

Logic and Experience

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BOOK REVIEW

LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION. By *William P. LaPiana*. New York: Oxford University Press, 1994. 254 pp. \$39.95.

Allen D. Boyer†

Twenty years too late (perhaps one hundred years too late) we are finally beginning to understand the crabbed, dogged, literally myopic man who gave us the modern American law school—the casebook, the Socratic method, the first-year contracts course, and the lawyer-academician. Among its many merits, *Logic and Experience*,¹ by William LaPiana,² provides the most thoughtful biographical treatment to date of Christopher Columbus Langdell.

Nine decades after his death, Langdell continues to be honored and denigrated because of forty-odd words in the preface to his *Selection of Cases on the Law of Contracts*.³ These were the sentences that suggested that “[l]aw, considered as a science, consists of certain principles or doctrines,”⁴ and that legal reasoning was a matter of identifying and applying certain basic, universal principles.⁵ “[T]he number of fundamental legal doctrines is much less than is commonly supposed,” Langdell explained, “the many different guises in which the same doctrine is constantly making its appearance . . . being the cause of much misapprehension.”⁶

These passing remarks have sufficed to associate Langdell with an inflexible scientism—the idea that law is an exact science, capable of precise and geometric calculation. This view materialized as early as 1880, when Oliver Wendell Holmes, Jr. called Langdell “the greatest living legal theologian.”⁷ The invective changed, but lost none of its sarcastic edge, when Jerome Frank attacked Langdell as “a brilliant neurotic.”⁸ Finally, in 1974, during the lectures which became *The*

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¹ WILLIAM P. LAPIANA, *LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION* (1994).

² Rita and Joseph Solomon Professor of Wills, Trusts, and Estates at New York Law School.

³ CHRISTOPHER C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS* (1871).

⁴ *Id.* at vi.

⁵ *Id.*

⁶ *Id.* at vi-vii.

⁷ *Book Notices*, 14 AM. L. REV. 233, 234 (1880) (Oliver Wendell Holmes, Jr. anonymously reviewing CHRISTOPHER C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS* (2d ed. 1879)).

⁸ Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1303 (1947).

Ages of American Law, Grant Gilmore dismissed Langdell as the mediocre prophet of a simplistic age:

A better symbol could hardly be found; if Langdell had not existed, we would have had to invent him. Langdell seems to have been an essentially stupid man who, early in his life, hit on one great idea to which, thereafter, he clung with all the tenacity of genius. . . . Langdell's idea was that law is a science.⁹

So pervasive has this stereotyping become that even *Logic and Experience*, a book which demolishes most of this construct, finds it necessary to frame its revisionist theses in familiar terms:

Aspects of Langdell's method of teaching, his beliefs about the scientific nature of law, and the rhetoric with which he justified them resembled those of the past. Yet the first dean of Harvard Law School has acquired the reputation of an innovator of the first order, and a perverse innovator at that. His thought—and by extension the form of legal education he helped create—has been identified as one of the principal sources of the sterile formalism that supposedly marked late nineteenth-century American legal thought.¹⁰

Logic and Experience is partly a study of the vast sea-change which overtook nineteenth-century legal education. It is partly an analysis of the philosophical and professional influences which shaped Langdell's thought. More than that, it opens up a personal dimension on this intellectual history, investigating what Langdell had learned from practicing law in Tammany New York. On all these levels, LaPiana succeeds. His book is written with the subtlety of scalpel-work, but it sweeps like a broad-axe in clearing away *idées reçues*.

Christopher C. Langdell was born in 1826, in hardscrabble New Hampshire. The family was poor, and the children had to be farmed out to different homes. Langdell worked his way through school at Exeter doing janitorial work and ringing the academy bell. The year he turned eighteen, he worked several months as a mill-hand in

⁹ GRANT GILMORE, *THE AGES OF AMERICAN LAW* 42 (1977). See also Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1 (1983) (arguing that Langdell was a principal player in the emergence of modern legal thought); see generally Duncan Kennedy, *Toward an Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America, 1850-1940*, 3 RES. L. & SOC. 3 (1980) (explaining the development of American legal thought). But see Anthony Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HIST. 329 (1979) (suggesting that there were many other reasons for the emergence of modern legal thought besides Langdell's contributions); Anthony Chase, *Origins of Modern Professional Education: The Harvard Case Method Conceived as Clinical Instruction in Law*, 5 NOVA L. REV. 323 (1981) (arguing that Langdell merely came at "the right time" rather than orchestrating a new form of thought); Marcia Speziale, *Langdell's Concept of Law as Science: The Beginning of Anti-Formalism in American Legal Theory*, 5 VT. L. REV. 1 (1980) (concluding that Langdellian thought is denigrated in law schools today).

