



THE HARVARD LAW SCHOOL

Louis D. Brandeis

THE MUCH-DEBATED QUESTION, whether the law school or the lawyer's office affords the better opportunity for legal training, may well be considered settled. Undoubtedly each offers advantages which the other does not possess. All lawyers concede that a short apprenticeship in the office of a practitioner is valuable; but a thorough knowledge of legal principles is essential to higher professional success, and this knowledge, which under all circumstances is difficult of acquisition, can rarely be attained except as the result of uninterrupted, systematic study, under competent guidance. For such training, the lawyer's office seldom affords an opportunity. That this is now the prevailing opinion among lawyers is shown by the growth of law schools in the United States, and the introduction in England of systematic instruction in the common law, both at the Universities and at the Inns of Court.

It is but a century since the first school for instruction in the common law was founded. The Harvard Law School, the oldest of all existing institutions devoted to such education, is scarcely sev-

This article (with illustrations) first appeared at 1 GREEN BAG 10 (1889). At the time, its author was ten years out of Harvard Law School and practicing law in Boston. He had declined an offer by Professor Langdell to be an assistant professor at the school, but was the secretary of the Harvard Law School Association (whose creation he had spearheaded) and had recently been involved in the founding of the Harvard Law Review.



Austin Hall

enty years old. Its age, the eminence and ability of its instructors and the excellence of its methods made it a potent factor in the struggle to establish the value of school training. Now that the battle has been won, it may be interesting to consider the condition of legal education at the time the Harvard Law School was founded, and the development of the school itself.

The elaborate system for acquiring a knowledge of our law, which prevailed in England at the time of the settlement of the Colonies, and which Lord Coke has so graphically described in his preface to the Third Reports, fell into disuse there soon after his time. In America nothing similar ever existed. There was little need of lawyers in the early days of American life, when the barrister was apt to be regarded as a barrator. But during the movement which culminated in the independence of the Colonies the law became more and more a subject of general interest. Already before the Revolution, Blackstone was found, it is said, side by side with the Bible in the houses of laymen. With a growing respect for the knowledge of the law, the lawyers grew rapidly in number and importance. Still, no means had been provided of training the aspirant

for the bar. Here, as in England, the student learned what he could by reading and re-reading the few text-books then existing, by listening to the conversation of lawyers, and by watching the proceedings of the courts. After his admission to the bar, the young lawyer doubtless learned, as he does now, by that most expensive method of instruction, — his own mistakes.

Professor Greenleaf describes the method of study which he and Judge Story pursued as follows: "We both commenced the study of the law many years since, amidst the drudgery and interruptions of the lawyer's office, perusing with what diligence we could our Blackstone, Coke, and other books put into our hands." This sort of legal training, which may have been adequate at a time when the scope of the common law was narrow and the reported cases comparatively few, naturally proved itself inefficient when the commercial development of England and America brought with it a corresponding increase in legal principles and in litigation. The inadequacy of such training was particularly obvious in the United States, where the varying decisions rendered in the different States — grafted as they were upon the English stock — had resulted frequently in a less homogeneous development of the law. The evils of the existing means of legal education being greater in America and the conservative force of tradition less, it is natural that the reform should have been inaugurated here. Even prior to the organization of the Harvard Law School in 1817, systematic instruction in the common law had been given in America. A professorship in English law is said to have been established at William and Mary College in Virginia as early as 1782. In 1790 a law professorship was established in the College of Philadelphia, and James Wilson — one of the Associate Justices of the Supreme Court of the United States — was appointed the first professor. Judge Wilson prepared a series of lectures designed to cover three courses. The first was delivered in the winter of 1790-1791, and a part of the second course was delivered the following winter. In April, 1792, the College of Philadelphia and the University of Pennsylvania were united under the name of the latter; a law professorship was created in the new university, and Judge Wilson was appointed to fill the chair; but for some rea-

Louis D. Brandeis

son no lectures on law were delivered there for many years. Judge Wilson's law lectures were published in 1804 — after his death. These early professorships cannot be considered as in any sense establishing law schools or separate departments of universities. Besides, like the law schools at Litchfield, Conn., and Northampton, Mass., — the early competitors of the Harvard Law School, — they were soon abandoned.



Joseph Story (left) and Simon Greenleaf.

The school at Litchfield, which was the first regular school for instruction in the English law, was founded by Tapping Reeve, author of the treatise on “Domestic Relations.” When, in 1798, Mr. Reeve was appointed Associate Justice of the Superior Court of Connecticut (of which bench he subsequently became Chief Justice), Hon. James Gould, author of the work on “Pleading in Civil Actions,” took an active part in the management of the school. These gentlemen, together with Jabez W. Huntington, who became an assistant upon Judge Reeve's retirement, were the only instruc-

tors whom the school ever had; and in 1833 it was discontinued, after a life of fifty years. During most of that time the reputation of the school was high. In 1813 it was attended by more than fifty students, and the aggregate membership during its whole existence exceeded one thousand. It was what might be called a private school; for it was unincorporated, had no power to confer degrees, and was managed by the instructors. The method of instruction at Litchfield in 1831 is thus described in an official publication: "According to the plan pursued by Judge Gould, the law is divided into forty-eight Titles, which embrace all its important branches, of which he treats in systematic detail. These Titles are the result of Thirty years' severe and close application.... The lectures, which are delivered every day, and which usually occupy an hour and a half, embrace every principle and rule falling under the several divisions of the different Titles. These principles and rules are supported by numerous authorities, and generally accompanied by familiar illustrations. Whenever the opinions upon any point are contradictory, the authorities in support of either doctrine are cited, and the arguments advanced by either side are presented in a clear and concise manner, together with the Lecturer's own views upon the question. In fact, every ancient and modern opinion, whether overruled, doubted, or in any way qualified, is here systematically digested. These lectures, thus classified, are taken down in full by the students, and after being compared with each other, are generally transcribed in a more neat and legible hand.... These notes thus written out, when complete, are comprised in five large volumes," etc. Mr. Huntington held examinations, every Saturday, upon the lectures of the preceding week, consisting "of a thorough investigation of the principles of each rule," with "frequent and familiar illustrations, and not merely of such questions as can be answered from memory without any exercise of the judgment." Mr. Reeve's lectures were accompanied by more of colloquial explanation. A Moot Court was held at least once in each week.

