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Legal Separation: The Relationship Between the Law School and the Central University in the Late Nineteenth Century

Mark Bartholomew

One afternoon in New Haven, a group of distinguished members of the Connecticut bar gathered on the town green. They were there to celebrate the fiftieth anniversary of the Yale Law School. Those involved with the school boasted of its recent progress and promise for the future. Theodore Dwight Woolsey, former president of Yale, used the occasion to describe his ideal law school. Students in this institution would study a broad curriculum. Some would practice law, but others would use their liberal legal education to prepare themselves for public service. The school’s influence would grow greater and greater until it became “a fountain of light through the whole land.”

Only five years before, Yale’s central administration had considered abandoning the law school. The school’s lone instructor had died, and Yale’s managers did not know if sustaining the school would be worth the time and expense. The school was rescued by three men from the New Haven bar who agreed to step in and assume the teaching duties. Even then, the university did little to sustain the school, focusing on the undergraduate college and leaving the fledgling law faculty to its own devices. Eventually the central administration would take a greater interest in law school affairs, but only eventually.

The changing relationship between Yale Law School and Yale University parallels the histories of other university-affiliated law schools in the late

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1. The celebration occurred in 1874. The first year that Yale College listed law school graduates in its catalog was 1824. See Frederick C. Hicks, Yale Law School: The Founders and the Founders’ Collection 20 (New Haven, 1935). But Yale College did not confer degrees on graduating law students until 1843. See id. at 24.


3. “The death, in 1869, of the last of the professors of the Yale Law School left the school without a faculty, without means, and with but few students. The Yale Corporation, it is understood, was not in favor of a continuance of the school and desired that it be closed.” George D. Watrous, Address Before the New Haven County Bar Association, in Records & Addresses in Memory of Simeon E. Baldwin, 1840–1927, at 12–13 (1928) [hereinafter Records & Addresses] (on file with the New Haven Historical Society Library).
nineteenth century. The demand for law school education mushroomed in the late 1800s. In 1860 there were twenty-two university-affiliated law schools in the United States. By 1900 there were 102 law schools in the country, and most of this increase consisted of new law schools affiliated with public or private universities. The story of the rise of university legal education is a large part of the history of legal education as a whole.

At first the new university law schools were not full partners in higher education. They were left largely to support themselves and often encountered financial trouble; law faculties lacked the prestige of professors teaching a classical curriculum in the undergraduate college. By the turn of the century, however, the law schools were stronger. As they became more prestigious and financially secure, they raised barriers for entry to the legal profession and adopted new teaching methods, all designed to raise the social standing of those who practiced and taught law. Yale and other law schools would tighten admissions requirements and raise academic standards in an effort to restrict the practice of law to a small university-educated elite. Although the university administrations would initially oppose these restrictions, they would ultimately give in to the wishes of their law faculties.

But while some of Yale Law School's history mirrors that of other university law schools, there were also things that made Yale unique. Not until the presidency of Timothy Dwight in 1886 would Yale's administration take an active role in promoting the law school. The school's development up to this point would be largely idiosyncratic, depending on the efforts of a small group of men from the local bar who agreed to take responsibility for the school in 1869. They believed in an unconventionally expansive definition of legal education at a time when Harvard and other university-affiliated law schools were attempting to remove the influence of other academic disciplines from the legal lecture hall. The Yale faculty's broad interpretation of what was an acceptable template for legal education remained one of the school's distinguishing characteristics.

Using Yale as an example, this article describes the interaction between university-affiliated law schools and the larger university during a crucial period in the development of legal education: the last third of the nineteenth century. At the same time, the article contrasts Yale with the other law schools of the day to show what made Yale unique and how Yale's nineteenth-century idiosyncracies would come to shape legal education at other schools in the twentieth century. The article is divided into two parts. Part I examines the university administration's attitude toward the law school and how it typified law school–university relations in the late nineteenth century. Part II assesses the educational philosophies of the law school faculty, comparing and con-

trasting their views on legal education and professionalization with those of other law teachers of the time. Understanding this period in Yale’s development provides insights into law school–university relations and the prevailing justifications for university-affiliated legal education after the Civil War.

I. The Administration’s Attitude Toward the Law School

A. Administrative Ambivalence

The rapid growth of the United States after the Civil War and the increased rate of industrialization created a need for more lawyers to deal with an increasingly complex society. Universities responded to the need by either establishing their own law departments or by annexing preexisting private, independent law schools. The University of Michigan, which created its law department in 1859, is an example of the former. Yale, which annexed a private law school run out of the home of New Haven attorney Seth Staples, is an example of the latter.6

Some university administrations acted with great indifference toward the new law schools; they took care to avoid responsibility for law school finances and teaching practices. Virginia law professors complained of inadequate facilities and the administration’s turning a blind eye to their problems.7 The law school at the University of Georgia had to rely on funding from private sources to pay for new facilities, and teachers’ salaries came from what the faculty could charge in tuition, not from university funds.8 When the University of Buffalo allowed a local law school to grant degrees in its name in 1890, the university made clear that it would not be responsible for any law school debts. As a result, most of the faculty were unpaid volunteers.9 The law school at Cumberland University had to rely on the same proprietary arrangement.10

Yale presents an extreme example of this administrative indifference. The administration’s ambivalence toward the law school was most apparent in 1869. When Henry Dutton died that year, the school was left with no faculty and no endowment to hire any.11 The Yale Corporation appointed a committee to recommend measures for the reorganization of the law department.12 President Woolsey was a member of the committee, but there is no evidence that it ever presented any recommendations to the Yale Corporation.13 Later

7. See John Ritchie, The First Hundred Years: A Short History of the School of Law of the University of Virginia for the Period 1826–1926 at 90 (Charlottesville, 1978).
11. See Hicks, supra note 2, at 1.
12. See Yale College in 1869: Annual Statement of the Society of Alumni 12 (on file with Yale University Library [hereinafter YUL], Department of Manuscripts and Archives [hereinafter DMA].
that year the corporation agreed to let three members of the New Haven bar—Simeon E. Baldwin, Johnson T. Platt, and William C. Robinson—take charge of the law school. Baldwin was the leading spirit in this undertaking. He was a graduate of the college (also known as the Academical Department) and had briefly attended both the Harvard and Yale law schools, but he was only twenty-nine when he began teaching and had been practicing for only six years. In 1871 Francis Wayland joined the three men and assumed the law school’s administrative duties. The faculty would expand in the 1880s and 1890s, but mostly by adding lecturers and part-time faculty; the four men who took over the school after the Civil War continued to set the school’s direction for the rest of the century.

There is little evidence that the law school received significant financial assistance from the administration before or after this last-minute rescue by the local bar. The Yale treasurer’s reports show that the university’s contributions to the law school totaled $60 in both 1869 and 1871. One of Yale’s historians, Brooks Mather Kelley, faults Woolsey for his failure to support the law school before the crisis in 1869: “Woolsey’s intelligence often enabled him to recognize a problem; somehow his character prevented him from moving to solve it.” Woolsey seems to have recognized the sorry condition of the school in 1867, but he absolved himself of responsibility for its decline:

The college authorities have not been at fault in what they have done for the school, or rather in what they have left undone. “The destruction of the poor is their poverty.” We could have raised the school by funds and men, but to get the funds we must have the men, and to get the men we needed the funds. There was no leverage.

Kelley adds: “There is no sign he had really tried to do much about either men or funds, and the school had not stayed the same but had actually declined.”

The law school’s new leaders continued to struggle for adequate funding during the 1870s. A member of the New Haven bar described the grim financial situation when Baldwin, Robinson, and Platt took over: “The school at that time, and for some time to come, was a proprietary institution; receiving no support from the College, and relying on tuition fees for its expenses. This was indeed a venture upon which the three men entered!”

14. See Minutes of the Yale Corporation (July 1869) (on file with YUL, DMA).
17. The money was paid for upkeep of the law library. See Report of the Treasurer of Yale University 1 (1871); Report of the Treasurer of Yale University 1 (1869) (on file with YUL, DMA).
18. Kelley, supra note 6, at 208.
19. Letter from Woolsey to Luther Frederick Jones (June 11, 1867), quoted in Frederick C. Hicks, Yale Law School: From the Founders to Dutton, 1845–1869, at 36 (New Haven, 1936).
tion did agree to pay "the whole or part of the rent of the rooms [now] used for the Library and Lecture room of the Law School" in 1869. Aside from the rental payments, the corporation limited its economic aid to periodic payments to preserve the school's library. Even with these payments, an 1871 assessment of the law school revealed that no books had been added to the library since 1852. The assessment, probably written by Simeon Baldwin, explained that the school's core problem was its lack of financial support: "At the present time, the Law Department is, as it always has been, the only department of the University wholly destitute of any permanent funds."

If the law faculty hoped for more from the university when Noah Porter replaced Woolsey as president in 1871, they were probably disappointed. Since 1850 the law school had been housed above a noisy saloon, and it desperately needed new quarters. The administration refused to put up badly needed funds to relocate the school to a new building. Instead, the school moved in 1873 into the third floor of the newly built New Haven County Courthouse, with Porter's administration offering only "funds to pay rent for a lecture room, so far as it may be needed for the lectures of the Kent Professor of Law in the Academical Department." In 1876 Simeon Baldwin wrote in his diary, "Yale doesn't care much for the Law School, and hardly regards it as hers . . . ." Porter retired from the Yale presidency in 1886. That same year the annual statement drawn up by the Yale College Alumni Association noted a rise in law school enrollment over the last fifteen years, crediting the faculty who had taken over in 1869. Not only did the alumni fail to mention that Porter had had any role in the law school's resurgence, but they seem to have subtly criticized him by noting that the increased enrollment had forced the law faculty to double their work without receiving any additional

22. Minutes of the Yale Corporation (July 1869); see Hicks, supra note 2, at 3.
23. See Minutes of the Yale Corporation (Dec. 1872) (authorizing $400 for a librarian's salary); Minutes of the Yale Corporation (July 1870) (appropriating $25 for a bookcase); Minutes of the Yale Corporation (July 1869) (authorizing $55.55 to pay a bill for care of the library). The law librarian was the first salaried position ever provided for the law school that did not rely on the income derived from tuition fees. See Hicks, supra note 2, at 57. In 1884 the corporation appropriated $300 from general university funds to buy new law library books and agreed to pay $300 every year for this purpose until 1894. See id. at 55.
24. See Yale College: Needs of the University Suggested by the Faculties to the Corporation, the Graduates, and the Benefactors and Friends of the Institution 18 (1871) (on file with the Yale Law School Library) [hereinafter Needs of the University].
25. See Hicks, supra note 2, at 6.
26. See Needs of the University, supra note 24, at 20. One of Woolsey's contemporaries, William C. Robinson, praised Woolsey for his efforts on behalf of the law school. He said that Woolsey "remained the stanch friend of the school till the last moment of his life." Address Commemorative of the Life and Character of Francis Wayland Delivered Before the Law School of Yale University at Hendrie Hall 24 (Apr. 22, 1904) (transcript available in the New Haven Historical Society Library). Robinson's assessment, however, may have reflected Woolsey's work for the law school after 1871 rather than any initiatives Woolsey took while president.
27. See Hicks, supra note 19, at 27.
28. Minutes of the Yale Corporation (July 1872).
29. Diary entry (July 18, 1876), Baldwin Family Papers (on file with YUL, DMA).
compensation.\textsuperscript{30} In contrast to Yale and other established schools like the University of Virginia and the University of Georgia, administrations at newer universities took a more active role in law school affairs in the late 1800s. This was especially true at state universities in the Midwest and West. The regents at the University of Michigan investigated the quality of teaching in the law department, particularly reports of professors failing to provide regularly scheduled lectures.\textsuperscript{31} University of California president Benjamin Ide Wheeler explained that "a law school must stand in close connection with a university as one of its departments, and especially must work in cooperation with related departments."\textsuperscript{32} The interests and goals of the administration at the University of Oregon paralleled those of the university’s law school. The leaders of each were convinced of the need to gradually raise academic standards for the state while at the same time providing practical educational opportunities for Oregonians.\textsuperscript{33}

