ESSAY

William L. Burdick and the Making of the University of Kansas School of Law

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I first met William Burdick at Spivey’s bookstore in 1996 in the section on Ancient History. I did not meet him in person of course, since he had died in 1946, but I met him in spirit. On those shelves at Spivey’s I found a copy of Monro’s two-volume translation of selections from Justinian’s Digest published by the Cambridge University Press at the turn of the last century.\footnote{1} Burdick’s signature, in bold hand, was on the inside cover of each volume. I was excited to find these volumes. They are relatively rare, even in England, and I had been looking for them, on and off, for twenty years. That these copies belonged to one of my predecessors (Burdick having been dean of the law school from 1935 to 1937) made them especially attractive. I bought them and they now reside in my study.

This encounter with William Burdick piqued my curiosity about the man. One of my first experiences at KU was hearing Professor Paul Wilson give his annual talk about law school history at Old Green Hall on the last day of class. He spoke of Judge Nelson Timothy Stephens, of Uncle Jimmy Green, of Kate Stephens, but not of Burdick. Over the years of my deanship, I encountered Uncle Jimmy everywhere, but Burdick’s name was rarely mentioned.

As most of you know, I am an historian by trade and inclination. In my last book, I attempted to revive the memory of a band of hardy nineteenth- and early twentieth-century scholars of Roman law.\footnote{2} I did not include William Burdick, who taught Roman law at KU and who in 1938 published a fine treatise, The Principles of Roman Law and Their

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Relation to Modern Law. His work fell outside of the timeframe of my book and was, in one sense, the classic case of the right book at the wrong time. Interest in Roman law was at a low point and the book went, unfortunately, largely unread. Perhaps by this speech, I may apologize to William Burdick and may encourage modern readers to rediscover his work.

Something else motivated me to talk about Burdick. In the twelve years I have spent as a law school dean—and the twenty years I have been a law professor—I have come to understand that legal academia is populated by certain archetypes. Among faculties, one finds, for instance, the “great teacher,” whose whole life is dedicated to students; the “practitioner-teacher,” whose life is split between teaching and consulting, the one activity (in the best cases) enriching the other in a kind of academic symbiosis; and the “scholar-teacher,” whose greatest joy is writing and whose shelves are filled with the products of the pen—or, these days, the word processor. Deans too can be seen as types. The “public dean’s” forte is fundraising and dealing with alumni. The “student dean’s” every thought is on the student body. And there is, somewhat less commonly, the “scholar-dean,” who continues to research and write while dean. Most deans are a mixture of these types, but often one type predominates. Uncle Jimmy was clearly a “student dean.” His great love for “his boys” (and theirs for him) was legendary. In my mind, William Burdick was something of a “scholar-dean” who, even while serving as an administrator, retained his love for researching and writing about the law.

I have always cared for the KU law students, although I think at times they have not understood this, and I have always tried to do my best at alumni matters, but I must also confess that I have always seen myself primarily as a “scholar-dean.” I have not felt a spiritual closeness to Uncle Jimmy (though I’ve not disliked him as Kate Stephens once did), but from the time I bought Burdick’s copy of Monro’s classic


4. Kate Stephens was the daughter of Judge Nelson Timothy Stephens, the founder of the KU Law School, and was the sister-in-law of Uncle Jimmy Green. She served as the second woman professor at the University of Kansas, in the Chair of Greek, until a disagreement with the Chancellor caused her to move to New York, where she took up a writing and editorial career. She harbored a deep and abiding hatred for Jimmy Green, perhaps because she believed that he had stolen the credit for founding the law school from her father. The product of this vituperation was her book, Truths Back of the Uncle Jimmy Myth in a State University of the Middle West, self-published by her in 1924.
work, I have felt a closeness to him. In my office, a photograph of Uncle Jimmy hangs on the wall, but Burdick’s picture is on my desk. I like to think we have much in common.

WANDERINGS IN THE DESERT

William Livesey Burdick was born in 1860 in Rhode Island, where his ancestors had settled in 1651. According to sources in the KU Archives (including press releases and the 1900 KU Yearbook, The Shingle), Burdick graduated from Wesleyan University in Connecticut with his B.A. in 1882; in 1884, he received his Ph.D. from Chattanooga University in Tennessee; and in 1885, he received an M.S. from Wesleyan. Eighteen eighty-five until 1898 were his years in the desert. He tried various professions in various places. He flirted with the idea of becoming a physician, beginning the study of medicine and then soon abandoning it. He studied law in the offices of Judge D.W. Northrup in Connecticut, and was admitted to the bar in 1886. In 1889, he went to Harvard for a year as a special student. In 1891, he went to Fargo, North Dakota to head Fargo College. The following year he went to the University of Colorado where he headed the university’s preparatory school and taught Latin in the graduate school. In 1895 he returned to Connecticut to teach Latin at the Hotchkiss School, and two years later he was back in school. This time it was Yale Law School where he enrolled as a third-year student. He won the Jewell Prize for having the highest academic average of his class and graduated in 1898. That fall he traveled to Lawrence, Kansas to join the law faculty. His wanderings were over. He had found his home and his calling.