¹⁰ LAPIANA, *supra* note 1, at 3.

Manchester; he may have gone directly from the mill to Harvard College. However, poverty continued to plague him. He left Harvard in 1849, granted leave of absence to earn money by teaching school. He tutored briefly, but spent most of his time reading law. In 1851, upon returning to Cambridge, he enrolled in Harvard Law School. Over the next three years, he worked his way through law school, serving as school librarian and as research assistant to contracts scholar Theophilus Parsons.¹¹

While at law school, Langdell developed an obsessive involvement with legal history. According to legend, a fellow-student one day found him reading a blackletter Year Book:

Langdell looked up and said, in a tone of mingled exhilaration and regret, and with an emphatic gesture, "Oh, if only I could have lived in the time of the Plantagenets!" He roomed in Divinity Hall, but he was so constantly in the law library and so late at night, that some of the students used waggishly to say that he slept on the library table.¹²

After graduating, Langdell moved to New York, where he practiced law from 1854 until 1870. He appears to have led a reclusive existence, living above his office and haunting the library of the New York Law Institute.¹³ He did not marry until 1880, the year he turned fifty-four.¹⁴ His practice seems to have consisted mostly of appellate litigation. He argued at least one case before the New York Court of Appeals, and may have been involved in seven other cases argued by his partners.¹⁵ To some extent, professional recognition may have compensated for lack of popular success.

He was unheard of by the rank and file of the bar, but when the triumphant advance of opposing counsel was turned to rout by a sudden pitfall in the pleadings or an unexpected ambush in the argument, the well-informed would mutter, "Damn it, Langdell's at the bottom of this somewhere!"¹⁶

¹¹ *Id.* at 70. Biographical facts on Langdell's early career not reported by LaPiana are condensed from THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 1817-1917, at 223-26 (1918) [hereinafter CENTENNIAL HISTORY].

¹² CENTENNIAL HISTORY, *supra* note 11, at 226.

¹³ *Id.* at 227.

¹⁴ *Id.* at 236.

¹⁵ LAPIANA, *supra* note 1, at 70. LaPiana identifies *City Bank of New Haven v. Perkins*, 4 Bosw. 420 (1859), 29 N.Y. 554 (1864), as argued by Langdell. Cases involving Langdell's partners include *Belmont Branch Bank v. Hoge*, 35 N.Y. 65 (1866); *Manning v. Monaghan*, 28 N.Y. 585 (1864); *Van Buskirk v. Roberts*, 31 N.Y. 661 (1864); *McBride v. Farmers' Bank*, 26 N.Y. 450 (1863); *Gillespie v. Torrance*, 25 N.Y. 306 (1862); *Willitts v. Waite*, 25 N.Y. 577 (1862); *Platt v. Lott*, 17 N.Y. 478 (1858). *Id.* at n.79. To this list should be added two cases involving wills: *Kuhn v. Webster*, 78 Mass. (12 Gray) 3 (1858) and *Parish v. Parish*, 42 Barb. 274 (1858). See CENTENNIAL HISTORY, *supra* note 11, at 227.

¹⁶ CENTENNIAL HISTORY, *supra* note 11, at 227.

This is the personal context of Langdell's story: a rough, grinding background in which the university served as sanctuary; a successful career earned by the careful explication of precedents.

LaPiana provides a highly suggestive analysis of Langdell's intellectual background. By 1870, he exhaustively shows, there was nothing new about viewing law as a science; in the antebellum United States, this outlook had been common.¹⁷ In 1838, to cite only one example, Simon Greenleaf told the students of Harvard Law School that "[a]djudged cases, are, to the philosophical student of law, what facts are to the student of natural science."¹⁸

Langdell's introduction of the Socratic method also appears to be rooted in the antebellum course of studies, an innovative revival rather than an inspired break with tradition. In the 1840s, under teachers like Joel Parker and Joseph Story, classroom teaching seems to have involved "a lively interchange of interrogatories" with hypotheticals tossed out by the professor to the class.¹⁹ When Langdell worked for Theophilus Parsons, he worked for an academic who dropped cases into the footnotes, reserving the text of his contracts treatise for a discussion of principles and doctrine.²⁰