The newer universities also provided substantial financial support to their professional schools. From the beginning, the Michigan administration appropriated money from the university treasury to pay the salaries of law school faculty.\textsuperscript{34} The same was true at Northwestern.\textsuperscript{35} Like Yale, the University of Oregon began by creating a proprietary arrangement in which the law school was responsible for its own financial survival. After only one year, however, the regents began making annual appropriations to pay the salaries of law school lecturers.\textsuperscript{36}

\textbf{B. Quarantining the College}

There are two explanations for the Yale administration's indifference to the law school. First, at state universities in the Midwest and West, the law schools and the undergraduate colleges shared the same recent origins. Many of these schools had been created under the Morrill Land Grant Act of 1862, which was inspired in part by a desire for institutions of higher education that would teach vocational skills.\textsuperscript{37} In contrast, law schools at Yale and other older universities had to compete with an undergraduate liberal arts college that

\textsuperscript{30} See Yale College in 1886: Annual Statement of the Society of Alumni 17 (1886).
\textsuperscript{32} See Epstein, supra note 4, at 35.
\textsuperscript{33} See Mary S. Lawrence, The University of Oregon School of Law, 1884–1903: The Thornton Years, 59 Or. L. Rev. 249, 254 (1980).
\textsuperscript{34} See Brown, supra note 31, at 14, 69. The law professors received less than their undergraduate counterparts, however. In 1869 law teachers received $1,300 per year while arts and sciences faculty were paid $2,000. See id. at 35.
\textsuperscript{35} See James A. Rahl & Kurt Schwerin, Northwestern University School of Law: A Short History 8 (Chicago, 1960). In its first years the law department was actually a joint venture of Northwestern and Chicago University. When Chicago University was discontinued in 1886, Northwestern assumed full responsibility for the law school. See id. at 8–9.
\textsuperscript{36} See Lawrence, supra note 33, at 253.
had been the focus of the administration's pride and attention for many years. Law schools at these universities would have to prove themselves before the administration would consider treating them with the same attention and care as the undergraduate college. Yale may have been one of the most extreme examples because it had such a long history of undergraduate liberal arts instruction (over 100 years) before it began to award legal degrees.

Second, the Yale administration was particularly hostile to the German method of higher education. German universities stressed original investigation over instruction in moral or cultural traditions. In the late 1800s American educators, many having studied in Germany, would begin to adopt this foreign vision of university instruction. The Yale administration, however, would resist the German idea that both professional studies and studies in the undergraduate college should rely on the same principles of scientific observation and, therefore, should be treated as equals.

1. A History of Undergraduate Segregation

At Yale, not just the law school but all of Yale's professional schools took a back seat to the college. In the mid-nineteenth century Yale was a religiously oriented liberal arts college that had added a few small and struggling professional schools. It exemplified the "old-time college," a place geared to building its students' piety and strength of character. In the late nineteenth century the Connecticut Puritans had believed that the formation of a new college was especially urgent because Harvard College had strayed from traditional Congregationalist principles. They created Yale in the early 1700s to educate ministers and preserve their faith. These religious underpinnings continued to influence Yale's development even as Yale became a liberal arts college and its role as a training ground for Connecticut ministers lessened. Students attended daily mandatory chapel services into the 1890s. Hard work in abstract subjects led to a mental and moral discipline that Yale's presidents believed was more important than acquiring knowledge.

Thus, the law school was an academic newcomer that had to compete with a long-established undergraduate college. Law schools at Midwestern and Western universities were not at such a disadvantage. Since the Morrill Act schools had been formed at roughly the same time as their sister undergraduate colleges, neither was able to claim a history or tradition making it superior to the other. The founding legislation for the University of California authorized the creation of a professional law school at the same time as the College of Arts. The University of Oregon School of Law was founded in 1884, only

38. See Jackson, supra note 13, at 36.
40. See Kelley, supra note 6, at 3. Princeton College's creation forty years later may have been a reaction to Yale's orthodoxy. See id. at 53.
42. See Veysey, supra note 37, at 23–24.
eight years after the creation of the university itself. Similarly, only a few years separated the creation of the undergraduate colleges and the law schools at Michigan and Northwestern. The Morrill Act stipulated that both practical and academic subjects be taught in the same institution, putting liberal arts instruction and professional study on a similar footing.

In contrast, as Yale's administrators emphasized the college's moral mission, they tried to segregate the spiritual development of the undergraduates from new influences. The creation of the divinity school in 1823 marked the beginning of a policy of budgetary separation of new schools from the college. In the middle of the century Yale's curriculum was expanded to include more work in the natural sciences and to provide opportunities for graduate research, but the administration was also careful to promote these changes in a way that did not harm the college. In 1847 a special committee of the Yale Corporation advised creating a graduate school separate from the Academical Department. The committee believed that a graduate school attached to the college would interfere with training the minds of the college's students. Moreover, the graduate school was to have its own faculty; there could be no instruction by persons who already taught in the professional schools or the Academical Department. In 1854 a separate department called the Sheffield Scientific School was formed to instruct undergraduates in science and engineering. The separate school allowed the administration to test out new curricular ideas for undergraduates, like a freer elective system, without disrupting the college's course of study.

As Yale's first president in the twentieth century would remark, aside from the occasional lecture on constitutional law from a member of the law faculty or a talk on hygiene from a medical school professor, the college and the other schools affiliated with Yale had "practically nothing to do with each other."

Under Noah Porter the central administration continued to view the law school and the other professional schools as second-class citizens. Students from the law school, the medical school, and the Sheffield School had to post a bond from one of their teachers before they could borrow books from the college library.

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43. See Epstein, supra note 4, at 1 ("The idea of a school of law at the University of California was integral to the concept of the University itself.").
44. See Lawrence, supra note 33, at 249.
45. See Rahl & Schwerin, supra note 35, at 8 (Northwestern); Brown, supra note 31, at 6, 70 (Michigan).
47. See Kelley, supra note 6, at 146.
49. See Kelley, supra note 6, at 182.
50. See Storr, supra note 48, at 55.
51. See Kelley, supra note 6, at 183; Veysey, supra note 37, at 49.
52. Report of the President to the Fellows of Yale University 9 (1904) (on file with YUL, DMA).
professor of international law, recalled Porter’s lack of attention to law school affairs as he chronicled a long history of neglect at the hands of the administration. “Even in President Porter’s time,” he remarked, “that amiable gentleman scandalized the Law Department by minimizing its connection with the College, as I well remember.” Plans for reorganizing the university had been in existence since 1870. One in particular had been drawn up by Timothy Dwight, then a professor in the divinity school. Dwight published his plan in a pamphlet entitled *Yale College: Some Thoughts Respecting Its Future.* He called for a centralized university structure and a communal pooling of funds for all of the schools associated with Yale. Porter rejected the proposal, once again stressing the preservation of the college at the expense of the professional and graduate schools.

Dwight replaced Porter as Yale’s president in 1886. When Porter died in 1893, Dwight became free to discuss Porter’s failure to take an interest in the professional schools. Porter had continued to teach in the Academical Department while serving as president. Dwight criticized this practice: “The consequence of this fact was that his sphere of duty, as had been the case also with Dr. Woolsey and his predecessors in office, was mainly limited to the part of the institution to which his Professorship appertained. The relations of the Presidential office to the other Departments were much less immediate and intimate.” In an 1895 report to the Yale Corporation, Dwight chronicled the university’s inattention to the law school in greater detail. He recognized that his predecessors had ignored the professional schools and speculated as to their reasoning:

The college had been in existence for more than a century when the first of the schools which were added to it had its foundations laid. It was natural that the new department should seem to the men within the institution, and those without it as well, to be an addition to what existed before rather than an outgrowth from the original seed. The old was good, and strong, and independent; why think of the new as, in any sense, of equal importance with it. . . . [The professional schools] were welcome to receive a place beside the college, and to live near it, if they could by their own power sustain their life. But they must not demand of the central authorities what belonged to the central part of the institution.

. . . .

The professional schools were thus left mainly to themselves.

As one of Yale’s historians has put it, at the end of Porter’s tenure there was still a wide “gap between the College and the half-private little Law School.”

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53. See Minutes of the Yale Corporation (Mar. 1872).
54. Historical Address (June 16, 1924), in *Celebration of the Centennial of the School of Law* 6, 7 (1924) [hereinafter Celebration] (Woolsey Family Papers, Series III, Box 47, Folder 31, on file with YUL, DMA).
55. New Haven, 1871.
57. Report of the President to the Fellows of Yale University 7 (1893).
The administration’s efforts to quarantine the college from the rest of Yale led to an out-of-sight, out-of-mind policy and years of weakness for the graduate and professional schools.60

2. The German Influence

Other institutions of higher learning would not be so successful at inoculating their undergraduate colleges from change. Even some of the older universities with long traditions of undergraduate moral development found themselves rethinking their educational philosophies in the late 1800s. At those schools positions of authority were being claimed by a discontented group of future academic leaders, Charles Eliot of MIT, and later Harvard, chief among them. A plateau in enrollment in the 1850s and 1860s combined with an infusion of new wealth from the country’s industrial beginnings made the time ripe for universities to take a risk on new leaders and new educational strategies.61 Eliot and the other new leaders believed that education should give men practice making free choices and thereby encourage the development of new areas of knowledge.62 They incorporated the professional schools into their educational philosophy. Law and medicine were not trades but academic disciplines requiring the same rigorous standards of scholarship as history and science.

