APPENDIX A

A Discussion of American Institutions and Their Preservation

WILLIAM COOK’S LAST BOOK, American Institutions and Their Preservation, is a hard read, an irritating mix of bad writing and outrageous, outdated ideas. Ted St. Antoine, dean of Michigan Law from 1971 to 1978, called it the school’s “dark secret.”¹ In 1954 senior law professor Russell Smith told newly arrived law professor Alfred Conard that “you don’t want to know” what’s in the book.² What is so terrible about American Institutions? Rumors and published comments over the years have raised two questions: was Cook an Anglo-Saxon supremacist and anti-Semite, and if so, did he impose his views on Michigan Law? The answer to the first question is a very straightforward yes. Cook, like so many others of his time, held views that today make people wince. But it is important to our story to know that Cook never imposed these views on Michigan Law.

Professor Conard, who died in 2009, became a nationally recognized scholar of corporate law. He admired Cook’s published writings. On the verge of retirement, in 1994, Conard wrote an extensive review of all of Cook’s books. He wrote sympathetically of American Institutions, placing Cook’s book in the context of its times.

Cook’s views . . . are probably typical of those held by the voters who elected Presidents Harding, Coolidge, and Hoover . . . and since they are articulated with unusual clarity and documentation, they help us to appreciate the gap between the conventional wisdom of the 1920s and that of the 1990s.³

Conard is subtly warning us away from presentism, and he is on to something.

Why did Cook write this book? American Institutions was published in 1927 with 403 pages, and the 1929 edition ballooned to 833. Cook was at work on a third edition when he died. Perhaps the book, rather than Cook’s desire to
frustrate Henry Bates, diverted Cook from finishing the Law Quad. Why was this book so important to him?

*American Institutions* is the intellectual complement to Cook’s monetary and physical gifts to Michigan Law. The Tenth Part of Cook’s will states his beliefs that “American institutions are of more consequence than the wealth or power of the country” and that those institutions would “continue to be under the leadership of the legal profession.” The book describes the institutions Cook believed must be preserved and why they are America’s contribution to the world. He also addresses the dangers and problems facing American institutions and the safeguards necessary to maintain them.

By 1927 Cook had accumulated the financial resources and almost finished his plans for the Michigan Law Quadrangle, the architectural component of his vision. Compulsively thorough in his work and possessed of the rare ability to tend to every detail while remaining true to his larger mission, Cook was determined to describe and prescribe a method to preserve American institutions. Contrary to the rumors and published comments, Cook did not insist that any rules or policies be based on his prejudices. Cook’s will and the dozens of trusts he set up contain not a shred of a race-based requirement, let alone any dictate that Jews must not be allowed to join the Lawyers Club, a common rumor at Michigan Law over many years.

The archival correspondence brought to the fore only two incidents that might support this persistent rumor. In November 1924, Bates and Cook discussed the number and nature of the students who ate in the Lawyers Club dining room. On November 1, Cook wrote to Bates to urge filling up the underutilized dining room, since the income was needed to promote legal research. “Literary students who intend to study law should be admitted [to the dining hall],” Cook urged Bates. Bates replied that he had already done that, with meager results, adding, “[T]hree-fourths of that small number are members of one race. . . . Their presence is not altogether welcomed, not for racial reasons but because they are not desirable.” In his reply to Bates, Cook objected to “undesirables” being admitted to the dining room. What Bates and Cook meant by “undesirables” is not clear. In *American Institutions*, Cook uses the word *undesirables* to refer to a wide range of immigrants from southern and southeastern Europe and Asia. On November 19, Bates wrote to Regent Sawyer to complain about Cook’s protest against the presence of Latin students. “Of course,” Bates said, “we cannot reject men because they are Jews. These students all had good records in the literary college. . . . The state law forbids our discriminating against Jews.” If Cook was pushing the Law School to exclude Jews from the Lawyers Club dining room, he was obviously not going to get his way.
The second incident occurred at the November 21, 1925, meeting of the Lawyers Club’s Board of Governors. John Creighton and Regent Junius Beal were there. Beal reported to Walter Sawyer in a November 23 letter that Creighton “pulled out a slip of paper from his inside pocket to read off the list of things they must do. Among them was to discharge the woman then in charge [Inez Bozorth], to remove the pianos from the parlors, to refuse all Jews admission. . .” When Judge Moore, another board member, replied that meeting these demands would make a rubber stamp of the board, Creighton said that “the orders came from headquarters and there need be no discussing.”