If it is erroneous to attribute to Langdell the idea of law as science, it is just as unwise to assume that he believed jurists functioned with scientific precision. Five years after he wrote the preface to his casebook, when he spoke again on his vision of the law, the tenor of his comments was substantially different:

Law has not the demonstrative certainty of mathematics; nor does one's knowledge of it admit of many simple and easy tests, as in case of a dead or foreign language; nor does it acknowledge truth as its ultimate test and standard, like natural science; nor is our law embodied in a written text, which is to be studied and expounded, as is the case with the Roman law and with some foreign systems.²¹

Antebellum thinkers had described law in terms of mathematical models.²² Langdell's scientism, though couched in much the same language, rejected this past:

¹⁷ LAPIANA, *supra* note 1, at 29-54.

¹⁸ *Id.* at 31 (quoting *Notes of Professor Greenleaf's Introductory Lecture, at the Present Term*, 1 LAW REP. 217, 218 (1838)).

¹⁹ *Id.* at 22-28, 48-51. Judging by surviving student outlines, this system seems to have anticipated both the strengths and failings of modern-day legal instruction.

²⁰ See THEOPHILUS PARSONS, *THE LAW OF CONTRACTS* (2d ed. 1855).

²¹ LAPIANA, *supra* note 1, at 56 (citing ANNUAL REPORTS OF THE PRESIDENT AND TREASURER OF HARVARD COLLEGE, 1876-77, at 96-97 (1878)).

²² William Kent, who taught law in New York City and at Harvard, had blithely stated that the law grew "as a series of deductions from case to case and from principles to decisions." *Id.* at 31. Joseph Story had suggested that legal principles, infallible and unchanging, limited judges' power to decide cases. *Id.* at 35.

If the methodology of his science of law was that of the science of law of his predecessors, the subject matter of his science was different. Langdell studied and taught law not as a system of principles whose validity could ultimately be traced to the Creator, but as a logically coherent system of technical rules, principles that are applicable only to the decision of cases in the courts and which come from those cases.²³

This is LaPiana's most significant contribution to our understanding of Langdell. He has stripped from Langdellian scientism its philosophical aura, and shown that we should not confuse Langdell's insistence on right doctrine with a platonist insistence that existing law reflects unchanging verities. He has shown that generations of critics have pilloried a careful lawyer as a bad metaphysician.²⁴

Logic and Experience develops the close connection between Langdellian scientism (properly understood) and Langdell's personal interest in legal history. There are thematic rhymes between Langdell's desire for coherence and order in the modern commercial world and his nostalgia for the era of hair-splitting common-law pleading. Langdell's theory of consideration (arguably the most distinctive feature of his jurisprudence) was rooted in medieval law.²⁵ One type of consideration, Langdell argued, was the form of consideration required to support the traditional action of debt.²⁶ Bargain consideration had a different common-law origin; it was the consideration required to support an action in *assumpsit*.²⁷ In another context, Langdell could justify equitable jurisdiction over decedents' estates only after tracing the matter back to a "true theory" (abandoned in the time of James I).²⁸ That a rule was sensible and expedient was not enough for Langdell; he was happy only when he could establish its origins with genealogical precision.

Nonetheless, underlying the historical approach and talk of principles, Langdell's ultimate approach to law was distinguished by its close focus on cases. Although he preferred synthesizing leading cases to amassing and marshalling large numbers of precedents,

²³ *Id.* at 78.

²⁴ Langdell's work revealed the Victorian fondness for system-building most clearly in its approach to explaining judicial decisions. As LaPiana explains:

Langdell believed in and explicated a theory of contract law that explained the results in decided cases and provided the key to understanding all contract problems; the other authors wrote about fact patterns and recurring situations in life, not all of which could be confined within the bounds of general theory.

Id. at 60.

²⁵ *Id.* at 60-61.

²⁶ *Id.* at 63-64.

²⁷ *Id.*

²⁸ *Id.* at 68-69.

[a]t the heart of Langdell's scholarship is a reverence for the decided case, the judicial opinion, as the root of all Anglo-American law and the source of principles rather than as a more or less accurate illustration of them. For all the citation and discussion of cases by the other treatise writers, they did not draw the law itself out of the reports. The multitudinous situations of fact provided by cases were subordinated to the great overarching principles, which presumably could best be found in treatises and texts. For Langdell, in contrast, only what could be learned by analyzing the cases had any value.²⁹

On the title page of Langdell's contracts casebook, even before its author began to talk of science, he placed two quotations from Sir Edward Coke.³⁰ Coke's own preface to the Fourth Part of his *Reports* spoke clearly for Langdell: "The advised and orderly reading over of the books at large, I absolutely determine to be the right way to enduring and perfect knowledge."³¹ By citing Coke, Langdell could assure himself that his new project rested on ancient foundations.

