

175TH ANNIVERSARY

INSTITUTE FOR INTERNATIONAL AND FOREIGN TRADE LAW
GEORGETOWN UNIVERSITY LAW CENTER

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May 4, 1964

Reverend Brian McGrath
Academic Vice-President
Georgetown University
Washington, D. C.

Dear Father McGrath:

On Saturday I indicated to you the conflict between the jurisprudential concept of our Institute, on the one hand, and the concept of "research" the Law Center, an excellent legal training center, indeed, has in mind. In the meantime, I have received a memorandum from an official of the School, a most loyal and absolutely realistic friend of mine, which brings this conflict clearly into the open: Should our research be in line with the idea of our supporters, to be continued on the basis of systematic inquiry of certain problems of law, or should our Institute become a pool of researchers available for accidental writing? I believe that the best way of introducing you into our problem is to present to you the history and purposes of our Institute as well as our accomplishments and present plans.

PURPOSE AND HISTORY OF THE INSTITUTE

In 1948, at the invitation of Father Walsh, Walter Hallstein came to Georgetown University. At that time, we decided that the horrible experiences of World War II called for a continuous and thorough study of the jurisprudential basis of the legal developments in the United States and Europe. We believe that such a study should not be purely theoretical but should be based on practical issues from which the philosophical, historical and legal problems could then be penetrated. We selected as a practical issue the field of legal economics and private power. We invited Professor Coing, an outstanding Protestant scholar, and Professor Mosler, a Catholic scholar of similar standing, to join us in our endeavors. Our European work could be based on the already existing Frankfurt Institute which became more and more connected with the Max Planck Institutes and similar Institutes in Germany as well as with universities in Bern and Geneva and Italian, French and British scholars. The appointment of Walter Hallstein as Secretary of State and our friend George Ball, the present Under Secretary of State, confronted us, besides our theoretical problems, with practical issues.

In 1955, we had the great fortune that Mr. Schulte zur Hausen, an outstanding German Catholic, approached me with the

question of what he and his friends could do for me in consideration of my fight for Germany in 1945-1950. I suggested that nothing could be more gratifying to me than a gift making possible an exchange program in the service of our aims and purposes, worked out by Hallstein, Coing, Mosler and myself, with the express understanding that all our work should be under the command of a real Catholic idea in the meaning of the recent second Ecumenical Council. We had always your fullest support, dear Father McGrath, without which we could not have survived much of the open and hidden opposition.

I have never thought of the necessity to present myself or the University with an accounting of what we have actually achieved because I lived in the dream that the University and the Law Center were aware of it. However, confronted with the cold facts of the memorandum of Dean Pye -- himself a man of highest integrity -- speaking for the new practical approach of the Law Center in learning law as a technique independent from the ideas and ideals in which our work was conceived, I find it necessary to do so.

PARTIAL LIST OF PUBLICATIONS AND OTHER ACTIVITIES

(A complete list can be compiled on request)

The following publications have either been published under the auspices or with special reference to the Institute as is the case with the other mentioned activities.

Jurisprudence And Legal History

Helmut Coing: *Evangelica Denunciata*, Law Quarterly Review.

Horst Kaufmann: *Glanvill, Traditio*.

Eckhard Kaufmann: *Das Fraenkische Recht und Equity*, published by Frankfurt Institute.

Adalbert Erler: *Die Urkunde des Mainzer Bischofsstreits*, published by Frankfurt University.

Heinrich Kronstein: *Rechtsauslegung im wertgebundenen Recht*, Karlsruhe, 1957.

Conflicts Of Law

Heinrich Kronstein: *Arbitration is Power*, New York University Law Review, 1963.

Heinrich Kronstein: One other article to be published and two recent speeches, copies of which are available.

Corporation Law

Kronstein-Claussen: *Publizitaet und Gewinnverteilung*, Frankfurt, 1960.

Coing-Kronstein: *Die Nennwertlose Aktie*, Frankfurt, 1959.

Heinrich Kronstein: *Reporting on Corporate Activities*, University of Detroit Law Journal, 1961.