Eliot’s reforms reflected the influence of the German university.65 In the mid-1800s thousands of Americans traveled to Europe to study at German universities. They returned touting the advantages of Germany’s system of higher education. In the German university respect for traditional academic disciplines did not mean that professional and scientific fields of study were shortchanged. Up to 1880 the second-most-popular subject for Americans to study in Germany was law. The Germans emphasized research and the production of new scholarship over the transmission of known wisdom. A belief in the systematic acquisition of knowledge influenced disparate fields that included law, natural science, and the liberal arts.64

This new emphasis in education clashed with the traditions of the old-time college. Research meant an increasing specialization of knowledge as each member of the faculty was encouraged to develop his own personal contribution. Assuming that everyone has a finite amount of time to devote to his occupation, the higher premium placed on scholarship meant that there was less time left for pedagogy. In the German classroom paternal activities such as taking attendance or investigating student conduct off schoolgrounds were considered unworthy distractions from the pursuit of knowledge.65 Professors

60. Kelley, supra note 6, at 146.
61. See Veysey, supra note 37, at 10.
62. See id. at 88–89.
64. See Clark, supra note 63, at 320–22, 324.
65. See Veysey, supra note 37, at 138.
were seekers of truth, not babysitters. Yale’s particularly strong reaction against the German model of higher education helps explain its indifference to law school affairs; the Yale administration continued to view the university’s primary role as spiritual caretaker of the young, not as a collection of different disciplines that were moving forward the boundaries of scholarship.  

Admittedly, the influence of German educational ideals on American colleges can be overemphasized, especially in the decade after the Civil War. Intense devotion to research was usually confined to a small pocket of faculty and graduate students. Most administrations were slow to accept research as the university’s dominant goal, and it did not become a central concern in university thinking until the late 1870s.

Nevertheless, the German influence continued to build as the years wore on; by the twentieth century it would come to dominate the thinking of most American colleges. In time, German ideas in the college classroom would move across the quad to change university legal instruction. The arrival of Christopher Columbus Langdell as dean of the Harvard Law School signaled the arrival of German education in the legal lecture hall. Langdell articulated a vision of the law as an organic science with several guiding principles rather than as a series of facts and rules to be memorized. He institutionalized a research function at Harvard Law School similar to that existing in German universities; part of a professor’s job was to mine the language of appellate cases for general principles of law. Langdell then appointed James Barr Ames as an assistant professor in 1873. Ames’s appointment reflected Harvard’s embrace of another German educational practice: appointing former students with little practical experience but with research potential. As Langdell explained, “What qualifies a person . . . to teach law is not experience in the work of a lawyer’s office . . . but experience in learning law.”

Harvard was not alone in embracing the German ideas for legal education. The reforms implemented at Harvard by Eliot and Langdell became the

66. Although the Yale law faculty sought more attention and financial support from the larger university, they agreed with the administration that spiritual development of the young was the raison d’être for the college. As late as 1912, Baldwin would write that of all the things taught by Harvard and Yale, high standards of morality were the most important. “[M]orals [can] best be taught . . . by the light of religion and the study of the principles of Christianity,” he wrote. According to Baldwin, endowed institutions like Yale are better suited to this moral teaching because they do not confront the First Amendment restrictions faced by state-funded universities. Simeon E. Baldwin, The Relations of Education to Citizenship 43 (New Haven, 1912).

67. See Veysey, supra note 37, at 158, 174.

68. See id. at 174.

69. See Clark, supra note 63, at 327–29.


templates for other university law schools. By the end of the century, other schools had followed Langdell’s lead and hired faculty on the basis of their potential for writing and research. John Henry Wigmore, dean of the Northwestern Law School at the turn of the century, made scholarly promise, not career success outside of academia, his prime requisite in faculty hiring. The same was true of Michigan, once Harry Hutchins became dean of the law school in 1894. Men brought in for full-time positions during Hutchins's deanship did not have legal experience; some of his new hires were men who had started out teaching in the undergraduate college.

The German influence can also be seen in the case method of instruction, which was based on the idea that law is a science. Instead of organizing his teaching around a treatise, Langdell had his students read only cases. Instead of explaining and illustrating the application of legal principles, Langdell focused his attention on giving his students practice in scientifically observing appellate court opinions and extracting legal principles from them. By the end of the nineteenth century, schools that had refused to adopt the case method found themselves estranged from other university law schools.

Law teachers liked the German model of higher education because it conferred prestige on their profession. Use of German educational methods allowed law professors to compare themselves with other academics; they were advancing the boundaries of knowledge, not merely instructing students on how to ply a trade. Overseas study affected many notable nineteenth-century legal academics. William Gardiner Hammond, the guiding force in the early development of the Iowa Law School, studied legal history in Heidelberg for two years. This German training shaped his scholarly work: he used observations from reported cases as the primary component of his instruction and viewed law as an expression of the particular culture from which it emerged, not as an expression of natural immutable principles. At the University of California law was first taught within Bernard Moses’ political science department. Like Hammond, Moses earned his doctorate at the University of Heidelberg and took a scientific approach to scholarship in keeping with his German training. When the law school became a separate school and instituted a four-year program of study, one Berkeley professor commented approvingly that this was an attempt to structure the law school along the lines of the German university, where pure scholarship and research mattered most.

72. See Clark, supra note 63, at 317. For more detail on the adoption of the Harvard model by other schools, see generally Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s (Chapel Hill, 1983).
73. See Rahl & Schwerin, supra note 35, at 23.
76. See Epstein, supra note 4, at 6.
77. See id. at 81. The four-year program was abolished, however, after only four years of existence. Id. at 80.
Ernst Freund, a professor at the University of Chicago, drafted a curriculum in 1902 for the Chicago law school that would provide “a careful and systematic study of the legal system as a whole after the European method.”

Yale’s especially strong reaction against the German method distinguishes it from other schools. Despite their common origins as centers for religious instruction of the young, differences in university leadership in the 1800s caused Harvard and Yale to take different paths. The latter half of the nineteenth century was a period of fierce competition between American universities. To win this competition, Eliot was motivated to make his school reflect the latest educational models; this meant importing ideas from the German research university and shedding a past that revolved around the spiritual development of young undergraduates.

Early on, the Yale administration decided not to remake itself along German lines and to hold itself aloof from the rivalry that was causing its competitors to focus on research. Yale added its graduate school during Woolsey’s presidency, which lasted from 1846 to 1871. Unlike Harvard and German universities, however, Yale kept its graduate school and college faculties separate. Woolsey did not approve of Germany’s system of higher education. He had studied in Germany as a young man but had been largely unimpressed. In a letter he explained: “For my own part I prefer the American system with a slight portion of the German grafted upon it. [In the German schools,] only philologists are formed and the moral being and much of the knowledge necessary in life is neglected.” Woolsey made the college his first priority during his presidency. In 1871 Yale remained a college “with incidental appendages which made out the best they could.”

Woolsey’s successor, Noah Porter, who served as Yale’s president from 1871 to 1886, was even more hostile to the Germanization of American education. He appreciated the communal experience, historical standards, and, most important, the shared moral values of the college. In contrast to Harvard’s Eliot, Porter thought that the school should make choices for its students. They needed to study Latin and Greek because those subjects provided intellectual discipline. Developing this discipline was more important than acquiring new knowledge. Porter’s conservatism isolated Yale in the 1870s, as

78. See Clark, supra note 63, at 332.
79. See Veysey, supra note 37, at 96.
80. See id. at 330.
81. See Storr, supra note 48, at 30–31. “In the intellectual sphere Harvard College had been changed from a small college on the restricted, disciplinary model into a swarming university-style college, whose students could specialize in all sorts of new subjects or shift as they saw fit between departments and levels of study. Thus the achievement of Harvard University had involved the transformation of Harvard College.” Pierson, supra note 41, at 48.
82. Letter from Theodore Dwight Woolsey (Apr. 21, 1828), in Woolsey Family Papers, Series III, Box 47, Folder 27.
83. Pierson, supra note 41, at 63.
84. See id.
85. See Kelley, supra note 6, at 240.
86. See Veysey, supra note 37, at 23–24.
the school "adopted a standoffish pose, refusing even to confer with such reformed institutions as Harvard." When Eliot led interuniversity conferences to standardize admissions requirements and examinations, Yale refused to even enter the discussions.

More than any particular antipathy to the German concept of the research university, it was Yale's sense of its particular moral mission that caused it to protect the college at the expense of its other schools. The educational trends associated with the German university clashed with Yale's desire to preserve its traditional role as a place for instilling spiritual values. Compared to other schools, Yale's undergraduate faculty had an extraordinary amount of autonomy, and they fought to keep their place at the head of Yale's academic table. Placing more emphasis on research meant deemphasizing the pedagogical techniques designed to instill moral virtue into young students. There were only so many classes a student could take. Opening up the college curriculum to innovations in the natural and social sciences meant undermining the foundational classes that stressed discipline and training more than acquiring knowledge. And, in the view of Yale's leaders and the college faculty, diverting attention to professional and graduate schools meant weakening the college. To be sure, the college did change somewhat under Woolsey and Porter. A limited number of electives were permitted, and college seniors chose to make political science and law a large part of their curriculum. Overall, however, Yale made its changes in a slow, piecemeal fashion, years after other schools had fully reorganized to accept the German system's emphasis on research, specialization, and elective choice.

Yale's traditionalist stance against the research and specialization movements in higher education took a toll on its graduate and professional schools. The historical data indicate that as Yale's administrators tried to preserve the old-fashioned college, they neglected the law school. The administration did not allow the law school to die in 1869, but neither did it try to promote a quick recovery for its ills. The law school in the 1870s was like a sick patient

87. Id. at 50.
88. See Letter from Academical Department Faculty to President Eliot (Mar. 11, 1880), Noah Porter Papers, Box 1, Folder 2 (on file with YUL. DMA).
89. See Pierson, supra note 41, at 129.
90. See Kelley, supra note 6, at 264-65.
91. See Pierson, supra note 41, at 73-80.
92. See Kelley, supra note 6, at 174-75. A study of the number of hours of classroom work per week taken by the 1895-96 senior class over their four years at Yale showed that law and political science were two of the most popular areas of study. The only subjects on which students spent more classroom hours were foreign languages, history, and English. See Report of the President to the Fellows of Yale University 30-31 (1896).
93. See Kelley, supra note 6, at 264-65 ("At a critical point in the history of American higher education, Yale was on the wrong side.").
94. See Robert Stevens, Two Cheers for 1870: The American Law School, in Law in American History, eds. Donald Fleming & Bernard Bailyn, 405, 438-39 (Boston, 1971) ("Yale was declining in importance as a law school, in part because its sponsoring institution chose to remain predominantly a college rather than joining Harvard, Columbia, and Chicago in transforming itself into a university.").
receiving only the bare minimum of treatment to keep it alive, but nothing more. Because of Yale’s tradition of spiritual development of students through hard work in classical subjects, the law school found itself at the bottom of the administration’s priority list. Instead of embracing the German philosophy of higher education, with its emphasis on scientific observation in relatively new areas of scholarship, including law, the administration continued to stress time-honored subjects and the moral development of its students above all else.