What happened? Beal closed his letter by observing that “it is getting pretty tangled.” There is no other mention of the issue of Jews and the Lawyers Club in the hundreds of archival documents at the Bentley Historical Library.

These two instances may well show that Cook wanted no Jews in the Lawyers Club. However, ambiguity remains about the meaning of “undesirables” in the November 1924 letter. Creighton’s November 1925 list may have come straight from him rather than from Cook. After all, Creighton’s prejudices against immigrants from eastern Europe were blatantly on display when he enthusiastically and illegally arrested them in Chicago in 1919. Even if there is truth to the rumors that Cook would have preferred not to have Jews in the Lawyers Club, he did not succeed in imposing his views on Michigan Law then, nor did he later, as a review of his will and trusts clearly indicates.

Does *American Institutions* contain anti-Semitic ideas? Yes, it does. It also shows Cook’s puzzlement about Jews. More important, any expert in American social history will recognize Cook’s approach as typical of the late 1920s, a mix of racial prejudice, nativism, an assumption of the superiority of American Anglo-Saxonism, and the holding up of Anglo-Saxon ways as the culmination of human improvement.

A brief summary of the book will make clear its lack of originality and its failure to make any impact at all, except for the negative impact it has had on Cook’s long-term reputation at the University of Michigan.

*American Institutions* has four parts. Part I identifies ten American institutions. They are (1) a written constitution, (2) popular sovereignty and a republic, (3) universal suffrage, (4) the division of sovereign powers into federal and state, (5) a supreme court with power to declare statutes void, (6) separation of the executive from the legislative branch of the government, (7) universal common schools, (8) the town meeting, (9) separation of the church from the state, and (10) equality of opportunity.
Part II describes the traits of fifteen groups of people and their relationship to American institutions. Cook felt that diverse groups had already been successfully “fused” or “amalgamated,” to use his words, into America. Cook assigned a set of traits to each “race,” citing and quoting from an astonishingly wide array of sources to support his opinions. Next, Cook judged the likelihood of a particular race amalgamating and what would happen to that race if it could not amalgamate. Each chapter holds a mix of positive and negative conclusions (supposedly objective) about the nature of a particular race, followed by facts and statistics from historical works and the census.

The first eight races developed and would continue to maintain our institutions: the New Englander, Southerner, New Yorker, Pennsylvanian, Scotch-Irish, Dutch, French, and Scandinavian. The other seven present difficulties: Irish, German, Jew, Negro, Italian, Russian, and Pole. These groups, arrayed as they are from the most- to the least-favored in Cook’s eyes, catalog the racial and ethnic thinking rampant in the 1920s, when even the most educated American considered each of these national groups a “race.” Cook, in 1929, was following the lead of the U.S. Congress: there is a direct correlation between Cook’s positive (or negative) conclusions about the various races and the favorable (or not) treatment of each race in the restrictive federal immigration legislation of 1921 and 1924. The purpose of both congressional acts was to limit new immigration (of Cook’s second group) and to favor the old (Cook’s first group). The New Englander, Cook believed, was the “predominant type of American.”

The New England character was narrow, but it was deep and strong. It was based on self-abnegation, hope of heaven, and fear of hell. It produced men and women who have never been surpassed in sterling qualities, not even in Spartan times. Their granite hills furnished a sparse livelihood but created a granite character, which gradually predominated over the whole North.

Cook described Scandinavians in his own words.

They understand and appreciate American institutions, support good government, and are not stampeded by theorists nor misled by emotion. Scandinavians are not noted for high intellectual achievements or leadership, and yet they are among the most valued citizens of the United States.

The Jew is another story. Cook wrote more about Jews than any other group. Cook reproached Jews for greed, clannishness, and socialism but praised their commercial, intellectual, practical, and economic skills: “If the Jewish element is ever absorbed into
the American, it will be a powerful strain of blood—somewhat too commercial, somewhat mystical, but intellectual, practical, and economic and of tremendous vitality and tenacity.” He supports this conclusion by a footnote to a full page of citations to writers favorable to Jews. Cook continues on with his thoughts on Jews as follows:

We may not like the manners, we may not like the methods of the Jews, but they are here to stay. We can prevent others from coming but cannot drive out those now here, and we rest assured they will not leave voluntarily. Probably our present unconscious policy is the best, namely, to make it so uncomfortable for them that they will amalgamate and cease to be a separate race.