Contracts

Eugen Auer: *Ausschluss von Gewaehrleistungsanspruechen in Allgemeinen Geschaeftsbedingungen*, Betriebsberater, 1963.

John T. Miller, Jr.: *The Lawfulness of Long-Term Contracts for the Purchase of Energy Supplies by Public Utilities in Interstate Commerce*, Georgetown Law Review, 1961.

Kurt H. Biedenkopf: *Vertragliche Wettbewerbsbeschraenkungen und Wirtschaftsverfassung*, Heidelberg, 1958.

Labor Law

Kurt H. Biedenkopf: *Unternehmer und Gewerkschaft im Recht der Vereinigten Staaten von Amerika*, Heidelberg, 1961.

Antitrust Law

- Hartmut Johannes: Exportkartelle und Entwicklungshilfe, Betriebsberater, 1962.
- Heinrich Kronstein: Internationale Kartelle, Berlin, 1961.
- Ivo E. Schwartz: Deutsches Internationales Kartellrecht, Berlin, 1962.
- Heinrich Kronstein: Extraterritorial Application of American Antitrust Legislation, Journal of Business Law, 1959.
- Heinrich Kronstein: Cartels under the New German Cartel Statute, Vanderbilt Law Review, 1958.
- John T. Miller, Jr.: Extraterritorial Effects of American Antitrust Law Abroad, Pennsylvania Law Review, 1963.
- Manfred Schiedermaier: Registrierung und gerichtliche Nachprüfung von Wettbewerbsbeschränkungen in Grossbritannien, Karlsruhe, 1962.
- Ivo E. Schwartz: Antitrust Legislation and Policy in Germany, Pennsylvania Law Review, 1957.
- Horst Bruecher: Bereichsausnahmen in U.S. Antitrust-Recht, Wirtschaft und Wettbewerb, 1959.

Patent Law

- Alfred F. Crotti: The "Allgemeine Erfindungsgedanke" in the German Patent, Journal of Patent Society, 1957.
- James Brennan: Study on a Comparison between German and American Protection of Employees in regard to Inventions, Journal of Patent Society, 1961.
- Conference on the Proposed European Patent Convention 1963, Washington Institute

Tax Law

- Jan M. Z. Kaczmarek: Tax Incentives to Foreign Trade, Georgetown Law Journal, 1958.

Commercial Law

- Henry Glazer: A functional Approach to the International Finance Corporation, Columbia Law Review, 1957.
- Heinrich Kronstein: Recht und wirtschaftliche Machtentfaltung, Betriebsberater, 1960.
- Ernst von Caemmerer: A Study on the Commercial Law in Europe and the USA, _____.
- Heinrich Kronstein: Government and Business in International Trade, Santa Barbara, 1961.

American Textbooks

Kronstein-Miller: Regulation of Trade, New York, 1953.

Kronstein-Miller-Schwartz: Modern American Antitrust Law, New York, 1958.

A new edition of these two books is going to the printer in July 1964.

Common Market

Participation in the preparation and execution of the Common Market Treaties Cooperation with Walter Hallstein and Professor Mosler as well as with the present Under Secretary of State George Ball

Participation in the execution of the articles on competition in the Luxembourg Treaty on Coal and Steel and of the Treaty of Rome.

Kronstein-Johannes: Presentation of American Experience to Members of the Staff of the European Economic Community, Frankfurt, 1962.

Coing-Kronstein: Ueber den Zeitpunkt der Anwendbarkeit der Wettbewerbsregeln (Art. 85-88) des Vertrages ueber die Europaeische Wirtschaftsgemeinschaft (Advisory opinion to the German Federal Government on the time of application of the provisions on competition contained in the Treaty on the EEC), Frankfurt, 1958.

Heinrich Kronstein: Die Auslegung der Wettbewerbsregeln des EWG-Vertrages im Lichte amerikanischer Rechtserfahrung, Betriebsberater, 1962.

Related Activities

Konrad Adenauer and Heinrich von Brentano were brought to Georgetown through my efforts and the efforts of the Institute.