C. Reorganizing the University

After Timothy Dwight became president of Yale in 1886, the relationship between the college and the rest of the university began to change. Dwight’s 1871 work, *Yale College: Some Thoughts Respecting Its Future*, sets out a blueprint for a new type of presidential administration. It begins by arguing that Yale has entered a new era. Yale started out as a high school for young students: “Men had not come as yet to take the widest views of education.” As a result, only the college was emphasized and the university’s other parts developed unevenly. But in 1871, said Dwight, “[t]he age of mere colleges in this country, in a certain sense, is past.” Instead, the “outside” schools were crucial to Yale’s future success. “They are, even, the essential thing.” In marked contrast to Woolsey and Porter, Dwight criticized Yale’s neglect of the graduate school as a failure to fully implement the German model of higher education. He regretted the hierarchy that placed the professional schools below the college: “The student in theology or law is pursuing a no less noble branch of learning than the student of pure mathematics or of the ancient languages.” He exhorted the trustees to “keep in mind the idea of the unity and unification of the whole University, in all their actions and plans.”

When he became Yale’s president, Dwight moved to implement his fifteen-year-old plan for unifying the university. In his first report to the corporation, he pledged his attention to all of the schools associated with Yale, not just the college. He criticized the old view of the noncollege departments. (“They were welcome to receive a place beside the college, and to live near it, if they could by their own power sustain their life. But they must not demand of the central authorities what belonged to the central part of the institution.”) Instead, he told the corporation that all parts of the university benefited when the graduate and professional schools were strengthened. The professional schools’ true potential could only be realized when they were no longer dependent on student tuition for their survival: “Yale University can never be a

96. See *id.* at 28.
97. *Id.* at 21.
98. *Id.* at 102.
99. See *Report of the President to the Fellows of Yale University* 8–9 (1887).
100. *Report of the President to the Fellows of Yale University* 68 (1895).
great university if its higher schools are suffered to decline or die away."102 Within a decade, Dwight began to claim success: "[Yale] is no longer a central school with outside sections more or less loosely attached to it, but a University composed of coordinate departments, each having its own sphere but all united as equals in the one great institution."103

Dwight gave the law school more than rhetoric. While he was president, the corporation approved the purchase of a site for a law building, allowing the school to move from its shared quarters in the New Haven County Courthouse.104 Dwight stressed the need for a substantial law school endowment in his reports to the corporation.105 At the beginning of his term as president, the law school’s endowment stood at $11,600; by the time he retired in 1899, it had reached $82,813.77.106 It is unclear what role, if any, Dwight had in soliciting these funds for the law school. His emphasis on a university of “equals” may have given donors more confidence in the staying power of the troubled law school, but it is difficult to tell. It is clear, however, that Dwight also backed up his talk with his own dollars. In 1899 he contributed $1,000 to the law school for “general purposes.”107

But the full integration of the law and medical schools into the university would take time. Even while Dwight was president, the law school continued to struggle to move out of the shadow cast by the college: "Despite Dwight’s interest in seeing the whole university develop, Yale College remained preeminent."108 Dwight found it difficult to redistribute the power and prestige of the college to the new professional and graduate schools.109 Dwight himself was

102. Report of the President to the Fellows of Yale University 72 (1895).
103. Report of the President to the Fellows of Yale University 30 (1894).
104. See Frederick C. Hicks, Yale Law School: 1895–1915, Twenty Years of Hendrie Hall 3–4 (New Haven, 1938). But Dwight could not persuade the corporation to appropriate the $35,000 necessary to complete the law building on the site. The corporation agreed to lend the required funds only after the law faculty raised additional money in subscriptions and pledged to be personally responsible for the remaining sum of $12,000. The loan was not approved until 1899, eight years after the site’s purchase. See id. at 9.
105. See Report of the President to the Fellows of Yale University 56–57 (1893); Report of the President to the Fellows of Yale University 71–72 (1895); Report of the President to the Fellows of Yale University 77 (1899).
106. See Report of the Treasurer of Yale University 54 (1899); Report of the Treasurer of Yale University 26 (1886). The $71,000 increase came from several sources. Simeon Baldwin anonymously gave $12,600 to the school in 1896. See Indenture Book, entry for Simeon E. Baldwin Fund (on file with Stephen Yandle, associate dean). The Phelps fund was worth $50,000 by 1891 and had probably gained some interest since then. See id., entry for Morgan Fund. In 1899 Joseph Parker gave $3,000 for a prize on the best thesis on Roman law. See id., entry for Joseph Parker Prize. Also in 1899 Eliza and Mary Robinson gave $5,000 for annual lectures to serve as a memorial to their uncle William L. Storrs. See id., entry for William L. Storrs Memorial Fund. A donation by an 1873 graduate of the law school provided $10,000 as a permanent endowment for maintenance of the school’s library.
108. See Kelley, supra note 6, at 292.
109. See Pierson, supra note 41, at 65.
not receptive to pleas from the law faculty for assistance in convincing Yale undergraduates to stay in New Haven for law school instead of going to Columbia or Harvard. When the philosopher George Santayana visited Yale in 1892, he observed: "The essential object of the institution is still to educate rather than to instruct, to be a mother of men rather than a school for doctors."

At Harvard the lines between the professional schools and the undergraduate college were not so clearly drawn. Eliot took a particular interest in the Harvard Law School. He noted with pleasure that his reforms had transformed all departments of the university in a parallel manner in keeping with the German method: "In all departments of the University, a careful observation of actual facts, an accurate recording of the facts determined, and a just and limited inference from the recorded facts have come to be the primary methods of study and research." At Harvard the lines between the professional schools and the undergraduate college were not so clearly drawn. Eliot took a particular interest in the Harvard Law School. He noted with pleasure that his reforms had transformed all departments of the university in a parallel manner in keeping with the German method: "In all departments of the University, a careful observation of actual facts, an accurate recording of the facts determined, and a just and limited inference from the recorded facts have come to be the primary methods of study and research."

This was not true of Yale in the nineteenth century, despite Dwight’s best intentions. During his tenure and beyond, Yale refused to implement the educational models of Eliot, Langdell, and the German universities. “Although it was now said officially that no one at Yale could rise above an assistant professorship without some evidence of research, in fact a zealous attitude toward original investigation was discouraged rather than otherwise.”

The law faculty resented the university’s lack of interest in their affairs. Worst of all was the college faculty’s disdain. By rejecting the trend at other schools toward scientific observation and original research, the college faculty maintained their monopoly over moral instruction of undergraduates and their preeminence in Yale’s academic pecking order. “[T]he College looked askance at [the Law School] . . . [T]he College faculty was reluctant to admit that our work had cultural value,” recalled one law professor. Although the law school improved during Dwight’s term as president, he failed in his attempts to centralize power in the university and reduce the autonomy traditionally enjoyed by the college faculty. Referring to both the law school and the Sheffield Scientific School during the late 1800s, a Yale law professor remarked: “We were both pariahs in the eyes of the academic professor.”

II. Establishing the Profession of Legal Scholar

There was no strictly academic legal profession before 1865; most law teachers were practicing or retired judges or lawyers. But in the 1870s a small group of legal scholars moved to create a new academic discipline in a pattern analogous to the efforts of professors in political science, sociology, and

110. See id. at 106.
111. Quoted in Kelley, supra note 6, at 308.
113. Veysey, supra note 37, at 235.
114. Woolsey, supra note 54, at 14.
115. See Pierson, supra note 41, at 65.
The Law School and the Central University in the Late 19th Century

anthropology to carve out their own areas of intellectual expertise.\textsuperscript{117} As John Henry Schlegel has explained, professionalization is an attempt by one segment of the middle class to improve its social and economic status through a strategy of market control. The control is achieved by excluding others from production, i.e., weeding out the competition. In the university, the professionals seek control over the production of knowledge. They also seek to standardize their product within their small circle of producers so their product is easily differentiated from rival manufactures.\textsuperscript{118}

The law professors of the late 1800s did this in a variety of ways. First, the case method of instruction gave them sole possession of a unique way to teach. Now they could illustrate principles of law inductively through primary sources (collections of reports of actual cases) instead of lecturing at their students.\textsuperscript{119} The method was easily replicated across law faculties to create a standardized way of providing knowledge that contrasted with instruction in other disciplines.\textsuperscript{120} Second, law schools tried to make their product more "respectable" by raising admission requirements, thus excluding the foreign-born and restricting legal opportunities to those who already had an academic background.\textsuperscript{121} The increased admission requirements also had the effect, when sanctioned by the state bars, of eliminating a rival to university legal education: the part-time night law school.\textsuperscript{122} Third, by removing public law from their curricula, university law schools further moved to corner the legal education market by preventing competition with another group of emerging academic professionals: the social scientists. When Harvard stripped public law from its curriculum in the 1880s and 1890s, the result was a product (legal education) that bore little resemblance to other disciplines and was easily recognized by the academic consumer.\textsuperscript{123}

Like many of their counterparts at other university-affiliated law schools, the Yale Law School faculty believed in defending law and, in particular, law teaching as professions that required a rare set of intellectual skills. According to Robert Stevens, "[William] Robinson wanted no part of a system of legal education which seemed to return to the concept of law as a trade." Robinson argued that while law had once been regarded as a trade, the recognition of law as a science was changing that.\textsuperscript{124} Similarly Simeon E. Baldwin wrote: "Law

\textsuperscript{117} See Schlegel, supra note 74, at 956-57; see also Burton J. Bledstein, The Culture of Professionalism: The Middle Class and the Development of Higher Education in America 126 (New York, 1976) (explaining that the middle class set up a dichotomy between professional studies and practical ones).

\textsuperscript{118} See Schlegel, supra note 74, at 959; see also Bledstein, supra note 117, at 269.

\textsuperscript{119} See Friedman, supra note 5, at 536.

\textsuperscript{120} See Laura Kalman, Legal Realism at Yale, 1927-1960 at 12 (Chapel Hill, 1986).

\textsuperscript{121} See Jerold S. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America 94-95 (New York, 1976).


\textsuperscript{123} See Schlegel, supra note 74, at 961.

\textsuperscript{124} Stevens, supra note 72, at 87 n.34.
Schools are not for the many, but for the few; not so much for those who are content to follow the law merely as a money-getting trade, as for those who seek it as a liberal and liberalizing profession." Baldwin helped found the American Bar Association to improve public opinion of the legal profession; the ABA would raise standards and combat what he saw as "the baseness of everyday law practice."

Yet even though the Yale faculty identified themselves as legal scholars, they did not always endorse the reforms used by other university-affiliated law schools to make legal education a distinct and elite commodity. The Yale faculty did advocate higher admission standards, even when these standards threatened to decrease student enrollment and take money out of their own pockets. The faculty moved very slowly in embracing the case method of instruction, but they eventually accepted it. On the other hand, the law faculty rejected Harvard's attempt to remove all classes involving nonlegal sources from the law school curriculum. Instead the Yale law faculty adopted a uniquely broad cross-disciplinary perspective on legal education at just the moment when the other university law schools were shrinking their curricula. Its emphasis on breadth would become the law school's most distinguishing characteristic of the period.