LaPiana persuasively suggests that much of the importance Langdell placed on the scientific search for principles can be traced to the time he spent in practice.³² Between 1848 and 1877, New York lawyers operated under the Field Code. The Field Code abolished the traditional forms of action, substituting for them a single form of "civil action." This revolutionized pleading. "Because the stock allegations and fictions of the forms no longer meant anything . . . lawyers and courts were forced to articulate clearly the legal principles that underlay concepts like trover, replevin, assumpsit, and debt."³³

Preparing for litigation under the Field Code meant close analysis of earlier cases—hunting for factual similarities and controlling doctrines in a legal landscape where old landmarks had been cleared away. What Langdell had learned in digesting cases for Parsons was now reinforced by practice.

As a student at Harvard, Langdell had been exposed to teaching law as a system of principles. His work after assuming the deanship at his alma mater shows a strong commitment to order and coherence

²⁹ *Id.* at 70.

³⁰ LANGDELL, *supra* note 3, title page.

³¹ *Id.*

³² To some extent, Langdell's emphasis on "science" also reflected the legal profession's shift toward a jurisprudence more concerned with material factors than moral beliefs. LaPiana relates this shift to the controversy over slavery: "The moral discord created by the competing arguments of the abolitionists and their opponents, especially as they confronted each other in the legal system, may have rendered a belief in universal—or even widely held—moral values both more difficult to accept and hence less useful to lawyers." LAPIANA, *supra* note 1, at 75-76. Here one hears an echo of the late Robert Cover. See, e.g., ROBERT M. COVER, JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS (1975).

³³ LAPIANA, *supra* note 1, at 72.

in the law. It is tempting to imagine Langdell as agreeing with the conservative interpretation of the code—seeing the principles of the forms of action as still alive and finding them best expressed in a small number of older English cases dating from a time of procedural purity.³⁴

At the time, in the courtrooms of New York, procedural purity was in short supply. The court system in which Langdell practiced was ruled by Tammany judges—most notably, Albert Cardozo and George Barnard, who were forced off the bench when their corruption became too notorious to be covered up. Throughout the mid-1860s, as profit and Tammany politics dictated, Cardozo and Barnard agreeably handed out orders shifting control of embattled companies—now siding with Cornelius Vanderbilt, now beleaguering Daniel Drew, now furthering Jim Fisk and Jay Gould as their vision broadened from currency manipulation to corporate free-booting. In *Chapter of Erie*, the Adams brothers wrote about this corruption, which embraced even the chief draftsman of the Field Code:

The degradation of the bench had been rapidly followed by the degradation of the bar. Prominent and learned lawyers were already accustomed to avail themselves of social or business relations with judges to forward private purposes. One whose partner might be elevated to the bench was certain to be generally retained in cases brought before this special judge; and litigants were taught by experience that a retainer in such cases was profitably bestowed The debasement of tone was not confined to the lower ranks of advocates; and it was probably this steady demoralization of the bar which made it possible for the Erie ring to obtain the services of Mr. David Dudley Field as its legal adviser.³⁵

One of Langdell's partners, Edwards Pierrepont, sat as a judge during this era, and later, returning to practice, took an active part in the "Erie War."³⁶ He later held high office under the Grant administration, which suggests that he did not shrink from ethical compromise. Langdell (although this may not have been entirely a virtue) seems to have been made of sterner stuff.

One lawyer, asked to comment on Langdell's fitness for the Harvard deanship, wrote that Langdell was "out of relations with the present state of things in New York. He is disgusted with their courts

³⁴ *Id.* at 74.

³⁵ CHARLES F. ADAMS, JR. & HENRY ADAMS, *CHAPTERS OF ERIE* 110 (1966). See also KENNETH D. ACKERMAN, *THE GOLD RING: JIM FISK, JAY GOULD, AND BLACK FRIDAY, 1869* (1988); JOHN S. GORDON, *THE SCARLET WOMAN OF WALL STREET: JIM FISK, JAY GOULD, CORNELIUS VANDERBILT, THE ERIE RAILWAY WARS, AND THE BIRTH OF WALL STREET* (1988).