THE EARLY YEARS AT KU

When William Burdick arrived at the KU law school in 1898, the school was just growing out of its infancy. For the first twenty years the school had been Uncle Jimmy’s, but the university and the law school were about to see some changes and Burdick’s arrival could be seen as a harbinger. He was the first faculty member with a degree from a law

school other than KU, replacing W.B. Brownell, who left to become a county attorney. When Burdick arrived, the program was two years long; but in 1900 it became a three-year program, and the law school became a charter member of the Association of American Law Schools. The diploma privilege was in place in 1898 and KU law graduates could be admitted to the bar without examination. In 1903, the privilege was abolished and the first bar examination was initiated. Admission requirements were low in 1898; but in 1904 the school began requiring a high school diploma (and in 1912 a requirement of thirty hours of credit in the College of Liberal Arts and Sciences was added). The law school lived in the north wing of old Fraser Hall in 1898, in two classrooms, a library and a reading room, faculty offices and a cloak corridor. In 1905 the school moved to its own new building – Green Hall.

Burdick’s career at KU can be seen as being of two parts. His early years, from his arrival in 1898 until about 1912, were years of teaching and scholarship. The curriculum at the time he joined the law school was very traditional, and included the usual common law subjects as well as equity and Roman law. Burdick was well-trained to assume his teaching responsibilities. Yale at the time was known not only for its teaching of the common law, but also for comparative and Roman law taught by the great Charles Phineas Sherman.

As a teacher Burdick was strict and to the point, very much in the fashion of the time. He thought deeply about the process of teaching law and wrote about his philosophy of teaching in an article titled The Study of the Law in a 1904 issue of The Kansas Lawyer. He required that his students attend all his lectures and that they be on time. A failure in this could bring a sharp rebuke. George Allen, a student during Burdick’s later years at KU, remembers that Burdick always required students to stand when they were presenting a case. Allen recalls that Burdick often asked what the law on a particular point was in a state other than Kansas, to which the proper answer was “I don’t know.” He required

7. C.P. Sherman was an instructor in Roman law at Yale at the turn of the twentieth century. His principal published work was Roman Law in the Modern World (1917). See generally Hoeflich, supra note 2, at 123-25 (discussing Sherman).
that his students be well-prepared for class and sure of themselves. If a student began an answer with the words "I think," Burdick would interrupt and say: "When you get to practicing law you will not be paid to think but you will be paid to know what the law is." For all his ability to be pointed and even stern, he was a popular teacher, well-loved by his students and alumni. For years after his retirement, students, faculty, and alumni celebrated "Burdick Day" each spring. He was as good and popular an orator as he was a teacher, and delivered over three hundred high school graduation speeches during his career.

The Burdick seen in photographs seems to be consistent with descriptions of his teaching and speaking. The photograph in The Shingle, the law school yearbook published in 1900, shows a slim man with a high forehead, piercing eyes and a walrus mustache. Photos from later years show he added girth (as do we all), but his face remains always intelligent and kindly. The photographs show that he was careful in his dress. His suits were always elegant and his habit of wearing a red tie on all special occasions was well known.

Burdick the budding scholar is seen in his The Elements of the Law of Sale of Personal Property, New Trials and Appeals in Kansas and Oklahoma, Handbook of the Law of Real Property, Illustrative Cases on the Law of Real Property, and numerous articles. Burdick's dedication to the New Trials and Appeals book is illustrative of Burdick in this period, comfortable in his teaching and beginning to produce significant scholarship growing out of that teaching: "To The GRADUATES during recent years of the School of Law of the University of Kansas, in recollection of many pleasant hours spent with them in connection with their practice-court work in appellate

10. Another Great "Red Necktie Day", supra note 9.
13. The Shingle, published by the students of the University of Kansas School of Law in 1900 as a yearbook was the first yearbook published by KU Law. A copy of The Shingle is in the University of Kansas Archives, Kenneth Spencer Research Library. Burdick's photographs may also be seen in the various class composite photographs now hanging in Green Hall classrooms. He aged gracefully.
16. WM. L. BURDICK, NEW TRIALS AND APPEALS IN KANSAS AND OKLAHOMA (1907).
17. WM. L. BURDICK, HANDBOOK OF THE LAW OF REAL PROPERTY (1914).
18. WM. L. BURDICK, ILLUSTRATIVE CASES ON THE LAW OF REAL PROPERTY (1914).
procedure." The students, too, early on understood the importance of his work. In the October, 1900 issue of *The Kansas Lawyer*, one student editor wrote: "If he continues in this work [his scholarly publishing, he] will do more toward placing the Kansas Law School at the front than could be accomplished along any other line."