A. The Case Method

At first Yale's law faculty was reluctant to adopt the case method. Instead the faculty called on students in class for oral recitations of legal principles from previously assigned treatise passages. The bulletin for the 1869-70 school year explained that the instruction consisted of "recitations from standard text-books, accompanied with oral explanations" as well as a certain amount of lecture. An 1889 account of teaching in the law school explained that students were encouraged to ask questions during the recitations—an opportunity that supposedly made the Yale system superior to a course of lectures that did not require students to do any analytical thinking in class. The faculty discouraged the use of cases as primary sources until the second year: "it is the general policy of the school to postpone their study until a groundwork has been laid for their proper comprehension." Harvard's new style of legal teaching was on the Yale faculty's mind. The Yale Law School catalog in the 1880s and 1890s contained a passage defending the recitation method as the best method for learning legal principles. Even the university president, Timothy Dwight, defended the recitation method in his report to the Yale Corporation in 1892.

Simeon Baldwin's reason for disapproving of the case method is revealing. His objection was not that it used the Socratic method to question students; Baldwin himself, at times, questioned his students on hypothetical cases that were often adapted from actual suits. The problem with Langdell's method,
he thought, was that it relied *only* on appellate court decisions. Baldwin contended that the case method gave students a myopic vision of the law. Speaking of a Harvard graduate's defense of a legal point based solely on the cases he had read, Baldwin said: "This kind of clinging to authority and decided cases, makes a man after a while almost incapable of reasoning with his eyes open to the actual work about him."

As I will discuss below, Baldwin believed in an unusually broad cross-disciplinary legal education. A teaching method that restricted him to one source, appellate cases, clashed with his views on the proper scope of a legal course of study.

The Yale faculty's initial reluctance to embrace the case method was not unusual. Harvard itself only gradually moved toward an exclusive reliance on it. Instead of the case method, several Harvard professors used for years a combination of lectures and recitations to teach their students. In the 1880s and 1890s other law professors around the country condemned the new teaching method, but their reasons were different from Baldwin's. Some argued that the method just didn't work: one could not find the relevant legal principles by reading a handful of cases.

Theodore W. Dwight at the Columbia Law School criticized the case method as inappropriate for teaching "those of average powers" and worried that it would leave most students behind.

But in the first years of the twentieth century it became evident that the tide had turned in favor of the case method. Advocates of the method were appointed at Northwestern in 1893 and Chicago in 1902. At Notre Dame it was introduced in 1889 and became the standard teaching method by 1905. By 1908 it had been adopted at thirty schools. Even Yale became more accepting of the case method once most of the teachers who had joined the faculty in 1869 had retired or moved on to other schools. The 1903–04 bulletin indicated that classes were taught by three methods—lectures, textbook recitations, and the case method—and no one method was adopted to the exclusion of any of the others. In 1912 the law faculty passed a resolution allowing an instructor to use the case method in any class, even a first-year class, if he had the permission of the dean. That same year, nearly every course at Yale was taught with casebooks only. Among the older faculty there was a grudging acceptance of the new teaching style. In a 1924 speech Theodore

130. Letter from Simeon E. Baldwin to Charles C. Soule (Nov. 9, 1903), Baldwin Family Papers.
132. See, e.g., Christopher G. Tiedeman, Methods of Legal Education III, 1 Yale L.J. 150, 154–55 (1892).
133. Columbia College Law School, New York, 1 The Green Bag 141, 144–48 (1889), quoted in LaPiana, supra note 70, at 96.
134. See Stevens, supra note 94, at 438.
136. See Stevens, supra note 94, at 440 n.61.
137. See Hicks, supra note 104, at 44.
138. A biographer writes that Baldwin felt isolated in the early 1900s as his peers adopted the case method over his objections. See Goetsch, supra note 16, at 79.
S. Woolsey remarked: "The old way bred great lawyers. But like the caste mark of the Brahmin, the case system is the cachet of the crack law school of today."  

B. Raising Admission Standards

If the Yale faculty accepted the case method grudgingly, they wholeheartedly endorsed Harvard’s extension of the course of study to three years and the raising of admission standards. Higher admission requirements were part of the move toward professionalizing university legal instruction. In one sense, elite law faculties were doing what was in the interest of their class: by restricting the profession, they solidified their own distinctiveness and made legal learning an exclusive commodity. Higher standards meant a higher social status for both law professors and the organized bar. The move to make legal education less easily available coincided with a dramatic increase in the percentage of lawyers who were foreign-born or had foreign-born parents. By cutting out these newcomers and limiting access to the profession to those with traditional Protestant backgrounds, lawyers may have been trying to make their profession more “respectable.” As one Columbia law teacher remarked, the immigrants were less versed in “American family life” and thus could hardly be taught the ethics of the legal profession. Once the American Bar Association and state bars sanctioned the admissions restrictions, competing legal education institutions such as the part-time night school found it hard to survive. The law professor’s elite status became secure. Langdell at Harvard led the admission standards race. In 1878 Harvard required three years to complete the course of law study. By 1896 Harvard required a college degree for law school admittance.

Most law teachers of the early twentieth century joined the Harvard faculty in lobbying for higher admission standards. When Harry Richards became dean of the University of Wisconsin Law School in 1903, he immediately embarked on a plan to “Harvardize” the school. He insisted that prospective students complete one year of college before law school, even though that put law school out of the reach of most Wisconsin citizens. The Northwestern faculty urged that the legal course be lengthened from two to three years because Columbia and Harvard already required three years and Michigan and Yale had announced plans to do the same. In 1889 the Michigan faculty recommended that the course of instruction be lengthened to three years.

139. Woolsey, supra note 54, at 16. Occasionally the old method crept back in when someone from the old era joined the faculty. William Howard Taft, a Yale Law School alumnus, came back to teach after his presidency; he conducted his class using the old recitation method. See Pierson, supra note 41, at 620–21. But times had changed. Students complained to the dean about his teaching methods. See id.

140. See Auerbach, supra note 121, at 95; Stevens, supra note 94, at 463.

141. Quoted in Auerbach, supra note 121, at 100.

142. See Stevens, supra note 94, at 450–51.


144. See Rahl & Schwerin, supra note 35, at 17.

145. See Brown, supra note 31, at 108–09.
William Carey Jones of the law school at Berkeley lobbied California state officials to tighten admission procedures for the California bar.\textsuperscript{146}

There were exceptions. The law faculty at Notre Dame tried to keep admission requirements relatively low so as not to shut out deserving men.\textsuperscript{147} Cumberland University’s law faculty actively campaigned to lower admission standards.\textsuperscript{148} James Woods Green, the man who established the University of Kansas law school, resisted the imposition of any admission standards.\textsuperscript{149} Thomas Cooley, the guiding force in the early years of the Michigan law school, took pride in opening his school’s doors to all literate Americans.\textsuperscript{150}

But these exceptions became less and less frequent over the years. Cooley retired in 1884, and by 1886 Michigan’s other law teachers had lobbied the administration to lengthen the course of study and raise entrance requirements. In 1908 the Michigan law faculty asked that one year of college work be required for admission.\textsuperscript{151} At Kansas, Green grudgingly agreed to lengthen the course to three years and to require college work for admission.\textsuperscript{152} Most law faculties of the time wanted to adopt the same admissions reforms as Harvard. As the dean of the Michigan law school explained in a 1912 report: “The fact that the Harvard Law School now leads all first class schools in attendance is undoubtedly due to the fact that it early increased its entrance requirements and its standards of work.”\textsuperscript{153} Tighter entrance requirements were a way for university law teachers to ensure entry into the clique of “first-class” schools and to distinguish themselves from the part-time and night law instructors.

No exception to the general trend, the Yale Law School faculty embraced higher admission standards and the consequent move to elite status for law teachers. The law faculty vigorously opposed the administration’s efforts to protect Yale from the professional influences that had overtaken Harvard and other schools. Theodore S. Woolsey, interim dean of the law school from 1901 to 1903, emphasized in his report to the corporation that Harvard already required a college degree and soon Columbia and the new University of Chicago law school would require one as well.\textsuperscript{154} Henry Wade Rogers, who became dean of the Yale Law School in 1903, was the first permanent chairman of the ABA’s Section of Legal Education. Rogers implied that the corporation’s refusal to require a college degree for law school admission

\textsuperscript{146} See Epstein, \textit{supra} note 4, at 92.

\textsuperscript{147} See Moore, \textit{supra} note 135, at 43 n.15.

\textsuperscript{148} The authors of the definitive history of that school speculate that Tennesseans did not share the concern over the admission of the sons of immigrants from eastern and southern Europe that shaped the policies of Yale, Harvard, and other law schools. See Langum & Walthall, \textit{supra} note 10, at 137.

\textsuperscript{149} See Carrington, \textit{supra} note 57, at 16–17.


\textsuperscript{151} See Brown, \textit{supra} note 31, at 277. The Michigan regents denied their request.

\textsuperscript{152} See Carrington, \textit{supra} note 57, at 17-18.

\textsuperscript{153} Brown, \textit{supra} note 31, at 281.

\textsuperscript{154} See Report of the President to the Fellows of Yale University 115 (1902).
tarnished Yale’s image: “A university law school must determine whether it is willing to confer professional degrees on persons of limited general culture, and whether it can do so without prejudice to its prestige as a university.” Rogers scoffed at concerns that raising admission standards would force out those who did not have the means to sacrifice six years for postsecondary education: “The fact that the adoption of a higher standard of admission to law schools may force some individuals to obtain their legal education in offices or in non-university schools does not seem to be in itself a very valid reason why advanced requirements should not be established.”

Obviously Yale’s new dean was not concerned about dividing the legal profession into elite and non-elite status.

The guiding force of the law school through the late nineteenth and early twentieth centuries, Simeon Baldwin also supported raising the bar for entry to the legal profession. In his diary he discussed his support for a new law school admission standard and also revealed his own anti-immigrant biases: “We now require Latin for admission, and I fear it will shut out more than Micks. It will, however, give us a better set of men, and it is in my judgment a necessary step in the advancement of legal education.” Although he did not believe the time was right for the law school to require a college degree for admission, Baldwin’s professional relationships testified to his general sympathy for restricting access to the legal profession. One scholar argues that Baldwin’s career is emblematic of a “legal culture which increasingly celebrated the virtues of narrow professionalism.” In addition to being one of the founders of the ABA, Baldwin was the prime mover of its Section of Legal Education. He also served as president of the Association of American Law Schools in 1902. Both organizations tried to raise the standards both for admission to law schools and for membership in the state bars.