The school at Northampton was founded in 1823 by Judge Samuel Howe, who had once been a pupil at the Litchfield School, and his former law-partner, Elijah H. Mills, a lawyer of extensive prac-

tice, and a United States Senator from Massachusetts. In 1827 Mr. Mills's law-partner, John Hooker Ashmun, was added to the list of instructors. The prominence of Judge Howe and of Senator Mills, and the great legal ability of Mr. Ashmun gave the school a high reputation; but this, too, appears to have been in the strictest sense a private school. Its average attendance numbered hardly more than ten; and in 1829, when Mr. Ashmun accepted a professorship at Cambridge, the school was discontinued. The method of instruction adopted at Northampton seems to have resembled that at Litchfield. The professors read written lectures, of which the students were supposed to take copies, and there were less formal oral lectures and recitations.

The Harvard Law School had its origin in a gift of Isaac Royall, a prominent citizen of Massachusetts, who died abroad in 1781. In his will, made in England in 1779, whither he had gone after the battle of Lexington, Isaac Royall devised to Harvard College more than two thousand acres of land in Royalton and Granby, Mass., "to be appropriated toward the endowing a professor of Law in said College, or a professor of Physic or Anatomy, whichever the Corporation and Overseers of said College shall judge best for its benefit; and they shall have full power to sell said lands and put the money out at interest, the income whereof shall be for the aforesaid purpose." Had the College availed itself immediately of this devise, the school at Cambridge might perhaps have been organized before Tapping Reeve began his instruction at Litchfield Hill. But it was not until 1815 that the proceeds of this devise, which amounted then to \$7943.63 and had hitherto remained in the treasury of the College unappropriated, were first devoted to the establishment of a professorship of law. The annual income of this fund, about four hundred dollars, was supplemented by the fees of students; and Isaac Parker, then one of the Justices (afterwards Chief Justice) of the Supreme Judicial Court of Massachusetts, was appointed under the title of Royall Professor. This was, however, merely a college professorship, like the Vinerian professorship at Oxford, and the professorship of law at the College of Philadelphia. The foundation of the Harvard Law School, as such, dates from the year 1817,

when Asahel Stearns was appointed University Professor of Law. The statutes of the College required him to open and keep a school in Cambridge for the instruction of the graduates of the University and others prosecuting the study of the law; and in addition to prescribing to his pupils a course of study, to examine and confer with them upon the subjects of their studies, to read to them a course of lectures, and generally to act the part of a tutor, so as to improve their minds and assist their acquisitions. His compensation consisted of the tuition fees paid by the students. Chief Justice Parker took but little part in the exercises of the school. His duties required him to deliver every summer fifteen lectures to the undergraduates and the members of the Law School; these lectures, which were necessarily general and elementary in their nature, related chiefly to the Constitution of the United States and of Massachusetts, and the early legal history of New England. In 1827 Chief Justice Parker resigned his professorship, and in 1829 his withdrawal from the school was followed by that of Mr. Stearns. The method of instruction adopted at Cambridge during this period appears to have resembled that which prevailed at Litchfield and Northampton. Mr. Stearns's treatise on "Real Actions," once widely known, embodies a course of lectures read by him to the students. Besides, there were less formal lectures, recitations, and Moot Courts. In spite of the learning of Mr. Stearns and the eminent ability of Chief Justice Parker, the Harvard Law School was not successful during the early years of its existence. The belief in school instruction was still limited to a few, and most of those were attracted to Litchfield and Northampton. The former enjoyed a national reputation, and the latter, being situated within a hundred miles of Cambridge, was a dangerous rival. Thus the Harvard Law School, notwithstanding the zeal of its professors and its connection with a college then already widely known, received but few students. The largest number until 1829 was eighteen, and the average attendance was only eight.

The year 1829 marks a new era in the life of the Harvard Law School. In that year Nathan Dane, a lawyer of Beverly, Mass., author of the once famous "Abridgment of American Law," and the alleged draughtsman of the never-to-be-forgotten Ordinance of

1787 for the government of the Northwest Territory, following the example of Viner, gave to the school the profits of his Abridgment. This gift secured for Harvard the services of Joseph Story, and for the world his epoch-making treatises on the law. In laying the foundation for the professorship which bears his name, Mr. Dane prescribed that "it shall be the duty of the professor to prepare and deliver and to revise for publication a course of lectures on the five following branches of Law and Equity equally in force in all parts of our Federal Republic, — namely, The Law of Nature, The Law of Nations, Commercial and Maritime Law, Federal Law and Federal Equity, — in such wide extent as the same branches now are and from time to time shall be administered in the courts of the United States, but in such compressed form as the professor shall deem proper; and so to prepare, deliver, and revise lectures thereon as often as said Corporation shall think proper;" and "as the Hon. Joseph Story is by study and practice eminently qualified to teach the said branches both in Law and Equity, it is my request that he may be appointed the first professor on this foundation if he will accept the same; and in case he shall accept the same it is to be understood that the course of his lectures will be made to conform to his duties as one of the Justices of the Supreme Court of the United States; and further, that time shall be allowed him to complete, in manner aforesaid, a course of lectures on the said five branches, probably making four or more octavo volumes, and that all the lectures and teachings of him and every professor so to be appointed shall be calculated to assist and serve in a special manner law students and lawyers in practice, sound and useful law being the object." The amount given was ten thousand dollars; and the fund was increased by a bequest of five thousand dollars upon Mr. Dane's death, a few years later.

