously did not belong and where the going was a lot rougher than on any gridiron. He came to me one time in distress, saying that he had not understood a thing which had gone on in class, but that it seemed like such a beautiful fight that he wanted to get in on it. "Why," he said, "Mr. Moore gets up on top of the desk and shakes his fist and it's wonderful if I could only understand what it's all about." I was so softened by his plea that I arranged some special assistance for him from two schoolmates, one now a distinguished law professor, another an oil magnate. So successful were they in feeding him a judicious intermixture of the "institutional approach" and Norton's Bills and Notes that the athletic hero, although failing generally, passed that course with flying colors and I had all I could do to prevent the growth of an immediately incipient tutoring monopoly.

Moore had a very high conception of the obligations of a teacher. It was a favorite thesis of his that law teachers had to suffer the menopause, and administrators must face that as a to-be-expected phase of every teacher's life. Some, he felt, being bored or worn out with their teaching, must necessarily go back to practice and should be allowed to depart quietly. Others might be nursed along to recover in time their former equilibrium and to recover once more the zest of classroom success; just a few, perhaps the most precious, could be stimulated to advance beyond their teaching into the real life of the scholar. Both his mordant wit and his indirect approach—so open as to be direct in its indirection, if I may hazard the paradox—are perhaps illustrated by an administrative incident. He came to me to recommend for the faculty a promising young lawyer of excellent background, as well as professional experience, saying that he was just the type of man I must necessarily like to select for law teaching. When I suggested interest, but said, "Why don't you recommend him for faculty vote?" Moore's answer was, "Oh, you know my sentiments and that I couldn't do that. I don't believe any man with law training should be elected to a law faculty."

There was, of course, here not merely a colorful personality, but a rugged independence disclosing a strength of character wholly admirable in any teacher. I have been told that Moore showed his mettle at his first teaching assignment, near the beginning of the century in Kansas, where he defied the then authorities to hold to standards of scholarship and discipline, for which they later came to

thank him. The late Judge Hinton always referred most affectionately to him as "Chesty," in relating earlier adventures together at Wisconsin and Chicago—a nickname perhaps not without significance in the total picture of the man. A vigorous and aggressive personality, an unusual teacher, and a warm friend—such a one was destined to stand high in the ranks of great teachers and in the affection of many students scattered all over the country.

But even when I have said this, I have not yet touched upon the most unique and, as I believe, the most significant feature of his career. All this was in one sense only background or prelude to, as well as explanation of, what he clearly considered his outstanding work. For at the summit of his teaching career he turned his back upon classroom success for research of the most extensive and persistent character and of the most novel kind for any law teacher of our age. His further teaching—and, of course, it was still extensive—was geared entirely to his conception of law as determined by facts and as being itself an "artifact," and to his fiery crusade to follow what he believed to be the scientific approach to the ascertainment of the institutional background which shaped and indeed was our law. Hence he set himself, with a staff, to the most detailed and laborious investigation of limited areas of social or business activity to determine the precise impact of actual happenings upon the course of law. Nor would he allow anything to deter him from his dedicated task, not even the almost universal doubts and questionings, not to speak of more ribald comments, of his compeers in the legal world. What he wrote lent itself easily to caricature and witticism; I can recall Professor Reed Powell at his powellian best in such quotations at a Law Journal banquet. Indeed, I fear that I contributed somewhat to this attempted gaiety by a not particularly good wisecrack, which had more currency than I had expected, when I reported at a law school association meeting that he was engaged in research into "the love life of a check."

There is a story of the time which, if not true, needed in any event to be invented, for it so perfectly illustrates the spirit and persistence with which he carried out his program. It is said that as he and his researchers went past the Hotel Taft in New Haven, carefully observing and setting down data as to the parking of cars in the city street, a gentleman came out of the hotel and with outstretched hand said, "Well, Will Moore, how are you? I haven't seen you in years." This was in fact an old friend, who was doubtless startled to receive the reply, "Don't bother me. Can't you see I'm busy counting these cars?"

It is not my purpose here to review the results of his years of research; most of it indeed appeared in these pages,¹ where also is to be

1. I have in mind particularly those articles cited in the bibliography of his writings, pp. 288-90 *infra*, which set forth the "institutional method" as applied to certain problems of banking and of negotiable instruments and the "law and learning theory" de-

found a sympathetic evaluation of its significance.² But I think it pertinent to the picture of the man himself to point out its sharp differentiation from the usual research in the social sciences and particularly in the law. That tends to be general, imprecise, conclusory, and hence, in large measure, subjective. On the other hand, Moore's work was to the last degree specific, precise, limited, and as objective as it could conceivably be made. This is in fact indicated by the selection of the fields of his chief investigation, namely, the comparison in different areas of bank customs in the clearing of checks and the effect of city parking ordinances on the actual duration of parking on city streets. Obviously this was the way of painful patient work without the glories of large results largely announced. It was, in fact, a demonstration of a method and a proposed way of life for the law and law study, rather than a showing of attained ends. No one without a rather unusual sense of consecration could have sustained such a search over twenty years or more. Some have thought that he may have weakened a bit in his faith towards the end. But I am quite sure this is a misinterpretation. He did express a certain natural impatience with the slowness of the demonstration, but he was alive to the formulation of new tests to be undertaken and unswerving in his belief in their need and value.

The law teaching profession is so close to actual practice that it must necessarily be affected by professional and vocational standards. Not without some cause—notwithstanding also the beneficial results—do university administrators complain about the materialism of law professors who are so ready to leave the academic shades if salaries lag unduly. From the days when the full-time law school came to be thoroughly recognized this has been considered a matter for apology as raising doubts of the ultimate dedication of the law teacher. In the light of this past it is now passing strange to see that the materialistic approach to law teaching is gaining in support and approval. Now, indeed, the vogue seems to be for strong and vigorous arguments for greater practicalization of law schools, indeed for lawyer-schools for the training of lawyers exclusively. Is not this not only novel, but amazing, doctrine? If there is any appropriate criticism of this branch of the teaching profession it is quite to the contrary, indeed that it is too easily distracted from pure matters of the intellect, which it can and should pursue, to the aping of the practicalities of the law, which it cannot successfully do. Against this trend of the times Underhill

veloped from his study of the operation of city parking ordinances. A generalized statement of his approach appears in the chapter by Moore and Callahan in *MY PHILOSOPHY OF LAW* 201, 204-7 (1941).

2. Hull, *Moore and Callahan's "Law and Learning Theory": A Psychologist's Impressions*, 53 *YALE L. J.* 330 (1944); Yntema, *"Law and Learning Theory" through the Looking Glass of Legal Theory*, 53 *YALE L. J.* 338 (1944). See also *NORTHROP, THE LOGIC OF THE SCIENCES AND THE HUMANITIES* 125, 272 (1947).

Moore set himself to pursue his lonely vision. To my mind his figure shines in lofty splendor. Even had his research not justified itself in breaking new ground—as those competent to judge appraise it—I would still have felt his example one we could hardly overprize. That in our materialistic age there could be this fierce devotion, unswerving, persistent, against all obstacles, to the discipline of the mind and this following of the intellectual approach wherever it should lead is a sign that, after all and however generally concealed, there are lofty virtues and a high call to intellectual duty among law teachers just as with other teachers.