Although the Yale administration took note of the Harvard Law School’s success and its requirement of a college degree, Dwight’s successor as president, Arthur Twining Hadley, adamantly opposed adopting such a requirement at Yale. “I believe that we should strive to widen rather than narrow the range of those whom we can reach by our professional schools,” he said. In a 1902 report to the corporation, Hadley explained that a degree require-

155. Report of the President to the Fellows of Yale University 151 (1906).
156. In later years Yale’s faculty would be more explicit about their desire to keep certain groups out of the law school by means of higher admission requirements. In a 1915 article William Howard Taft, then a professor at the school, noted that stringent admission requirements would help keep out “radical” elements. See Auerbach, supra note 121, at 100-01 (quoting William Howard Taft, The Social Importance of Proper Standards for Admission to the Bar, ALSR, Fall 1913, at 326, 333). In 1923 law school dean Thomas Swan argued against using grades to limit enrollment because such an admission standard would admit students of “foreign” rather than “old American parentage,” and Yale would become a school with an “inferior student body ethnically and socially.” John Henry Schlegel, American Legal Realism and Empirical Social Science: From the Yale Experience, 28 Buff. L. Rev. 459, 472 n.69 (quoting from Yale Law School Minutes, Dec. 20, 1923).
158. See Horwitz, supra note 16, at xii.
159. See Report of the President to the Fellows of Yale University 14 (1902).
160. Id. at 29.
ment would make “the professions of law and medicine places for the sons of rich men only.” Overly restrictive admission standards threatened to create a “caste system” between the learned and unlearned professions. Yale should not use “artificial restrictions,” he implored, to “single out one group of professions as the peculiar property of those who had enjoyed inherited wealth and college education.” Hadley admitted that the degree requirement could be used to screen out some unfit men from the profession, but it would also screen out “new blood” and men who could appreciate “public needs.” If John Marshall and Abraham Lincoln would have been denied admission under such a system, then the system had no place at Yale.\(^1\)

Hadley also believed that a degree requirement for the law school and the medical school would harm the college course, which, despite the addition of more electives, still centered around core classical subjects designed to instill moral virtue and discipline in students. If all law school applicants had to go through the college, the college curriculum would have to be made broad enough to accommodate the wishes of the different men who wished to go on to professional school. This would weaken the college’s goal of “hard and disinterested work.” Hadley conceded that the traditional classical curriculum was not necessary for legal training. But if too many people in the college did not take the traditional curriculum, he argued, Yale’s community spirit would be destroyed. Hadley also drew a line in the sand against the further encroachment of professional work into the old-time college by intimating that the introduction of professional studies into the college curriculum had been a failure.\(^2\) Ultimately, Hadley said, it did not matter if “Yale will lose caste as a university” by failing to do “what Harvard, Columbia and Johns Hopkins are doing [i.e., instituting a degree requirement for law or medical school admission].” “A university maintains its rank by doing public service,” “[a]nd if there is any college in the land which ought to be guided by considerations of public service, and set aside all questions of caste, it is Yale.”\(^3\)

Hadley was not the only administrator who opposed the trend toward more and more restrictive law school admissions policies. The regents at the University of Michigan refused the law faculty’s initial requests to extend the course of instruction to three years and to require at least one year of college.\(^4\) Michigan did not require a college degree for admission to the law school until 1928. The administration at the University of Virginia kept law school entrance requirements low. The school’s 1888–89 catalog explained: “It has never been the policy of the University to reject any student merely because of deficient preparation in special branches of learning.” It was not until 1903, seven years after Harvard instituted a college degree requirement, that the Virginia law faculty was given the authority to require a high school degree for

161. See id. at 15–17.
162. Id. at 18–19.
163. See id. at 22.
164. Id. at 24.
165. See Brown, supra note 31, at 108–09, 277.
admission. In 1916 the president of Northwestern denounced a law faculty proposal to require three years of college preparatory work for admission.

The Yale law faculty could afford to challenge the central administration on this issue, however. More law schools were joining Harvard in requiring a college degree. In addition, the law school’s increasing financial success improved its bargaining position with the university. In the decade beginning with the 1888-89 academic year, the school ran at a meager surplus of $378. But in the years between 1898 and 1910 that surplus jumped to almost $58,000. As Dean Rogers pointed out to the corporation, “since 1900 the Law School has made a profit above operating expenses of about $90,000, of which the University has had the benefit.” And the law school’s overhead ran far below that of the other schools. It cost less to instruct a student in the law school ($115 per student) than in the Academical Department ($158), the divinity school ($432), or any other department. Recognizing a good deal when they saw one, the corporation finally arranged in 1904 for the full consolidation of the law school with the rest of the university and ended the old proprietary arrangement that made law school instructors solely responsible for all profits and losses. Instead law school finances were mixed in with the rest of the university, and law teachers were paid a salary out of the university treasury. In making the change, President Hadley argued that Yale needed to pool the law school’s resources with those of the other university departments if the school was to compete on equal terms with the legal programs at Harvard and Columbia. Sometime between 1911 and 1916 the administration relinquished full control of law school profits and agreed to earmark any surpluses exclusively for the law school.

With its survival assured, the law faculty could continue its quest for an elite student body. And by 1912 Hadley was forced to concede the issue to the law school:

166. Ritchie, supra note 7, at 59.
168. By 1921 Stanford, Columbia, and Western Reserve required a college degree of all first-year law students except for those enrolled in the same university. See Stevens, supra note 94, at 432. In addition, four schools required three years of college work, 29 schools required two years, and 21 schools required one year. See Reed, supra note 5, at 392–93.
169. See Report of the President to the Fellows of Yale University 218–19 (1911).
170. Id. at 221. Rogers arrived at the $90,000 figure after factoring in the costs of a real estate mortgage, library purchases, and construction funds, all of which were paid by the law school. See id.
171. See Report of the President to the Fellows of Yale University 15 (1908).
172. See Report of the President to the Fellows of Yale University 10 (1904); see also Stevens, supra note 94, at 444 n.10.
173. See Report of the President to the Fellows of Yale University 23 (1904).
174. See Letter from Dean Thomas Swan to John Wigmore (May 16, 1916), Hadley Presidential Records, Series I, Box 83, Folder 1639 (on file with YUL, DMA). Swan was trying to persuade the respected Northwestern professor to accept a position at Yale. As part of his pitch, Swan noted his school’s financial stability: “You may be interested to know that profit which the School might make (as it has in the past) must be devoted to law school purposes instead of going into the general funds of the University.” Id.
The kind of preliminary training which is needed for law differs from that which is needed for medicine. . . . The best way for a law school to assure itself that its students have these preliminary requisites is to require a college degree as the general condition of admission. It has taken me some time to reach this conclusion.\textsuperscript{175}

Now all law school applicants (except for Yale College seniors) needed four years of college work for admission.\textsuperscript{176} By using its impressive financial performance as a bargaining chip, the Yale faculty had been able to impose the same admissions restrictions as other university-affiliated law schools. In doing so, the faculty put distance between the mere practitioners with little formal legal education who took over the school in 1869 and their twentieth-century personas as elite dispensers of specialized knowledge who granted access to the profession to a limited swath of the social hierarchy.

C. A Broad Definition of Legal Education

Under Langdell Harvard took a restrictive view of the proper scope of legal study. Langdell believed that law should be studied as it is, and legal education need not be confused with education in other descriptive sciences like sociology, political science, and economics.\textsuperscript{177} An individual case was important only because of the legal rule it articulated, not because it reflected the social predispositions of its author or the larger culture.\textsuperscript{178} Langdell’s belief that law should be studied as is made the profession of law teacher even more distinctive, eliminating potential competitors in the social sciences. “The invention of a science of pure law [undiscernible] by lay persons was therefore attractive to the legal profession competing with other professions for status.”\textsuperscript{179} By 1900 a narrow view of legal education prevailed, influenced by Langdell’s reforms and biased against administrative law and the study of sources other than court decisions.\textsuperscript{180} Although the Yale faculty did everything it could to match Harvard’s restrictions on student admission, it took an unusual stance against this other Harvard innovation. Instead of applauding Harvard’s strategy to limit the legal education market and increase professorial prestige, the Yale faculty pushed for educational reforms in the opposite direction. Theodore Woolsey, the former president and now a member of the law school faculty, set the tone in an 1874 speech. The faculty’s belief in broadening the scope of education is also evident in their writings, their professional associations, and their additions to the curriculum.

\textsuperscript{175} Report of the President to the Fellows of Yale University 18 (1912).
\textsuperscript{176} See Hicks, supra note 104, at 43.
\textsuperscript{178} See Kalman, supra note 120, at 48.
\textsuperscript{179} Carrington, supra note 75, at 2150.
1. Woolsey's View of Legal Education

Although Theodore Dwight Woolsey did little to ensure the continuance of the law school during his presidency, his enthusiasm for the school increased in later years. In 1871 he began to deliver lectures on international law.\textsuperscript{181} He also became something of an authority on legal education. One law teacher at Michigan solicited his opinion on the proper courses of study for law students.\textsuperscript{182}

Woolsey described his conception of the ideal law school in his speech at the law school's fiftieth-anniversary celebration in 1874. There is evidence in Woolsey's speech of an unconventionally broad definition of legal education. This emphasis on breadth would become the law school's most distinguishing feature.

First, Woolsey singled out the school's auxiliary lectures, which "enlarge and broaden the system of law training."\textsuperscript{183} During the school year practicing lawyers spoke on topics ranging from insurance to Roman law.\textsuperscript{184} According to Woolsey, these lectures gave Yale a special character that distinguished it from other law schools:

\begin{quote}
I say that nowhere in the United States are these handmaids to a finished legal education brought more effectively into the service of legal studies and made more useful than in Yale Law School, in the latest stage of development. And by carrying out this plan, it is made apparent how much more comprehensive and finished a legal education ought to be, when it is pursued as a department of a university, than when it stands alone.\textsuperscript{185}
\end{quote}

Whether or not the auxiliary lectures truly enriched a Yale law student's education is debatable. There is no information on the students' attendance at them. Since most of the lecturers did not live in New Haven, they must have lectured infrequently at best.\textsuperscript{186} And, for all of Woolsey's praise of the lectures, the corporation provided no money for them; the lecturers spoke for free.\textsuperscript{187}

But even if the auxiliary lectures were more valuable for public relations than for actually enriching a law student's life, they fit in well with Woolsey's call for enlarging the scope of legal education. Woolsey argued that the law school should go beyond the lectures to use the broad educational resources of the entire university. The school should do more than train men for

\begin{footnotes}
\item[181] See Yale Law School Bulletin, 1871-72; Hicks, supra note 2, at 9.
\item[182] See Letter from William P. Wells, Professor of Law at the University of Michigan, to Theodore D. Woolsey (July 16, 1877), Woolsey Family Papers, Series I, Box 27, Folder 509.
\item[183] Theodore Dwight Woolsey, Historical Discourse 11 (June 24, 1874) (transcript available in the Yale Law School Library).
\item[184] See Hicks, supra note 2, at 9-10. Another plan for a system of supplementary lectures had been proposed in 1868, but there is no evidence that the lectures ever took place. See Hicks, supra note 19, at 35.
\item[185] Woolsey, supra note 183, at 12.
\item[186] An 1889 article listed ten special lecturers and the towns they practiced in. It explained that only two, Edward Phelps and Mark Bailey, who taught elocution, were "otherwise connected with the Faculty of the University" and lived in New Haven. The other lecturers came from outlying cities such as Hartford, New York City, and even Baltimore. Daggett, supra note 127, at 242-45.
\item[187] See Hicks, supra note 2, at 10.
\end{footnotes}
practice; it should instruct its students in the wide array of related subjects necessary for success in public life:

Let the school, then, be regarded no longer as simply the place for training men to plead causes, to give advice to clients, to defend criminals; but let it be regarded as the place of instruction in all sound learning relating to the foundations of justice, the history of law, the doctrine of government, to all those branches of knowledge which the most finished statesman and legislator ought to know.