Joseph Story became Dane Professor, John Hooker Ashmun was appointed Royall Professor, and the school entered upon a period of great prosperity. At the time Story assumed the duties of instructor at Cambridge, he was fifty years old. He had been for eighteen years Associate Justice of the Supreme Court, a position which he held until his death. This was a period during which the attention of the

public was perhaps more generally fixed upon that tribunal than at any other in our history. The learning and the lucid exposition displayed in Story's judicial opinions had won the admiration of the bar throughout the land, and the opportunity of hearing his lectures was eagerly seized. Almost immediately upon his appointment as professor, the school changed its character from a local to a national school of law. It became broader in its aims; it improved in the quality of its instruction, and the attendance grew larger. When, sixteen years later, death severed Story's connection with the University, the Law School numbered one hundred and sixty-five students, representing nearly every State in the Union. During the same period the law library increased so rapidly that, after a few years, it surpassed any in America. Between 1829 and 1845 nearly thirty thousand dollars were expended by the Law School in the purchase of books, and it received in addition Samuel Livermore's collection of works on the Civil Law, which is said to have been the most valuable collection of its kind in this country. In 1831 Mr. Dane offered to advance funds to enable the College to supply a separate building for the Law Department. Dane Hall was erected in 1832; but the growth of the school soon necessitated extensive additions, which were completed in 1845. The prosperity of the school was so great that in spite of the purchases for the library and the enlargement of Dane Hall, there had accumulated at the time of Judge Story's death a surplus of over fifteen thousand dollars. How well he had performed the duty imposed by Mr. Dane to revise his lectures for publication may be seen from the fact that during this period Story published all his treatises on the law, filling no less than thirteen volumes.

Although it was the fame and ability of Story which then gave to the Harvard Law School its impulse and which established its national character, yet others contributed in no small measure to the high reputation which it won at this time. John Hooker Ashmun was a man of extraordinary legal acumen; and upon his early death, in 1833, Simon Greenleaf, then reporter of decisions for the Supreme Court of Maine, was appointed Royall Professor of Law. Greenleaf had already distinguished himself at the bar by his critical discrimi-

nation of legal principles, and for fifteen years he brought these mental faculties to bear with great effect upon his work as a teacher of law. In the performance of his duties as professor he prepared the work on "Evidence," which was published in 1842 and soon won for him a reputation in every country where the common law is administered. His learned edition of "Cruise on Real Property" appeared after he became Emeritus professor.

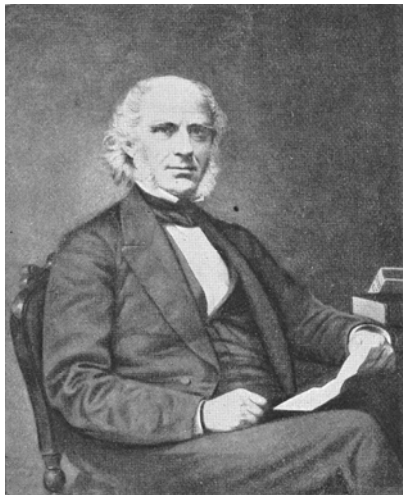
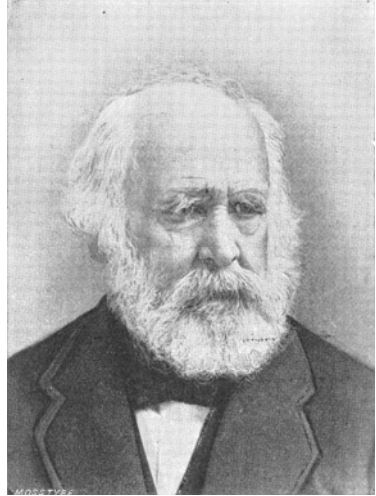
The method of instruction prevailing at the Law School during this period was in many respects similar to that which had been practised during the earlier years of its existence. Professor Ashmun's instruction was mainly by recitations adding informal explanations where it was deemed necessary. Judge Story taught mainly by lectures, and resorted rarely to questioning students. Professor Greenleaf adopted the same method, with such difference only as the different qualities of his mind would naturally produce. The multiplication of text-books on the lesser branches of the law — many of them prepared by the professors themselves — had done away with the careful copying of the instructor's lectures which at Litchfield and Northampton had occupied much of the students' time. A list of books for a course of study was prepared, and the students had an opportunity of airing their learning occasionally at the Moot Courts which were held by the professors.

Within a few years after Judge Story's death the school numbered among its instructors Hon. William Kent of New York, George Ticknor Curtis, Franklin Dexter, Luther S. Cushing, the author of the famous Manual, and Edward G. Loring. Henry Wheaton accepted the position of Lecturer on International Law, but died before entering upon the performance of his duties. Later, Richard Henry Dana delivered courses of lectures. But Kent, Curtis, Dexter, Cushing, Loring, and Dana were lecturers for short periods only; and during the twenty years following the death of Greenleaf, the fame of the school rested upon the ability and zeal of Judge Parker, Theophilus Parsons, and Emory Washburn.