Cook’s statements and the quotations he chose support the conclusion that some of his views were anti-Semitic but that he saw favorable and puzzling qualities as well. We must remember that he had urged Ellin Mackay, the wealthy Catholic daughter of his former boss Clarence and his close friend Katherine Mackay Blake, to follow her heart and marry Irving Berlin, who had been a poor and relatively unknown Jew until his songwriting career blossomed in the mid-1920s.

Part III of the book describes other forces affecting American institutions: wealth, trusts, the corporation, labor unions, railroad men, railroads, Wall Street and Wall Street bankers, American women, the lawyers, and the cooperation of the United States and Great Britain. Significantly, only lawyers are without flaws in Cook’s presentation.

Part IV discusses four dangers to the Republic. The first danger is an unbridled majority, which could attack the Constitution and the Supreme Court, seeking to substitute another system of governance. Second is the movement to create equality of condition (which Cook lumps with communism, socialism, and unrest), as distinguished from equality of rights and of opportunity, which he strongly supports. Third are class and sectional interests, and fourth is the dismantling of the power of states by adding to the power of the federal government.

Part IV also addresses problems of the Republic: foreign races in America (an elaboration on his ideas about racial traits), Central and South America (which need our help to develop into democratic republics), worship of the dollar (which is not actually a problem, he notes, since Americans are so generous in charitable giving), and office holding (politicians are not honest; other institutions must supplement elected governmental bodies).

The last section of part IV addresses safeguards of the Republic: the character of the people, the westerner (who bears a remarkable resemblance to John Mackay), education, the farmer, and leaders of the people. Here, less than ten pages
from the end of the book, we see the concepts expressed in Cook’s will and engraved in the stone at the Law Quadrangle.

I believe that on the legal profession rests the responsibility for the future of America. Nowhere else does the necessary leadership exist, and leadership, based on training, character, and intelligence, will determine the future of the republic.14

What is one to make of all this? William Draper Lewis, dean of the University of Pennsylvania Law School from 1896 until 1914, wrote, “One of the most common mistakes to which a student of history is liable is to criticize past ages from the standpoint of the age in which he lives.” This quote appears at the start of his 1894 article “The Anglo-Saxon Law Suit.”15 We must take his warning seriously.

When Cook began to write American Institutions, he was only three years from the end of his life. He had been sick with tuberculosis for seven years. His writing was handicapped by a lifetime of writing like a lawyer—citing authority for almost every statement, laying out the logic rather than telling the story, and paying little attention to what the reader might enjoy. His once-great powers of concentration, imagination, and creativity had weakened. American Institutions is full of long quotations. Cook relied on the very writers, politicians, historians, and public figures that are cited in today’s major works about American nativism, such as the 2002 edition of John Higham’s Strangers in the Land: Patterns of American Nativism, 1860–1925.16

Higham describes the growth of nativist or racist Anglo-Saxonism from 1860 forward, roughly Cook’s lifespan. He identifies the strains that created nativism: anti-Catholicism, anti-Semitism, anti-radicalism, and economic competition in the labor market. He relates the ebb and flow of nativism to what he calls rising and falling levels of confidence among the American people, linking drops in confidence to rising levels of nativism during the period he studied, 1860 to 1925. According to Higham,

[n]ativism as a habit of mind illuminates darkly some of the large contours of the American past; it has mirrored our anxieties and marked out the bounds of our tolerance.17

Cook’s views on race match remarkably well those of eugenicist Harry Laughlin (1880–1943), who assigned intelligence scores to different races. Laughlin presented
his findings to the House of Representatives in 1927. From highest to lowest, his ratings were English, Dutch, Danish, Scottish, German, Swedish, Canadian, Belgian, Norwegian, Austrian, Irish, Turkish, Greek, northern Negro, Russian, Italian, Polish, and southern Negro. Laughlin sent his report to Cook in 1928.18

Laughlin ran the private Eugenics Research Office in New York, part of the Carnegie Institution, located at Cold Spring Harbor. The Carnegie Foundation, John D. Rockefeller, and railroad executive E. H. Harriman supported the ERO, which advocated the sterilization of defective and delinquent classes.19 The U.S. Supreme Court supported the eugenicists’ theories in Buck v. Bell (274 U.S. 200 [1927]), the case that allowed Virginia to sterilize Carrie Buck because she was an “imbecile.” The case also legitimized similar statutes in other states.