To further this effort at broad legal training, the law library should be expanded to include "the best books on all branches and topics connected with law, legislation and government." This expansive plan seems especially ambitious coming from a man who had done little to help the law school when it was threatened with collapse. Woolsey admitted that his ideal law school could not be self-supporting. The final section of his speech may reveal why the law school had assumed a greater significance in his thinking in 1874 and why he was now willing to at least discuss subtracting from the central treasury to finance legal education. Woolsey asked whether a law school could survive in New Haven, away from the major metropolitan legal markets of New York and Boston. He answered in the affirmative, especially because the school could take advantage of Yale's other assets. "[A] connection with a seat of learning, where the whole circle of sciences is taught," he explained, "is the best place for such an institution." Woolsey thought that law students could profit from instruction in related disciplines such as history and government. Future political leaders would benefit from a broad legal education that did more than instruct them on the narrow requirements for practice.

There may be a deeper reason why Woolsey supported a broad concept of legal education. The revolution in the natural sciences disconcerted him, as it did many other American educational leaders of the late 1880s. The German university's concern with uncovering new knowledge through scientific observation promised to cater to secular, not spiritual, desires. The old course of study in the college emphasized hard work in abstract subjects that taught moral discipline; the new course of study called for simple observations to test scientific principles. So the natural sciences threatened to overtake the moral instruction that was at the core of a Yale College education. "There is a danger," Woolsey explained, "... that the balance between body and spirit, the natural and the moral world, will be disturbed, which would be a state of things fraught with danger to the best interests of man." Legal science, however, with its "foundation of right and justice," could bridge the gap between the moral discipline of an education in the humanities and the

188. Woolsey, supra note 183, at 23-24.
189. See id. at 24.
190. Id. at 21.
191. See Veysey, supra note 37, at 2.
192. See id. at 23-24.
detached observations of natural science. Unlike scientific study, law was rooted in basic, time-honored principles designed for moral uplift. Woolsey may have been doing his part to insure that law remained true to those moral principles. In one lecture he said that "a law of Christ in the New Testament" trumps other laws.

Woolsey may have seen this vision of the ideal law school only after he had given up the power to put his vision into place. On the other hand, additions to the law school and college curricula in the 1870s complemented his concept of legal education. In 1873 the law school began to offer a course of lectures on ecclesiastical law. The course of study also included Roman law, the law of nations, and comparative jurisprudence. President Porter taught ethics in the law school in 1876. Meanwhile, the college's senior-year curriculum for 1875 included lectures on political science featuring Woolsey's text, International Law, and lectures by Simeon Baldwin on jurisprudence and American constitutional law.

2. Straining for Breadth in the Law School

Like Woolsey, the rest of the law faculty conceived of legal education in broad terms. Instead of emphasizing local practice, Baldwin argued that all lawyers should be acquainted with foreign legal systems and comparative law, as well as Roman law. He wanted the course of study to be extended to three years so that more classes could be added to the curriculum. Baldwin believed that "[b]readth of view is the great gift of education." In their writings, the faculty proselytized for an interdisciplinary education that did more than just train future lawyers. William Robinson co-taught an "amateur law" class. When Robinson wrote about his vision of the ideal law school in 1895, he sounded like Woolsey or Dwight. In Robinson's law school, the instruction would adapt to the needs of the individual student whether he was "studying law to fit himself for citizenship" or training himself to serve as a lawyer.

The law school's unusual emphasis on breadth in legal education was also evident in the outside interests of its faculty. Baldwin's commitment to learned societies in history, political science, and various other fields was extraordinary. He served as president of the American Social Science Association, the

194. Handwritten lecture notes from 1881, page 2, Woolsey Family Papers, Series II, Box 33, Folder 23.
196. See Yale College in 1875: Annual Statement of the Society of Alumni 1 (1875).
197. See Yale College in 1876: Annual Statement of the Society of Alumni 12 (1876).
198. See Pierson, supra note 41, at 71.
199. See Jackson, supra note 13, at 106.
200. See id. at 94-95.
201. Baldwin, supra note 66, at 8.
202. Hicks, supra note 2, at 48-49 (paraphrasing Robinson's Study of Legal Education).
American Historical Association, and the Political Science Association. Like Baldwin, Francis Wayland was an "ardent student of the social sciences." He served as president of the American Social Science Association and spoke on issues of public law, criminology, and prison reform in particular. William Robinson's pedagogical techniques sound extremely simple by today's standards and maybe even by the standards of his own time. His method was to read his lectures so slowly that students could copy down his words verbatim, and then require the students to commit his lectures to memory. Nevertheless, he seems to have sympathized with the interdisciplinary approach of his colleagues. In 1895 he left Yale to help start a school of social science at Catholic University. The school's curriculum was made up of an interlocking set of courses in sociology, economics, political science, and law.

Simeon Baldwin's agreement with Woolsey's views on legal education is evident in his criticism of the reforms advocated by Langdell. Baldwin did not believe in a legal education that was narrowly focused on appellate cases. Instead he believed that outside sources were relevant to law study. In general, if a student is limited to a select few source materials or prohibited from exploring various fields of study, "he starts on his life voyage with an ill-loaded ship." Baldwin also believed that legal education should have a moral component, something that Langdell would have rejected.

Legal Graduate Study. In 1875 the law faculty submitted a plan for a graduate program. It was Baldwin's idea to make Yale the first law school in the nation to offer a graduate degree. Woolsey served on a committee with the law faculty to consider the plan. The corporation approved, and the Law School Bulletin for the 1876-77 school year described the new program, boasting that "greater advantages are now offered at Yale College for following the study of public law, Roman law, comparative jurisprudence, style and oratory and compositions, constitutional history, and political science, than have ever...

203. See Hicks, supra note 104, at 18.

204. See, e.g., Francis Wayland, Report of the Criminal Law Reform Committee of the Nation Prison Association (1891); Francis Wayland, Opening Address Before the American Social Science Association on Capital Punishment (Sept. 3, 1883). Transcripts are available at the New Haven Historical Society Library.

205. See Hicks, supra note 2, at 44.


209. See: Hicks, supra note 2, at 24. In making their pitch for the graduate program, the faculty suggested that legal graduate study would allow Yale to compete against other New England law schools. See Letter from Wayland, Robinson, Baldwin, and Platt to the President and Fellows of Yale College (June 15, 1875), Yale Corporation Records, 1714–1899, Box 2 (on file with YUL, DMA).


211. See Minutes of the Yale Corporation (June 1875).
been afforded before at an American law school."\textsuperscript{212} In addition to the law faculty, instructors from the college and graduate school were listed as teachers of the new graduate law courses.

The graduate program in law seems overambitious, especially for a school that had been on the brink of collapse just a few years before. It is not clear what role faculty from outside the law school actually had in teaching graduate law classes. The law school did make some effort to inform its students of relevant classes in the college and graduate school. Even before the announcement of the graduate program, Francis Wayland, dean of the law school, was routing students to political science professor William Graham Sumner.\textsuperscript{213} And once the graduate program had begun, Wayland asked the nonlaw faculty for information on how legal graduate students could attend their lectures.\textsuperscript{214} On the other hand, only a few students enrolled in the graduate program each year. In 1882–83, for example, only two students were enrolled.\textsuperscript{215} The graduate students accounted for only a fraction of the tuition fees that kept the school afloat. In the fall of 1889 undergraduate students paid $3,045 in fees while the school’s three graduate students paid only $281.60.\textsuperscript{216} Nevertheless, the aspirations for the graduate program fit in well with Woolsey’s concept of a law school that supplemented specific teachings on the law with studies in history and government.

Graduate schools like Yale’s did not become significant among university-affiliated law schools until the second decade of the twentieth century. In 1919, more than forty years after the beginning of Yale’s graduate program, the law schools at Berkeley and Northwestern introduced four-year programs of study. The Berkeley program was designed to allow for more of a balance between professional training and studies in jurisprudence and related social sciences during a law student’s stay at the school.\textsuperscript{217} The Northwestern program made four years of legal study mandatory, unless the student came to the law school with a bachelor’s degree. It would ensure student exposure to a wide array of “liberal legal subjects which develop breadth of view.” Ten to fifteen percent of a student’s credits had to be earned from a selection of nontraditional legal subjects including international law, jurisprudence, Roman law, and legal history.\textsuperscript{218} The University of Minnesota Law School adopted a similar program in the 1920s to broaden the scope of legal education.\textsuperscript{219}

\textsuperscript{212} Quoted in Hicks, supra note 2, at 25.

\textsuperscript{213} Wayland wrote a note on behalf of an attorney from the Washington Territory who was in his second year at the law school. He explained that the attorney wanted to attend Sumner’s lectures and asked: “Will you kindly give him such information as he needs?” Letter from Francis Wayland to William Graham Sumner (Nov. 7, 1869), William Graham Sumner Papers, Series I, Box 29, Folder 809 (on file with YUL, DMA).

\textsuperscript{214} See Letter from Francis Wayland to William Graham Sumner (June 9, 1890), William Graham Sumner Papers, Series I, Box 29, Folder 809.


\textsuperscript{216} See Account Book of Simeon Baldwin, entry for Oct. 7, 1889, Yale Law School Records, 1874–1910 (on file with YUL, DMA).

\textsuperscript{217} See Epstein, supra note 4, at 77.

\textsuperscript{218} See Rahl & Schwerin, supra note 35, at 31–34.

What is noteworthy about the Yale program is how early it came in the history of legal education. Harvard Law School did not award a graduate degree until 1909. In this sense, even though the Yale graduate legal program was not well attended, it signaled the Yale faculty’s particular interest in broadening the scope of legal education beyond professional training and into scholarship. Other schools that adopted graduate legal instruction in the nineteenth century did so only to provide more time for practical training. For example, the Notre Dame Law School created a postgraduate course in 1890, but it was designed to allow for more exposure to legal doctrine, not for cross-disciplinary instruction. In contrast, Yale’s graduate program was meant to include nonlegal subjects of study. Yale’s Charles Clark remarked that Baldwin’s graduate course, which “stress[ed] a broader education than one purely professional, encompassing history, the political and social sciences, and other disciplines which should be allied to law, distinguished Yale from all other law schools and placed Baldwin fifty years ahead of his time.”