YEARS OF FULFILLMENT

Recognition and a special opportunity for scholarship came to Burdick in 1912 when he was asked to become the editor-in-chief of Powell's *Standard Encyclopedia of Procedure*. He turned this position down, but contributed more than 1200 pages to the twenty-six volume set with articles on appeals, corporations, sales, banking, trials, and writs of error. Then in 1919, he was appointed acting dean of the law school upon the death of Uncle Jimmy Green. Clifford Griffin, in his history of the university, suggests that the faculty under Burdick began immediately to "atone for Green's sins" of "stodginess and low standards," and that Burdick was the logical choice to be dean "but [Chancellor Ernest] Lindley had made him university vice-president" instead. William Kelly, in his chapter on the law school in the history of the bench and bar published by the Kansas Bar Association, tells us that one of the first acts of the faculty in December, 1919 was to revise admission standards upwards.

The year Burdick was appointed acting dean brought him another honor and opportunity for scholarship. Congressman E.C. Little of Kansas, a former student of Burdick, convinced his colleagues in Congress that a recodification of federal law was needed—the last having been done in 1878. He sought out Burdick to do the job. The enormous task—the revised code contained over 10,000 sections—took from 1919 to 1924.

20. 7 KAN. LAW. 20, 20 (1900). That the students noticed Burdick's scholarly production and openly supported it is particularly interesting, for during this period the law school was better known as a home to KU's less intellectually endowed football players than it was as a home of scholarship.
24. Press Release Undated, *supra* note 5, at 3-4; see also *University Instructor Revises Laws of Nation, Dr. W.L. Burdick in Charge of Task of Codifying U.S. Statutes* U. DAILY KANSAN July 9,
In 1925 Burdick became acting Chancellor—for a few days—when the Board of Regents, in sympathy with Governor Jonathan Davis, dismissed Chancellor Lindley. Of his brief tenure as acting Chancellor, Burdick would later remark that it was a golden age for the university, a time when no one flunked out and no problems manifested themselves.\textsuperscript{25} In some ways, this period was a golden age for Burdick. He was the most distinguished as well as the senior member of the law faculty, and was well-thought of by the university community. He had a solid reputation as a scholar, and was loved and respected as a teacher.

In 1931, at age seventy-one when many would be entering a quiet retirement, Burdick and his wife traveled around the world. He sought to gain a comparative perspective on his own legal system. It was a time of great turbulence and change with fascism on the rise in Europe and a worldwide depression. He reported on his experiences in a series of newspaper articles. In one, he told of escaping arrest at the border of Stalin’s Russia by invoking the name of his friend Senator William Borah, who for some reason was known to the border policeman.\textsuperscript{26}

In 1934, Burdick was again appointed acting dean of the law school when Dean Robert McNair Davis resigned. In 1935, he was appointed dean and served until he retired in 1937. It is reported that the deanship was offered to him at a law school banquet by one of the sitting regents, Dudley Doolittle (a 1903 graduate of the law school). He accepted after asking the assembled students and faculty whether they wanted him as dean and they answered with a resounding “yes.”\textsuperscript{27} The law school during these years reflected Burdick’s own interests and personality. One of the privileges of being dean is that one can influence faculty hiring, and the 1935 appointment of W.J. Brockelbank is illustrative of Burdick’s influence. Brockelbank was a barrister of Lincoln’s Inn and a licentiate in law from the University of Paris. He received a Ph.D. from

\textsuperscript{25} See Draft Release from the Office of the Chancellor, University of Kansas (undated), (on file in the University of Kansas Archives, Kenneth Spencer Research Library).

\textsuperscript{26} See William L. Burdick, Letter to the Editor, Letter from Borah Admitted Burdick to Russia When Officials Held Up Passport, \textit{Lawrence J.-World}, Mar. 18, 1935, available in Burdick File, University of Kansas Archives, Kenneth Spencer Research Library. Throughout this period Burdick kept the KU and Lawrence communities informed of his travels. His letters and articles about his and his wife’s exploits were published in the \textit{Lawrence Journal-World}, the \textit{Kansan}, and the \textit{Graduate Magazine}.

\textsuperscript{27} See \textit{Honor to Dr. Burdick, K.U. Veteran is Named Dean of Law School}, \textit{Kan. City Times}, May 7, 1935; \textit{Burdick Becomes Dean}, \textit{Graduate Mag. U. Kan.}, May 1935. Those were the days when the dean of the law school made headlines for good behavior, not bad.
the University of Paris in 1934, and his thesis was awarded a silver medal and 3500 francs by the French foundation Dupin Aîné. It appears that even in 1935, KU had a major scholarly reputation in comparative and international law.