For the first time in German history, two Jesuit Fathers were awarded honorary university degrees of the Frankfurt School of Law: Rev. Francis E. Lucey, S.J. and Rev. Nell-Breuning, S.J.

Kronstein (Chairman), Winkhaus, Biedenkopf: Participation in the mediation between the European and U.S. coal industry.

Exchange Program

The College receives annual invitations for two Georgetown students to go to Germany, and excellent working relations were established between our College and the Catholic Organization of Students in Frankfurt, especially Father Dessauer.

A number of important American studies have been prepared for publication in Germany, e.g., Rev. P. P. Harbrecht, S.J.: Pension Funds and Economic Power. Graduate fellowships are granted to American and European students with great success.

Comparison Of Methods Of Education

Mr. Schulte zur Hausen stated again and again that the purpose of his gift which makes the exchange program possible is

- (1) to strengthen our research work;
- (2) to make possible that young Americans go to Germany and Switzerland to lose some of their biases against European scholarship and life, as well as to look more clearly at their own country; and vice versa the same for Swiss and German students;
- (3) to make it possible for people to compare the different methods of education.

We are at present engaged in a study of the utilization of American testing methods, especially the Law School Admission Test, in Germany.

The report by Dr. Helmut Michel is organized by our Institute and will be published with express mention of the Institute.

Cooperation With The Law Center

The Law Center has always been consulted in each and every respect. Professor Bradley, together with my partner and Associate Director of the Institute, Dr. John T. Miller, Jr., had their share in our work. Before any decision was reached, the advice of the Dean has at all times been obtained. For many professors, the Institute has sponsored a research trip to Europe. The list includes: Prof. Bradley, Associate Dean Pye, Rev. Snee, S.J., Rev. Hanley, S.J., Prof. Jacoby and Prof. Whelan (to England). Through my efforts, Prof. Bradley spent a year at Columbia University.

Important contacts for the Law Center have been established and strengthened due to the manifold activities of the Institute.

PRESENT AIMS

Our new research is undertaken with the support of the Ford Foundation and Chancellor Erhard. Since 1945, in the United

States and in each of the European countries, or community of countries, new organizations of trade have sprung up under the impact of new legal developments whether of public or private law character. Their influence extends to the interdependence of these countries. We are approaching our study with the time honored American case method. We use as examples the oil industry, the drug industry, the fertilizer industry and wheat. We are inviting a group of leading European scholars (lawyers from Oxford, Paris, Bern, Holland, Germany and Austria and economists from England, Germany and France) to Frankfurt on May 22 to make a definite decision which aspects and special problems we have to include in our study.

We intend to evaluate the interdependence of these international organizations and their inter-relationship with each other. In September 1964, we intend to invite to Washington a similar group of lawyers (Harvard, Chicago and California) and economists (Oregon, Chicago and Yale) and, of course, whoever in Georgetown might be interested and available.

The purpose of this Washington meeting is to undertake a corresponding study here especially under the aspect as to how far American law -- e.g., antitrust, escape clauses and dumping -- affects the American organizations in the particular fields.

We will also study the extraterritorial impact of European organizations on Americans and vice versa.

This study has an important practical aspect especially in view of the present American-European conflict in oil and agriculture. The Senate Committee on Monopoly has invited me to testify in September on this problem. We are selecting this topic, however, also for theoretical reasons. We would like to inquire to what extent and whether at all an Atlantic Community and other concepts can come to a uniform development in the economic laws. We also hope to find enough material for a new evaluation of the problems of international private law including arbitration.

At the same time in continuance of our previous work we are preparing a study on the most recent American developments in accounting as far as applicable under SEC rules to determine whether on the basis of the American experiences these rules could find adaptation in European law.

In connection with these immediate plans we will continue to use the support of our European, e.g., German and Swiss young scholars, and we hope to find an increased interest by young men. We are encouraged in these endeavors by the fact that in this term each of the participants to our exchange program has presented

an outstanding paper. Paul Dommer, present American graduate student in Germany, has presented a paper on the dumping conflict, and lectures were given by Mr. Reich, Mr. Pohle, Mr. Gottschalk and Mr. Hanloser. Mr. Volhard, my American assistant, did outstanding work in the preparation of our book -- Regulation of American Trade and Antitrust. He worked with me in the preparation of my lectures given at the Rochester Graduate School of Business and the Boston College Law School, copies of which are available. He has also assumed the responsibility of Institute administrative matters.