An Expansive Curriculum. The law school’s curriculum, both graduate and undergraduate, demonstrated the faculty’s concern with breadth, even at a time when the rest of the legal teaching profession was moving to narrow the scope of legal study. In 1891 Yale offered fifty-five courses while Harvard offered only twenty-two. The independence afforded the Yale law faculty by the central administration allowed the faculty to implement its own ideas for legal education and develop in a different way from other university law schools.

At Harvard, Langdell actually presided over a time of curricular expansion in terms of course subjects. For example, Harvard offered a class on torts for the first time in 1870. But Langdell set the stage for a general contraction in the scope of legal education by removing public law from the curriculum. Harvard stopped offering constitutional law because Langdell disdained it as a product of politics not worthy of study by professional legal scholars. His decision to remove public law from the curriculum prevented Harvard from training students in government, international law, or business principles. Instead, Harvard sought to equip its students with a set of tools that could be used to interpret the common law of any jurisdiction. As a result, classes in specific statute-driven areas of law were rarely offered in the Harvard curricu-

220. See Centennial History, supra note 71, at 57-58.
221. See Moore, supra note 135, at 27-28.
222. Foreword to Jackson, supra note 13, at vii, ix.
223. See Schlegel, supra note 74, at 961.
224. See Stevens, supra note 94, at 434.
225. See Kalman, supra note 120, at 100.
226. See Centennial History, supra note 71, at 29.
227. See Carrington, supra note 219, at 501.
lum of the late nineteenth and early twentieth centuries. Harvard did not teach tax until the 1920s, and did not offer administrative law until 1941.

While some of the fifty-five classes in the Yale Law School catalog were cross-listings of graduate school courses, most, like Robinson's lectures on The Early History of Real Property, were unique to the law school. Baldwin added Roman law and comparative law to the list of classes required for a degree. An 1875 alumni statement trumpeted the expansive law school catalog: "Its course of study, also, in embracing General and Comparative Jurisprudence, Forensic Composition and Elocution, Roman Law, the Law of Nations, &c., is more comprehensive than could be successfully attempted except in connection with a large university." A professorship of international law was created in 1877. In 1912 the following college and graduate school courses were still being offered to fulfill the requirements of the law school's graduate program: Colonization and Immigration, American Constitutional History, English Constitutional History, Diplomatic Intercourse with Asiatic Nations, The Science of Society, Self-Maintenance of Society, Social Politics, Mediaeval Institutions, and Physical and Commercial Geography. And throughout this period the law school continued to import outside lecturers on both public and private law topics.

Some of Yale's emphasis on breadth may have been sheer marketing. Yale could not compete with the law schools at Harvard and Columbia when it came to having a big-city legal market to enrich classroom teaching and recruit students. So Yale emphasized what it could offer: legal training in the midst of a large, respected university. By advertising an unusually expansive curriculum, Yale could make itself stand out from other law schools.

The long list of courses and continuing commitment to the struggling graduate program suggest something more, however. While it is impossible to

230. See Stevens, supra note 94, at 486.
232. See Hicks, supra note 104, at 73.
233. See Yale College in 1875: Annual Statement of the Society of Alumni (1875).
234. See Minutes of the Yale Corporation (Dec. 1877).
235. See Report of the President to the Fellows of Yale University 211 (1913). Descriptions of the courses can be found in the sections of the university catalog for the Academical Department and the Graduate School. Later in 1912, the graduate course was reorganized and all nonlegal subjects were dropped. Law school dean Henry Wade Rogers explained:

Like the candidate for the B.C.L. degree who elected to work in Political Science, the candidate for the LL.M. degree who elected work relating to the organization and working of human society, or to government, found his choice limited . . . . But it has been thought best to withdraw even the limited choice that was accorded. Such subjects should have received the student's attention while he was in the Academical Department.

Report of the President, supra.

236. Among the topics were Legislation, Parliamentary Law, The Interstate Commerce Act, Questions of Modern Government. See Report of the President to the Fellows of Yale University 75-76 (1899); Report of the President to the Fellows of Yale College 32 (1887).
tell for sure, it seems that the Yale faculty of the late nineteenth century did believe in an unconventionally expansive legal education for two reasons. First, the faculty believed that schooling in a wide array of topics produced better citizens. When Baldwin wrote on legal education, he stressed citizenship. He believed that the "educated man" must take an interest in politics so that he can interpret proposed legislation for the public and give an informed perspective to public opinion. He worried about the effect of specialization on the educated man's suitability to lead public affairs. The university errs when it "looks on high scholarship in a particular field, as entitled to more respect than high attainments in general knowledge" because the world looks for its leaders in "all-round men," not in masters of "any particular science."

Second, breadth in legal education gave students the training they needed to become law teachers. Theodore S. Woolsey argued that "[a] graduate school trains the teachers as well as the taught." He went on to explain that a graduate program could be a cost-saving measure: "You may draft your own graduates into your service at moderate cost, or you may call teachers of repute from the outside at high pay." An 1889 account of the law school noted that four former graduate students had become law professors. A few years later, one professor complained that his successor "was not appointed from our Yale D.C.L. graduates, the best qualified men in America to teach Roman law."

Wherever this desire for a broadening of legal education came from, it remained one of the Yale Law School's distinguishing characteristics. Morton J. Horwitz has asserted: "Despite almost fifty years of teaching at the Yale Law School, with unrivalled power to shape its direction during much of that period, Baldwin appears never to have had an interesting idea . . . about the nature of pedagogy in law, or of the role of a law school in a university." But

237. Baldwin, supra note 66, at 117.

238. Id. at 143. Yale's traditionalist stance and the faith of presidents Woolsey and Porter in the old-time college curriculum may have influenced Baldwin's views. Even though he strove for breadth in the law curriculum, Baldwin opposed an elective system that gave college students too much choice. "The old-fashioned college education, before the system of elective studies received any great extension, was distinctly a training for the general calling of a man and a citizen," he wrote. "[N]o inconsiderable part of the political vagaries of the past forty years may be traced to a one-sided education in special topics of political economy, sociology, or government administration." Id. at 29. Like Woolsey and Porter, Baldwin believed that all students should be forced to take difficult subjects like Latin and Greek because such study developed mental discipline. See id. at 31, 33. But it may have been Baldwin's natural conservatism, rather than any influence from Woolsey or Porter, that allied him with the administration when it came to college education. As one of his contemporaries said, Baldwin had an opinion on every subject, and "it was generally a conservative one." Henry H. Townsend, Address Before the New Haven County Bar Association, in Records & Addresses, supra note 3, at 20.

239. Woolsey, supra note 54, at 14. Laura Kalman suggests that the administration's failure to appropriate more money for the law school in the 1920s and 1930s led the school to hire its recent graduates instead of more experienced and more costly professors from other schools. See Kalman, supra note 120, at 106.

240. See Daggett, supra note 127, at 248.


Baldwin’s interest in public law did affect the school, pushing it in a direction different from the other law schools of the time. Yale’s cross-disciplinary links to nonlaw fields of study and its emphasis on training future law teachers made it unique. What Baldwin and Yale contributed was a more academic and less strictly professional conception of university legal education.

In addition, the willingness of Baldwin and the rest of the law faculty to embrace outside disciplines, particularly in the social sciences, may have helped pave the way for the law school’s unique approach to legal education some forty years later. Yale’s late-nineteenth-century curriculum foreshadowed the great expansion of law school curricula that would take place in the 1920s and 1930s. In the first part of the twentieth century the Harvard model held sway. Schools adopted a narrow view of legal education that did not include administrative law or other classes that required the study of sources other than appellate court decisions. By the 1920s many legal scholars were no longer willing to believe that all law came from a set of systematic rules. They saw judicial decisions as the product of judicial idiosyncrasies. Yale Law School’s unconventionally broad definition of the proper subjects of legal study fit in well with the legal realists’ desire to use social science to explain judicial decision making. By 1928 Yale had supplanted Columbia Law School as the headquarters of legal realism. Its broad concept of legal education, developed years earlier by an idiosyncratic faculty that was kept at a distance from the rest of the university, made Yale the perfect place to implement a new view of legal education that borrowed from other disciplines and expanded traditional notions of what was acceptable in a law school curriculum. Realism’s contributions, built on the work of previous legal theorists, proved to be important in shaping legal education’s future and promoting the use of academic legal thinking in government.

* * * * *

In the last third of the nineteenth century, the Yale Law School struggled to gain the attention of the university administration. The administration’s reverence for the traditions of the college made it hostile to innovations in graduate and professional education that threatened to alter the college’s nature. Presidents Porter and Woolsey largely ignored the law school as they focused on preserving the college’s time-honored system of moral training. As a result, Yale was out of step with the new educational philosophy at Harvard and the new universities in the Midwest and West that treated their law schools and their undergraduate colleges as equals.

243. See Kalman, supra note 120, at 75.
244. See id. at 17 (attributing legal realist ideas to Oliver Wendell Holmes 50 years before the start of the movement).
245. See id. at 52 (arguing that the realist movement made legal education more clinical); Clark Byse, Fifty Years of Legal Education, 71 Iowa L. Rev. 1063, 1067, 1072–75 (1986) (describing changes in teaching materials and pedagogical focus due to the realist movement).
246. See Kalman, supra note 120, at 130, 136 (describing the exodus of Yale faculty who left to work for the Roosevelt administration).
The years of administrative inattention meant more to the law school's development than just a shortage of funds. Without strong direction from the administration, the law school was free to develop according to the beliefs of the members of the local bar who rescued the school from destruction in 1869. Like their peers at other university-affiliated law schools across the nation, the Yale faculty sought to raise admissions standards and the barriers to entry into the legal profession, and thereby strengthen their own professional caste. Despite some reluctance from Simeon Baldwin, Yale adopted the case method, another innovation that transformed lawyers from technicians to professionals.

In one major respect, however, the Yale faculty sharply disagreed with their late-nineteenth-century peers. The law faculty, particularly Baldwin, believed in an unconventionally broad course of legal study that borrowed from other academic disciplines. Yale moved to expand its curriculum when other law schools were removing public law from the lecture hall. The 1869 faculty's broad definition of legal education would continue to shape the school in the twentieth century and distinguish it from most other law schools.

In 1924 the law school celebrated what it reckoned as its 100th anniversary. Thomas Swan, the dean of the law school at that time and a Harvard Law School graduate, explained that the school had two duties: to train students for practice and to offer graduate instruction for future law teachers. Harlan Fiske Stone, dean of the Columbia Law School and future Supreme Court justice, spoke on trends in American legal education. He urged law teachers to inform their analysis through the use of the social sciences, a view that would take hold as Yale became the center of the legal realist movement. But it was President Woolsey's son, Theodore S. Woolsey, who spoke first, addressing the history of the school. He remarked that the gap between the law school and the college had been closed over the last 100 years. "The academic officer is no longer the whole thing," he said. "This is good for him and not distasteful to us." Woolsey's statement showed that the law school had finally taken its place as a respected component of a larger university. But it took time for the law school to earn this respect and it only began to occur at the beginning of the twentieth century.

249. Woolsey, supra note 54, at 17.