Burdick’s 1931-1932 world trip led to a number of publications including an article on Courts of Law in the Orient, and a book titled The Bench and Bar of Other Lands. The book, which appeared in 1939, is remarkable and compares favorably to better known works by John Henry Wigmore and Roscoe Pound. It was intended for use by lawyers and law students, and provided an introduction to the law and legal systems of England, France, Italy, Germany, Russia, Egypt, Palestine, India, China, and Japan. The focus of each national section is on the court system, reflecting Burdick’s own interest in procedure and the fact that knowledge of the courts is most important to an American lawyer working with a foreign system. The descriptions are not dry and academic. They are enlivened by Burdick’s descriptions of architecture and interiors as well as court procedures and practices. The book’s felicity of style and lively prose made it valuable as a practical guide and pleasant reading.

His trip around the world may also have rekindled his interest in Roman law, for he published an article, The Influence of Roman Law upon English and American Law, in 1935, and his previously mentioned book, The Principles of Roman Law and Their Relation to Modern Law, in 1938. Roman law was an essential part of the curriculum when Burdick began teaching and was on the first Kansas bar exam. Burdick taught Roman law at Kansas just as Roscoe Pound did at Harvard. Burdick’s book was based on his lectures at KU and dedicated to his students and colleagues. He expressed his wish that the book would be used by both lawyers and law students. Throughout the book he attempts to connect Roman legal principles to the development of modern law and he speaks of Roman law as “the parent of the present law of most of continental Europe, of the Latin countries of the western hemisphere, and of the modern codes of Turkey, China, and Japan.”

The book covers the full range of substantive Roman law, as well as the extension of Roman law throughout the modern world and, in

30. BURDICK, THE PRINCIPLES OF ROMAN LAW, supra note 3.
31. Id. at vii.
particular, the influence of Roman law in the United States and England. Unlike most American legal scholars, Burdick was sufficiently familiar with the primary sources of Roman law, from Cicero to Justinian, to write from them rather than from secondary literature and translations. At the same time, he was exceptionally well-versed in English and American case law and able to use these sources to show developments and parallels. It was a scholarly tour-de-force. Burdick’s expertise in Roman law was recognized in 1940, when he was invited to Washington, D.C. to present a paper on Roman law to the Riccobono Seminar, which had been established several years earlier by refugee legal scholars from Italy, France, and Germany.32 Few Americans, even those who fancied themselves experts in Roman law, were invited to the seminar by its European founders. That they thought Burdick worthy to address them is the highest tribute these eminent scholars could give to an American.

Burdick continued to write into the 1940s, and at the time of his death had accumulated material for yet another book—on Abraham Lincoln. I believe one can judge people, in part, by their heroes and Burdick’s was Lincoln. Throughout his life, he had collected Lincoln material in preparation for a book about our great martyr-President. It is a terrible loss to Lincoln scholarship that the book was not written.33

IN CONCLUSION

By any standard of judgment, William Burdick lived a life filled with distinction. Although he was not our first dean, nor even our dean for a long period of time, his role in the development of our law school was far from nominal. His influence as a teacher was great. He educated governors, legislators, judges, officials at all levels, and countless lawyers. He was the first Kansas law professor to achieve a national and international reputation through his work on the

32. The Riccobono Seminar in Washington was the scholarly vehicle by which émigré Roman and Civil law scholars were able to establish themselves in the United States during the 1930s. The seminar’s proceedings were published in the journal Seminar. It was extraordinarily rare for an American scholar to be invited to contribute. On the émigré legal scholars, see DER EINFLUSS DEUTSCHER EMIGRANTEN AUF DIE RECHTSENTWICKLUNG IN DEN USA UND IN DEUTSCHLAND (Marcus Lutter et al. eds., 1993).

33. Although Burdick’s work on Lincoln was never published and his notes are now lost, two unpublished articles by Burdick on Roman law have been found. Excerpts from them will be published in volume 1 of The Roman Legal Tradition (forthcoming 2001), which is being published by the Roman Law Society of America and the Hall Center for the Humanities at the University of Kansas.
recodification of federal law and his writings on American law, Roman law, and foreign legal systems. His books on American law were used throughout the United States, and his works on Roman law and foreign law brought him to the attention of European legal scholars. He was instrumental in transforming KU from the local law school of Uncle Jimmy into a national school. He recruited faculty to Kansas who had studied far from our rolling hills and brought a truly global perspective to the KU law school.

To be a law school dean is a rare and great privilege. Burdick understood that it is not an office which elevates the holder but an office which permits the holder to serve colleagues, students, alumni, the university, the state, and the nation. In Burdick's long and productive life he did just that. And in doing so, he became a model of the scholar-dean and, indeed, of a life well-lived.

_In Piam Memoriam Guillelmi Burdick_