At the time of his appointment as Royall Professor of Law, Joel Parker, though but fifty-two years of age, had been for nearly fifteen years a member of the Superior Court of New Hampshire and

Harvard Law School

for nearly ten years its Chief Justice. He will doubtless long be considered the Chief Justice of that State, for he was one of the ablest of American judges. Stored with the practical experience of a long



Joel Parker (left), Theophilus Parsons (right), and Emory Washburn.

professional and judicial life, patient, assiduous, and accurate, keen in argument and clear in exposition, he devoted for twenty years all his powers to the performance of his duties at the school.

Theophilus Parsons became Dane Professor of Law in 1848, and held that position until the year 1870. He was a son of the eminent judge whose name he bore, — the Chief Justice of Massachusetts, — and inherited from his father a deep love for the law, and a power of impressive statement rarely equalled. At the date of Parsons's appointment as professor, he was fifty-three years of age, and had acquired considerable reputation, both as a practitioner in admiralty and as a literary man. His fame, however, rests upon his work at Cambridge. The ability of fixing and holding the attention of students, which he possessed in an unusual degree, gave him a high reputation as a lecturer, and the treatises prepared by him in his professorial work soon spread his name far and wide. His "Law of Contracts," which appeared in 1853, is said to have had a larger sale, during the lifetime of the author, than any legal text-book ever published in any country. Like Story's and Kent's Commentaries, it was often quoted in England, and for more than twenty years it was the leading book of reference on the subject in America. A Kentucky law-student, finding it constantly relied upon by the courts of his State, inquired whether there was any statute making it an authority. At comparatively short intervals between 1856 and 1869, Professor Parsons also published works on "Mercantile Law," "Maritime Law," "Bills and Notes," "Partnership," "Marine Insurance," and "Shipping and Admiralty." His reputation as a legal text-writer became so extended that his publishers sold over one hundred and fifty thousand copies of his "Law of Business Men," — a treatise on commercial law for laymen. It is believed to have netted the author, in royalties, fully \$40,000.

In 1855 Emory Washburn, a lawyer of rare integrity and industry, who had attained prominence not only in his profession, but also as judge, legislator, and Governor of Massachusetts, was appointed lecturer at the Harvard Law School, and in the following year became University Professor of Law, — a position which he filled for twenty years. The name of the professorship was changed,

in 1862, to Bussey Professor, a considerable fund then becoming available to the Law School from a bequest of Benjamin Bussey, Esq. Like his colleague, Professor Parsons, Washburn soon became favorably known both as a lecturer and as a legal writer. Probably no instructor at the Law School was ever more generally loved by his students. While at the bar every client's cause had been his own; and as a professor he identified himself in the same manner with his pupils, — their hopes and successes were his; their fears he sought to dispel by warm words of encouragement. His works on the "American Law of Real Property" and on the "American Law of Easements," renewing their youth with each new edition by the aid of able annotators, are still the leading books of reference on those subjects in America.

During the twenty-five years following the death of Judge Story, the attendance at the school fluctuated considerably, owing partly to the war, partly to the competition of law schools which were organized elsewhere in large numbers, and partly, perhaps, to other causes. The highest number of students (one hundred and seventy-six) was reached in January, 1860; the lowest (sixty-nine), in July, 1862. In the year 1869-1870 the attendance at the school was one hundred and fifteen. The method of instruction during this period remained substantially the same as that which was practised under Judge Story and Professor Greenleaf; namely, oral lectures illustrating and explaining a previously prescribed text-reading, with more or less examination thereon.

On Jan. 6, 1870, Christopher Columbus Langdell became Dane Professor of Law, — an event which, like Story's appointment to the chair forty years before, marks an epoch in the history of the school and of legal education. In external conditions two men could hardly have differed more widely than Story and Langdell at the time each entered upon his duties as an instructor of law. Story had a national reputation; at the early age of thirty-two he had been appointed one of the judges of the highest court in the land; he had been tendered the Chief Justiceship of Massachusetts; his official position, his family connections, and his social qualities had secured for him the acquaintance of the most prominent men of this country; he was the

pride of New England; the University was honored when he accepted the professorship at the Law School. Langdell, on the other hand, was almost unknown; he had held no public office; at the bar of New York, of which for more than fifteen years he had been a member, not many could be found who had even heard of him; he had rarely been seen in the courts; in Boston there were few to whom his name was known. But some of the leaders of the New York Bar had discovered his ability, and there were some other lawyers of prominence both there and in Boston who remembered that, nearly twenty years before, there had been at the Harvard Law School a young student from New Boston, N. H., of indomitable will, of untiring industry, and of a strong legal mind, who assisted Professor Parsons in his work on the "Law of Contracts," and acted for some time as librarian of the school. They remembered that their fellow-student had occupied himself much with the proper methods of study; they had regarded him then as something like a genius in the law; and when they heard that Mr. Langdell had been chosen Dane Professor, they did not share the anxious concern which other friends of the school expressed at the appointment of a man comparatively unknown.