INITIAL REACTION OF THE LAW CENTER

Briefly, the memorandum submitted to me contains the following:

A. As to the purposes of our operation:

1. While we deserve credit for having used the name of Georgetown in a number of conferences, meetings and publications, our European guests here do not do much work and are, just as the American in Europe, here for their own amusement.

2. That we live off 28 percent of the very scarce money of the Law Center.

B. As to the future:

1. The memorandum suggests for the immediate future the use of funds given to us for the program described above for an

increased travel allowance for Georgetown students and professors without any interdependence for the purpose for which we have been founded and for which we exist, while I paid for our (my wife and my own) approximately 30 trips out of my own pocket.

2. For the final organization of the Institute the memorandum envisages: "The Institute would be staffed with two research assistants and two secretaries. Each of the professors associated with the Institute would obtain the services of one research assistant for at least one six-month period in each 18 months and secretarial assistance." It also foresees the establishment of a research pool from which a Professor of Public Law may draw an assistant, if he undertakes a study.

FINANCIAL INDEPENDENCE

The memorandum justifies the approach on the basis of the opinion that our Institute has to be integrated into the Law Center because of alleged but non-existent financial support for activities "in which no member of its faculty has a deep personal interest." Can it be true that in a city having one of the biggest international centers and having the most active law offices in the world, in light of the above list of accomplishments, the Law Center has no one with a "deep personal interest" in these fields?

The Law Center alleges financial support to the extent of 28 percent of the Institute's budget which is claimed to amount to \$15,000 out-of-pocket costs exclusive of overhead. I maintain that the University's only contribution has been two rooms.

1. At the time Schulte zur Hausen made his grant it was agreed that the University pay for one secretary to which I am entitled to by University standards anyway, with or without an Institute.

2. Out of the four rooms we have, one is occupied by me, the other by Mrs. Weyersberg, which leaves the contribution of the University to the Institute as two rooms.

3. Every two years I am absent from Georgetown during the winter semester. For the resulting possible expenses accruing to the University, Schulte zur Hausen repaid the University \$8,000 per annum. This is more than half of my salary and should adequately cover any possible expenses which may result from my absence.

4. I also would like to point out, if we are going to account, that for my activities in connection with fund-raising and organizational duties regardless of my academic endeavors, a director of an Institute of this nature could usually demand

\$25,000 per annum. I have never received or asked for a penny or any other reward. I was only paid for my teaching as any other professor and for many years this was on the lowest possible scale.

5. My wife has established and organized the library (she is a qualified librarian) of the Institute and has maintained it for years without any compensation whatever.

Therefore, it is difficult for me to see where and how the University has out-of-pocket expenses of \$15,000 per annum to support the activities of our Institute and as a result of which they claim the right to "integrate" the Institute into the Law Center.

There is nothing more difficult for me than to write a letter in which I have to call your attention to our accomplishments and to the fact that I brought to Georgetown University about \$350,000 singlehandedly (Schulte zur Hausen, Ford, etc.). I hoped that I had prepared the Georgetown-Europe cooperation in our Institute for the next three years and prepared the basis for a permanent machinery of cooperation in research and philosophical examination of law. Suddenly I have to realize that the present thinking in the Law Center compared to my and Schulte zur Hausen's approach to scholarship and catholicism have nothing in common.

I come to you, as I did in my letter of Saturday, with the question: What can I report to the Frankfurt faculty and the Board of Trustees of the Schulte zur Hausen Endowment, whose co-trustee I am and to the Board of Advisers of the Institute, but failure? Do you know the answer?

Could I answer that the University is interested in setting up a joint venture for the immediate future and later a permanent institute under the direction of the President of the University, provided that the University is not required to contribute any substantial financial assistance? Would that not have the great advantage that we could cooperate with the other faculties?

Sincerely,


Heinrich Kronstein