Giving It All Away

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Giving It All Away: The Story of William W. Cook and His Michigan Law Quadrangle.

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IN THE 1920s, the last decade of William Cook’s life, he continued his work on corporations. The eighth and final edition, in six volumes, of *Cook on Corporations* came out in 1923. This appendix briefly explores the place of this epic work of Cook’s in the history and evolution of American law.

We can turn to Michigan Law’s expert, the late professor Alfred Conard, for an evaluation of *Cook on Corporations*. In 1995 Conard wrote for the *Michigan Law Review* what he described as a “belated review” of Cook’s publications on corporations. Cook recognized the corporate investor as a central figure of legal concern, and he captured this in the title of the first three editions of his book: *Stock and Stockholders* (later changed to *Cook on Corporations*). In Conard’s view, the recognition of the investor’s importance was Cook’s major innovation in the theory of corporation law. Conard also succinctly described Cook’s radical departure from earlier literature’s derivative nature: “No such deference to earlier authors infected the writing of William W. Cook.” Conard closed with this summation:

Cook was a leader in redirecting corporation theory from a system of state-given powers and disabilities to a structure of investor rights and liabilities. He was among the first to recognize and denounce the exploitation of investors by promoters and managers and to proclaim the impotence of individual shareholders in relation to the powers of management. He recognized the need for government participation in the administration of railroads many decades before Conrail and Amtrak met that need. The vision of legal education that he endowed in the Law Quadrangle was a fitting capstone for the vision of better business corporations that he promoted in his professional publications.¹

In 1925 Cook published a new book, *The Principles of Corporation Law*,² to mixed reviews. The book pulled principles from his larger work but left out the citations to the underlying cases that supported those principles, making the
monograph useless to legal researchers who didn’t own the multivolume treatise. Despite its problems, *Principles of Corporation Law* was significant for two reasons. First, it continued Cook’s work on corporation law. Second, and most important, it was his attempt to write a summary of the law of corporations to exemplify an objective he was urging on the profession as a whole. By the mid-1920s, lawyers in the United States were faced with such a huge array of case law that discerning specific rules of law was extremely difficult.

The value of Cook’s multivolume treatises on corporation law lay in their summarization of the principles he extracted from hundreds of cases. But he decided that an even more concise statement was essential. Cook first urged this kind of summary in a 1923 article published in the *Michigan Law Review* titled “The Law Book of the Future.” Cook predicted that future law books would be written by academics (like those he hoped to fund at Michigan) rather than by practitioners like himself (the way it had been done in the past).

Cook was not alone in seeing the need for more concise statements of the law. A group of prominent lawyers, judges, and law teachers had formed the American Law Institute in 1923. They set an ambitious goal: to lessen the uncertainty and complexity of the law, which they felt had led to general dissatisfaction with the administration of justice. The founders of the ALI included William Howard Taft, Charles Evans Hughes, and Elihu Root. They set out to restate the most fundamental areas of law. They tackled those areas of law in which courts (judges) made the rules: agency, contracts, property, torts, and trusts. Areas of law in which statutes had become the primary source of legal rules—criminal law and bankruptcy—were not within the ALI’s ken.

In 1927 Cook moved beyond the idea of a summarizing treatise and urged a different solution to the problem of understanding the accretion of cases. Writing in the *American Bar Association Journal* in 1927, he urged the creation of clear statements of the collective meaning of the points of law made by hundreds of individual cases, perhaps using the English method of summarizing all case law in an encyclopedic manner, with references to the underlying cases. Although Cook’s 1927 article criticized the ALI proposal, he eventually endorsed the plan of the ALI for a project similar to the English method: the creation of “restatements” of the law. Cook’s final will even stated that space in the Law Quad could be used for ALI purposes.

To this day, the ALI uses the best academics and practitioners to craft accurate summaries of case law. These restatements are usually considered more authoritative than even the most scholarly treatise by an individual. In short, the restatements have replaced the very kind of legal treatise on which Cook built his reputation.
and career. Cook accurately foresaw two transformations in legal literature: first, that professors, rather than practicing lawyers, would write multivolume treatises; and second, that the huge volume of case law would be routinely summarized by restatements and that this would simplify the research process. Although the ALI was never housed at Michigan, Michigan Law professors have been leaders in creating both treatises and ALI *Restatements of the Law.*