Madison Grant (1865–1937), a New York lawyer, was a leader of the eugenics movement, chairman of the New York Zoological Society, and trustee of the American Museum of Natural History. According to the 2006 second edition of Inventing America (a standard undergraduate text in American history),20 Grant’s book The Passing of the Great Race21 (the title refers to the white race) was the most popular statement of the threat posed by immigrants (with their genetic predisposition to shiftlessness and crime) to the virtuous Nordic race. Some eight hundred American libraries and several in Canada and Europe owned The Passing of the Great Race in 2009,22 and there is a German translation. Grant wrote to Cook on February 7, 1927, to praise the copious authorities in Cook’s extremely timely book and to point out that Passing “more or less started the restrictionist idea” but was not mentioned in Cook’s book.23 Grant sent a copy of Passing to Cook. The second edition of American Institutions contains two references to Grant’s work.

Clarence Cook Little was another respected scholar who believed eugenics could improve humanity. From 1919 to 1922, Little was a biologist at the Cold Spring Harbor eugenics laboratory, a lab through which the road to Auschwitz ran, according to Joseph L. Graves’s book The Emperor’s New Clothes.24 Little held a doctorate in science from Harvard and specialized in cancer research. We know he was president of the University of Michigan from 1925 to 1929, yet Cook did not mention him in American Institutions.

Cook echoed and cited the University of Wisconsin’s prominent professor of sociology Edward A. Ross (1866–1951) seventeen times with respect to the superiority of particular races. Cook also quoted no lesser lights than Viscount James Bryce (forty-two times), Ralph Waldo Emerson (forty-one times), former Harvard president Charles W. Elliott (twenty-two times), Yale professor William Graham Sumner (twenty-six times), Massachusetts senator Henry Cabot Lodge (twenty-four times), and some eight hundred others, along with a total of 1,307 books.
In Cook’s era, people who shared what we call his “prejudices” did more than write about them. Some directed U.S. foreign policy. A first-rate example is Theodore Roosevelt, one of the most important American politicians of Cook’s lifetime. Our William Cook and TR were both born in 1858 and educated at leading universities: Michigan for Cook, Harvard and Columbia Law for TR. At Columbia TR took classes from John Burgess, whose theories about the Teutonic origins of all that is good and great about Anglo-Saxons shaped TR’s view of the world. TR took classes from John Burgess, whose theories about the Teutonic origins of all that is good and great about Anglo-Saxons shaped TR’s view of the world. Cook cites John Burgess six times and TR himself eleven times. Roosevelt’s racial prejudices led him to wage war to take territory from the dark-skinned Cubans and Filipinos and to brazenly annex the Hawaiian Islands in 1898. At least Cook did not want to impose “the culmination of civilized government” on other nations. Perpetuating popular sovereignty and republican institutions in the United States, Cook wrote in *American Institutions,* “was quite enough.” Cook warned against foreign expansion.

Surprising further proof of the derivative nature of *American Institutions* surfaced. When I searched an online catalog for *American Institutions and Their Preservation,* up came the title of the American edition of the first volume of Alexis de Tocqueville’s *Democracy in America.* Although Cook claims that a definition of American institutions is “something not heretofore attempted,” he almost certainly studied Tocqueville and unconsciously retained memory of Tocqueville’s ten institutions, which are identical to Cook’s except for the tenth; Cook cites “equality of opportunity,” while Tocqueville cites “equality of condition.” Cook and Tocqueville describe four of the same dangers: an unbridled majority, class interests, sectional interests, and dismantling the states.

Cook’s life experiences shaped his worldview. For example, at several places in *American Institutions,* Cook bemoans the growth of labor unions and their linkage with immigrants (the dread “foreign races”) and radicals (those who wanted to change our republican democracy to something else). What happened during Cook’s life to make him so bitter about workers organizing?

Cook, born in 1858, was a child when the Civil War ended in 1865, and he was a preadolescent when the driving of the golden spike established the intercontinental railroad in 1869, when John D. Rockefeller founded Standard Oil of Ohio in 1870, and when the great Chicago fire of 1871 created a huge market for the Cook family’s lumber business in western Michigan. Cook would have been well aware, at fifteen, of the terrible financial panic of 1873, when over five thousand businesses failed. The panic caused a depression, sparking a series of violent strikes across
the nation. During these strikes by one hundred thousand workers, a hundred people were killed, and more than half the freight on the country’s seventy-five thousand miles of railroad stopped moving. Surely what were known as the “great railroad strikes” of 1877 affected then University of Michigan freshman William Cook—through his ability to travel, his father’s businesses, and the flow of his food and mail.