As soon as Professor Langdell assumed his new duties, changes were suggested in the requisites for admission and for graduation, and in the methods, order, and quality of instruction, which being eventually approved by the Faculty completely revolutionized the school. Prior to 1875, no examination or particular course of previous study was prescribed as necessary to entitle one to admission to the school. As a result the classes contained many students whose training had not been sufficient to enable them to profit by the instruction given. In that year requisites for admission were first prescribed, and since then no person other than a graduate of a college has been admitted without passing a written examination in Latin or French and in Blackstone's Commentaries. Persons not candidates for a degree, called special students, are still permitted to attend the school without examination. Likewise, prior to 1875, any person who had for three terms or eighteen months been enrolled as a member of the school was entitled to a degree without having nec-

essarily attended a lecture or passed an examination. Under the new administration the regular period of residence for the degree of Bachelor of Laws was first lengthened to two years, and subsequently a third year course was added. Now this degree is conferred only upon students who have been in the school at least two full years as candidates for a degree and have passed examinations in the studies for the three years. The course of study itself has been greatly changed and enlarged. The amount of instruction given in the school previously to 1870 appears not to have exceeded ten exercises a week. Although the course actually covered two years, half of the course only was given at the school each year, so that it was purely a matter of chance whether the student began his studies with one or the other set of subjects. This arrangement doubtless proceeded upon the theory that "there is neither beginning nor end to the law, neither fundamental principle nor natural development." But with such a theory the new Faculty most thoroughly disagreed. They believed that the law was a science, and should be studied as such. And so throughout the three years' course of study the subjects are arranged with reference to their fundamental character. The total number of exercises each week is now thirty-five. The following is the course of instruction for the year 1888-1889: —

FIRST YEAR.

Contracts. Professor KEENER. Three hours a week. Langdell's Cases on Contracts.

Property. Professor GRAY. Two hours a week. Gray's Cases on Property.

Torts. Mr. SCHOFIELD. Two hours a week. Ames's Cases on Torts.

Civil Procedure at Common Law. Professor AMES. One hour a week. Ames's Cases on Pleading.

Criminal Law and Procedure.¹ Mr. CHAPLIN. One hour a week.

¹ No text-book.

SECOND YEAR.

Bills of Exchange and Promissory Notes. Professor AMES.

Two hours a week. Ames's Cases on Bills and Notes.

Contracts. Professor KEENER. Two hours a week. Keener's Cases on Quasi-Contracts.

Evidence.¹ Professor THAYER. Two hours a week.

Jurisdiction and Procedure in Equity. Professor LANGDELL.

Two hours a week. Langdell's Cases in Equity Pleading.

Property.¹ Professor GRAY. Two hours a week.

Sales of Personal Property. Professor THAYER. Two hours a week. Langdell's Cases on Sales.

Trusts. Professor AMES. Two hours a week. Ames's Cases on Trusts.

THIRD YEAR.

Agency¹. Professor KEENER. Two hours a week.

Jurisdiction and Procedure in Equity. Professor LANGDELL.

Two hours a week. Langdell's Cases on Equity Jurisdiction

Partnership and Corporations. Professor AMES. Two hours a week. Ames's Cases on Partnership.

Suretyship and Mortgage.¹ Professor LANGDELL. Two hours a week.

Constitutional Law.¹ Professor THAYER. Two hours a week.

Jurisdiction and Practice of United States Courts.¹ Professor GRAY. One hour a week.

[Law of Persons.¹ Professor GRAY. One hour a week.]
Omitted in 1888-1889.

Wills and Administration.¹ Professor GRAY. One hour a week.

[Conflict of Laws.¹ Professor KEENER. One hour a week for half the year.] Omitted in 1888-1889.

[Points in Legal History.¹ Professor AMES. One hour a week for half the year.] Omitted in 1888-1889.

¹ No text-book.

In addition to the foregoing third-year subjects, third-year students may elect any second-year subjects which they have not taken in their second year. Every student who has been in the school one year or more has an opportunity each year of arguing in a moot court case before one of the professors.

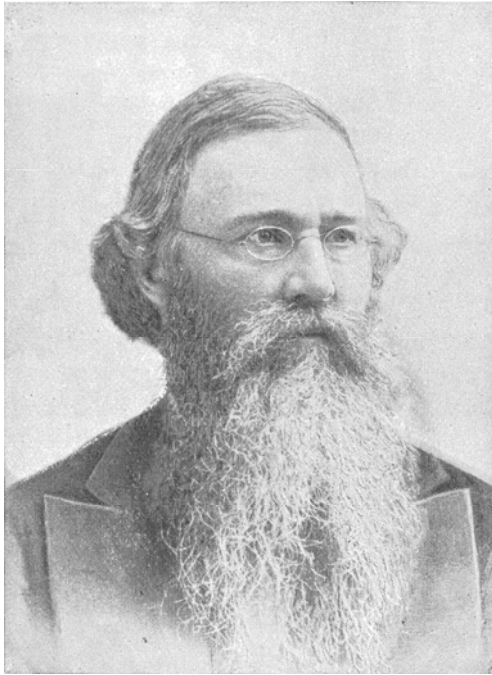
Every candidate for the honor degree will be required to take ten hours a week in each of the last two years. Every candidate for the ordinary degree will be required to take in the second year ten hours a week in the subjects of that year, and in the third year eight hours a week.

Great as have been the advantages derived from these changes in the requirements for admission and for graduation and in the quantity and order of the instruction, it is believed that Professor Langdell's chief contribution to the cause of thorough legal education was the introduction of an entirely new system of teaching law, — a system which was at first looked upon with great distrust by his colleagues as well as by the bar, but which, making converts from year to year, has eventually established itself firmly at the school. Believing that law is a science, and recognizing that the source of our law is the adjudicated cases, Professor Langdell declared that, like other sciences, the law was to be learned only by going to the original sources. It was there that the authors of text-books had gained their knowledge of the law, and there only can others acquire it. No instructor can provide the royal road to knowledge by giving to the student the conclusions deduced from these sources; his chief aim should be to teach the student to think in a legal manner in accordance with the principles of the particular branch of the law. He should seek to inculcate and develop in legal reasoning the habit of intellectual self-reliance. The sphere of usefulness of the teacher of law according to this conception of his duty is not a narrow one. Having gone over the ground which the student is to traverse, the teacher can, in the first place, aid the student by removing from his consideration the great mass of cases on the particular subject which bore no part in the development of the principle under discussion. Eliminating those, he selects the cases especially worthy of study; and for the convenience of the student the select (not leading) cases

on the different subjects are published as a collection. The principle upon which such a collection is made was thus stated by Professor Langdell in the preface to his "Select Cases on Contracts," which appeared in October, 1871, — the first book of the kind ever published: —

"Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of the law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied. But the cases which are useful and necessary for this purpose at the present day bear an exceedingly small proportion to all that have been reported. The vast majority are useless and worse than useless for any purpose of systematic study. Moreover, the number of fundamental legal doctrines is much less than is commonly supposed; the many different guises in which the same doctrine is constantly making its appearance, and the great extent to which legal treatises are a repetition of each other, being the cause of much misapprehension. If these doctrines could be so classified and arranged that each should be found in its proper place, and nowhere else, they would cease to be formidable from their number."

These books of cases are the tools with which the student supplies himself as he enters upon his work. Take, for instance, the subject of "Mutual Assent" in contracts. A score of cases covering a century, contained in about one hundred and fifty pages and selected from the English reports, the decisions of the Supreme Court of the United States, and the highest courts of New York, Pennsylvania, and Massachusetts, arranged in chronological order, show the



C.C. Langdell

development of its leading principles. Before coming to the lecture-room, the student, by way of preparation, has studied – he does not merely read – say from two to six cases. In the selection of cases used as a text-book, the head notes appearing in the regular reports are omitted, and the student, besides mastering the facts, has endeavored for himself to deduce from the decision the principle involved. In the class-room some student is called upon by the professor to state the case, and then follows an examination of the opinion of the court, an analysis of the arguments of counsel, a criticism of the reasoning on which the decision is based, a careful discrimination between what was decided and what is a *dictum* merely. To use the expression of one of the professors, the case is “eviscerated.” Other students are either called upon for their opinions or volunteer them, – the professor throughout acting largely as moderator. When the second case is taken up, material for comparison

is furnished; and with each additional authority that is examined, the opportunity for comparison and for generalization grows. When the end of the chapter of cases is reached, the student stands possessed of the principles in their full development. Having attended as it were at their birth, having traced their history from stage to stage, the student has grown with them and in them; the principles have become a part of his flesh and blood; they have *pro hac vice* created a habit of mind. Like swimming or skating, once acquired, they cannot be forgotten; for they are a part of himself.

One objection to this method of study, naturally presents itself: "How can anybody give the time to study the law in this elaborate manner? Either one must cover only a small field, or a lifetime must be given to the mere preparation for the profession." This objection was anticipated and an answer to it was given by Professor Langdell in the passage quoted from the preface to his "Select Cases on Contracts." Undoubtedly the principles of the law are numerous; one might almost say innumerable. It has been said that there are nearly three millions of distinct principles. This may be true; yet the fundamental principles are comparatively few. These only need be acquired; once acquired, they will be found springing up everywhere. They are immediately recognized and located; they are the guide-posts that point the lawyer unerringly to his destination, however numerous the cross-roads or alluring the by-ways. Besides, the progress through the cases, though at first slow, grows more and more rapid as the student progresses in the particular subject and becomes accustomed to this system of study. Furthermore, the particular principles of law thus gained represent but a small part of the total acquisition while studying the cases on one narrow subject. The courts, the judges, the pleadings, the practice, the arguments of counsel, have become real things. Again, though a case is selected because it illustrates one stage in the development of a legal doctrine, a dozen points not directly connected with that doctrine may be involved or suggested, and these the student either solves for himself or seeks to have explained. The points thus incidentally learned are impressed upon the mind as they never could be by mere reading or by lectures; for instead of being presented as desic-

cated facts, they occur as an integral part of the drama of life, — of an actual lawsuit. Besides, the study of the cases does not exclude the study of the treatises. The animated discussions in the classroom induce the student to resort to every means of fortifying himself, either for his own instruction or in order to overthrow his adversary in discussion, be it professor or fellow-student. This leads the pupil to independent investigation; and the treatises which are always accessible are rarely neglected.

There could be no stronger proof of the excellence of this system of instruction than the ardor of the students themselves. Professor Ames, writing of the school ten years ago, said: "Indeed, one speaks far within bounds in saying that the spirit of work and enthusiasm which now prevails at the school is without parallel in the history of any department of the University." What was true then is at least equally true now. The students live in an atmosphere of legal thought. Their interest is at fever heat, and the impressions made by their studies are as deep and lasting as is compatible with the quality of the individual mind.