Cook finished law school and moved to New York in 1882. From 1881 to 1885, strikes averaged five hundred a year, involving about five hundred thousand workers. In 1886 our young Manhattan lawyer would have joined the nation in alarm over labor unrest as workers sought an eight-hour day. In nearly twelve thousand establishments, 350,000 workers struck. The year 1890 saw a thousand strikes. The 1892 Homestead strike at the steel plant run by Henry Clay Frick and Andrew Carnegie became violent as Pinkerton guards confronted the strikers, and the state militia protected imported strikebreakers. The Homestead strike further fueled fear of labor, foreigners, radicals, and Jews. The depression of 1893–97 was the worst ever. One-fifth of the nation’s fifteen million workers were unemployed. Sixteen thousand businesses and 643 banks failed. The Spanish-American War and excitement over the 1898 acquisition of the Philippines, Guam, Hawaii, and extensive interests in Cuba dampened the labor unrest until 1902, when the United Mine Workers struck against anthracite coal mine operators. By 1904 there were four thousand strikes a year.

Banking panics were also disruptive, with thirteen between 1814 and 1914. Cook lived through one of the worst, the panic of 1907, which followed the 1906 earthquake and fire in San Francisco and caused global disruption in financial systems. The United States then saw a 37 percent decline in stock prices.

In early 1912, twenty-five thousand textile workers went on strike in Massachusetts. These workers were immigrant families from eleven different countries, again linking labor unrest with immigrants. From 1914 to 1918, altercations with Mexico and World War I provided both distraction from the complaints of workers and, eventually, full employment. However, the linkage in the public’s eye between labor (whether organized or not) and immigrants and radicals continued. The Department of Justice raided the headquarters of the International Workers of the World in September 1917, pursuant to the recently passed Espionage Act, because the IWW opposed the draft and the United States entering the war; the act forbade encouraging disloyalty or interference with the draft.

Strikes resumed in 1919, with the end of the war and the Treaty of Versailles. In September 350,000 steelworkers struck, and four hundred thousand miners struck in the next month. Four million workers went on strike that year,
including Mackay’s workers. William Cook and John Creighton would have talked about these strikes; in 1919 and 1920, Creighton went to Illinois to help with the coal strike and then to Chicago to carry out Attorney General Palmer’s raids against immigrant radicals.

Cook’s writing reflects the national consensus that immigrants and radicals were urging violence to create a more just society. Congress enacted immigration restrictions in 1921, limiting the inflow of any nationality to 3 percent of that nationality’s number in the 1910 census. In 1924 the law allowed only 2 percent of those present in 1890, when there were many fewer immigrants than in 1910. Only 150,000 people a year could enter the United States.

Despite the strikes, violence, and supposed threat of immigrants and radicals, William Cook saw great economic growth and revolutionary new inventions in his lifetime. He witnessed the creation of the telephone, electric lighting, the car, and the skyscraper and its elevators. Cook’s legal expertise was key to the rise of the giant corporation. He lived through the Civil War, the Spanish-American War, World War I, and a number of smaller wars, including those waged against Native Americans and Mexicans. He held on to his wealth during the recessions of 1873, 1893, and 1907. He resisted the siren call of the stock market investment scams in the 1920s. Cook was acutely aware of the strains these events put on the nation and grateful for the American institutions that helped him and the nation to survive.

Cook’s endorsement of the ideas about race, nativism, immigration, farmers, radicals, and organized labor held by most of those around him is not surprising and should not cause us to judge him to have been evil. We should heed William Draper Lewis’s advice not to criticize past ages by the standards of our own, and we should remember that those who hold ideas we shun can be reliable friends, supportive relatives, and generous donors.

Did *American Institutions* make a big splash? In fact, it received almost no spontaneous attention. Cook published it privately and gave it to six hundred libraries and an unknown number of individuals. He received about a hundred letters in response to the first edition, most very supportive. One exception stands out. Harry M. Biedka, a proud Polish lawyer in South Bend, Indiana, wrote a five-page letter to Cook that begins, “You have written a number of good books on legal subjects but your new field seems to be akin to the writing of philosophy by a coal man.” It is hoped that Mr. Biedka lived to see that *American Institutions* had no discernible impact on anything or anyone.