The testimony of the value of this system of instruction which is furnished by the zeal of the students is supplemented by the actions of the professors. Each instructor at the school is entirely at liberty to choose the method of instruction which most commends itself to his judgment. Several of the professors declined for many years to adopt the system introduced by Professor Langdell. Slowly it won its way. Actual experience overcame all doubts. Now that general method — varied of course in the manner and extent of application, according to the views of the different instructors — is almost universally adopted at the school. See what Mr. Justice Oliver Wendell Holmes, Jr., of the Supreme Judicial Court of Massachusetts, says of it: —

"But I am certain from my own experience that Mr. Langdell is right; I am certain, when your object is not to make a bouquet of the law for the public, nor to prune and graft it by legislation, but to plant its roots where they will grow, in minds devoted henceforth to that one end, there is no way to be compared to Mr. Langdell's way. Why, look

at it simply in the light of human nature. Does not a man remember a concrete instance more vividly than a general principle? And is not a principle more exactly and intimately grasped as the unexpressed major premise of the half-dozen examples which mark its extent and its limits than it can be in any abstract form of words? Expressed or unexpressed, is it not better known when you have studied its embryology and the lines of its growth than when you merely see it lying dead before you on the printed pages?

“I have referred to my own experience. During the short time that I had the honor of teaching in the school, it fell to me, among other things, to instruct the first-year men in Torts. With some misgivings I plunged a class of beginners straight into Mr. Ames’s collection of cases, and we began to discuss them together in Mr. Langdell’s method. The result was better than I even hoped it would be. After a week or two, after the first confusing novelty was over, I found that my class examined the questions proposed with an accuracy of view which they never could have learned from textbooks, and which often exceeded that to be found in text-books. I at least, if no one else, gained a good deal from our daily encounters.”

We Americans, who have given to modern England systematic instruction in the law, who enriched its law half a century ago with the ideas of Kent, Story, and Greenleaf, may feel some pride in the fact that the English now recognize the value also of Professor Langdell’s contribution to legal pedagogy. In 1886 Gerard Brown Finch, Esq., Law Lecturer at Queen’s College, Cambridge, after thoroughly examining the system of instruction prevailing at Harvard, introduced at Queen’s College Professor Langdell’s methods, and for that purpose published a selection of cases on the Law of Contracts.

But the time has passed when we need look to the enthusiasm of students or to the opinions of professors for evidence of the value of the new method of instruction. It is eighteen years since it was introduced. Those who have had an opportunity of putting the legal education thus acquired to a practical test are perhaps best qualified

to speak of its merits, and almost without exception they pronounce in its favor. Mr. James C. Carter, probably the leader of the New York Bar, has expressed in the strongest terms his belief in the new method of instruction: —

“Now, is this method open to the objection that the study of cases is apt to make the student a mere ‘case’ lawyer? Not at all. The purpose is to study the great and principal cases in which are the real sources of the law, and to extract from them the rule which, when discovered, is found to be superior to all cases. And this is the method which, as I understand it, is now pursued in this school. And so far as the practical question is concerned, whether it actually fits those who go out from its walls in the best manner for the actual practice of the law, I may claim to be a competent witness. It has been my fortune for many years to have charge of a considerably diversified legal practice; and the most that I have had to regret is that it has overwhelmed me so much with mere business that I have had too little time for the close study of the law which my cases have involved.

“It has been necessary for me to have intelligent assistants, and I have long since discovered that most valuable aid could be derived from the young graduates of this school. I have surrounded myself with them, partly for the reason that I have an affection for the place, and also because I have found them in possession of a great amount of actual acquirement, and — what is of more consequence — an accuracy and precision of method far superior to anything which the students of my day exhibited.”

That Mr. Carter’s experience is shared quite generally, appears from the following statement by President Eliot, contained in his report for the year 1885-1886 to the Overseers of Harvard College: —

“It is good evidence of the value of the full three years’ course that for several summers past the school has been unable to fill all the places in lawyers’ offices which have been offered it for its third-year students just graduating.

Louis D. Brandeis

There have been more places offered, with salaries sufficient to live on, than there were graduates to take them."

The intellectual self-reliance and the spirit of investigation which this new method of instruction engenders, have produced the "Harvard Law Review" and greatly developed the Club Courts. The "Harvard Law Review" is a monthly journal of law, of the same general plan as the "American Law Review," and is managed wholly by the students. It contains articles also by the professors and others, and is a magazine of high order. The Club Courts, which are practically Moot Courts, conducted entirely by students, have far outstripped in usefulness the Moot Courts held by the professors. These clubs have generally two sets of members, — the junior court consisting of eight members selected from the first-year class, and the senior court consisting of nine members selected from the second-year class. The junior and the senior courts meet at regular intervals, and at each sitting a case is argued by two of the members as counsel, — the rest sitting as judges. In the junior court a member of the senior court sits as Chief Justice. The cases are regularly presented upon the pleadings; briefs are prepared, arguments made, and opinions — sometimes in writing — delivered by each of the judges. The cases are prepared with quite as much thoroughness as any work that is done at the school.

In material prosperity the school has also progressed steadily during the past eighteen years. The number of students has risen from one hundred and fifteen in the year 1869-1870 to two hundred and twenty-five in the year 1887-1888. The national — indeed the international — character of the school has been fully maintained. Since the establishment of the three years' course ten years ago, thirty-five States, two Territories, and the District of Columbia, England and four of her provinces, Japan and the Hawaiian Islands have been represented at the school. The library now contains twenty-three thousand volumes, and is believed to be in some respects the best equipped law-library in America. About \$3,000 is spent upon it annually. In 1881 Mr. Edward Austin gave the school over \$140,000 for the erection of a new building, — Austin Hall, — which it now occupies. In 1882 the school received a gift of

Harvard Law School

\$90,000 to endow a professorship, and in the same year large gifts were made toward a library fund.

The enthusiasm of the graduates of the school found expression, in 1886, on the occasion of the celebration of the 250th anniversary of the founding of Harvard College. The Harvard Law School Association was organized, on Sept. 23, 1886, "to advance the cause of legal education, to promote the interests and increase the usefulness of the Harvard Law School, and to promote mutual acquaintance and good fellowship among the members of the Association." All former members of the School are eligible for membership in the Association. Its general meeting was held at Cambridge on Nov. 5, 1886. The membership of the Association now numbers eight hundred and eighteen. For the current year it has made a gift of \$1,000, to increase the instruction in Constitutional Law, and another of \$100, for a prize essay to be competed for by members of the third-year class. Similar grants for these purposes are to be made by the Association yearly.

In describing the progress of the school since 1870, we have referred only to the work of Professor Langdell. Those who have had any knowledge of the school during this period need not be told to how great an extent its prosperity should be ascribed to the co-operation of others who from time to time have been members of the Faculty. Of none of the instructors is this more true than of the present professors, who have devoted themselves to the cause of legal education with never-flagging zeal. The tact and good judgment which they have displayed in dealing with the difficult problems of administration, and the ability – nearly approaching genius – with which they have put the new method of instruction into practice, have alone made it possible to carry through the changes at the school, and to obtain the moral and financial support from without which have brought the school to the high degree of prosperity which it now enjoys.

After Judge Parker's resignation, Nathaniel Holmes, formerly one of the justices of the Supreme Court of Missouri, was appointed Royall Professor; and later, Charles S. Bradley, formerly Chief Justice of Rhode Island and a lawyer of great ability, became Bussey



Dane Hall

Professor. During this period Edmund H. Bennett, N. St. John Green, John Lathrop, Benjamin F. Thomas, and New England's greatest lawyer, Benjamin R. Curtis, were lecturers at the school. O.W. Holmes, Jr., held a professorship for a short time before his appointment to the Supreme Bench of Massachusetts in 1883.

The "Catalogue of the Students of the Law School of Harvard University, 1817-1887," which was prepared by John H. Arnold, Esq., its efficient librarian, under the inspiration of the Harvard Law School Association, contains five thousand two hundred and sixty-three names. A glance at its pages will show to how great an extent men prominent in public and professional life have received their early training at this school. Among those now holding offices under the Federal Government may be mentioned the Chief Justice and Mr. Justice Gray of the United States Supreme Court; the Secretaries of War, of the Treasury, and of the Navy; Senators Evarts, Hoar, Eustis, Chandler, and Gray, who will soon be joined by Senators-elect Walcott and Higgins; the Chief Justice and Mr. Justice Davis of the Court of Claims; Walter L. Bragg of the Interstate Commerce Commission; Judge Cox of the Supreme Court of the District of Columbia; the United States District Judges, Ogden Hoff-

Harvard Law School

man of California, Addison Brown of New York, Henry B. Brown of Michigan, Edward C. Billings of Louisiana; and, of the territorial courts, Judges Twiss of Utah, and Knowles and Blake of Montana.

On the highest State Courts the school is represented in Maine, New Hampshire, Massachusetts, South Carolina, West Virginia, and Iowa, by the Chief Justices, and in New York, Rhode Island, Delaware, and Ohio, by associate justices. Five of the seven judges of the Supreme Judicial Court of Massachusetts were students at the school.

To the Dominion of Canada the school has furnished the present Minister of Finance, Charles H. Tupper, as well as judges, and many members of Parliament; and to the Hawaiian Islands, the Chief Justice and Judge M'Cully of the Supreme Court.

We should expect to find the names of leaders of the Boston Bar now, as in the days of Rufus Choate, among the former students of the Harvard Law School; and in other cities the school is no less ably represented than there. Take, for example, New York, with James C. Carter, William M. Evarts, Joseph H. Choate, William G. Choate, George Hoadly, George Frederick Betts, George De Forest Lord, C.C. Beaman, D.H. Chamberlain, and George Bliss; at Providence, Benjamin F. Thurston, and formerly Charles S. Bradley; at Detroit, George V.N. Lothrop, the late Minister to Russia; at Savannah, Alexander R. Lawton; at St. John (N.B.), Ezekiel McLeod.

The educational influence of the Cambridge School has not been confined to the instruction given within its walls. Former students have as professors of law elsewhere spread wide its teachings. Thus, Francis Wayland, the Dean of the Yale Law School, and Prof. Simeon E. Baldwin, and Edmund H. Bennett, Dean of the Boston University Law School, studied at Cambridge.

Widely, too, has the Harvard Law School made its influence felt by the legal writings not of its professors merely, but also of others who were once its students. The last decade alone has given us, among others, Judge Holmes's work on the "Common Law," Langdell's "Summary of the Law of Contracts," Gray's works on "Perpetuities" and "Restraints on Alienation," Jones's treatises on "Mort-

gages and Liens," Benjamin Vaughan Abbot's various writings, Pierce on "Railroad Law," Gould on "Waters," Thompson & Merriam on "Juries," Morawetz on "Private Corporations," Merwin's "Patentability of Inventions," Stimson's "American Statute Law," besides the valuable writings of such authors as Preble, Austin, Grinnell, Aldrich, Wald, and Chamberlayne.

Among the many former students at the Harvard Law School who became prominent in spheres other than the law, may be named Caleb Cushing, Charles Sumner, Wendell Phillips, Rutherford B. Hayes, and Robert T. Lincoln; Elihu B. Washburn, Richard H. Dana, and Anson Burlingame; Motley, Prescott, and Parkman; James R. Lowell, William W. Story, and Dr. Oliver Wendell Holmes.

The Harvard Law School has done a great work in the past. May we not venture to hope that the work of the future will be immeasurably greater?