³⁶ LAPIANA, *supra* note 1, at 71.

and general mode of doing business."³⁷ Another attorney, also writing from Manhattan, reiterated this theme:

Langdell entered upon the practice of law in this city with the high purposes natural to such a man. He would scorn to win, or to struggle for, any success which was not the legitimate reward of merit. Very far from being an enthusiast generally, in his profession, he was one; and I think he soon conceived a hearty disgust for the means & methods by which business, place & reputation are here gained.³⁸

The starchiness such comments show should not be idly mocked. It prefigures the intensity which Langdell would show as dean.

In the years during which Langdell argued cases in the New York courts, Oliver Wendell Holmes served in the eastern theatre of the War Between the States.³⁹ Holmes' wartime service is probably the best-known conversion experience in the literature of the law; the war's crucial effect on his psychology and jurisprudence is widely acknowledged.⁴⁰ The court system which Langdell knew lacked the physical dangers of combat. Nonetheless, it shared with warfare the capacity to disillusion; in terms of chicanery, corruption, and waste, it outdid any satirist's invention. One would not go too far to suggest that Langdell's vision of law was shaped, to a different end but to the same degree, by his experience during those same years.

In 1871, not long after his return to Cambridge, Langdell offered a cold-eyed reflection on the theory and practice of law:

The chief business of a lawyer is and must be to learn and administer the law *as it is*; while I suppose the great object in studying jurisprudence should be to ascertain what the law *ought to be*, and although these two pursuits may seem to be of a very kindred nature, I think experience shews that devotion to one is apt to give more or less distaste for the other.⁴¹

³⁷ *Id.* at 12 (quoting George G. Shattuck, later law partner to Oliver Wendell Holmes, Jr.).

³⁸ *Id.* at 12 (quoting James C. Carter).

³⁹ *See, e.g.*, SHELDON M. NOVICK, *HONORABLE JUSTICE: THE LIFE OF OLIVER WENDELL HOLMES 34-89* (1989).

⁴⁰ *See, e.g.*, Saul Touster, *In Search of Holmes from Within*, 18 *VAND. L. REV.* 437 (1965) (examining how Holmes' war experiences led to the development of his Olympian aloofness, sentiment of honor, and legal stoicism).

⁴¹ LAPIANA, *supra* note 1, at 77 (quoting Letter from Christopher C. Langdell to Theodore D. Woolsey (Feb. 6, 1871) (on file with the Yale University Library, Manuscript Division). Langdell suggested that the study of jurisprudence did not "specially concern lawyers or those intending to become lawyers, but other portions of the community as well; some perhaps more, e.g., those aiming at public life or a high order of journalism." *Id.*

This language recalls John Austin, and LaPiana shows that Langdell had probably read Austin by this time.⁴² The critical phrase here, however, is *experience shews*. “Langdell almost certainly encountered Austin after the foundations of his view of law and legal science had been set,” LaPiana writes.⁴³ “It is possible, however, that Austin’s insights helped clarify Langdell’s narrow, technical view of legal principles.”⁴⁴ The point is well-taken. Any high-minded lawyer who had tried cases in Boss Tweed’s New York hardly needed help in recognizing the vast gulf between the *is* and the *ought* of law.

Langdell’s distaste for what he had seen in practice affected his career as dean.⁴⁵ It showed in the way Harvard Law School adopted entrance requirements, including a college degree. As a measure of intellectual accomplishment, Langdell seems to have trusted college graduation requirements more than he did bar examinations. It showed in the way he developed a faculty of law professors, rather than hiring practitioner-teachers: “Only full-time scientists can properly pursue legal science,” LaPiana explains.⁴⁶ At Columbia University, meantime, Theodore Dwight continued to teach law by lecture, to emphasize principle rather than case-law, and to link academic instruction with law-office training.⁴⁷ But while Columbia remained the nation’s largest law school, “[w]hat it was not was the newfangled university law school Harvard had become, complete with a graded course, rigorous admission standards, and a faculty devoted to research and publication, as well as teaching.”⁴⁸

⁴² *Id.* at 77-78. Despite a lack of documentary evidence, the inference is compelling. That Langdell had read the English jurist is certain; in 1879, he cited Austin in his own *Summary of the Law of Contracts*. CHRISTOPHER C. LANGDELL, A SUMMARY OF THE LAW OF CONTRACTS § 79 (1879). When Langdell read Austin is less clear, but the early date of this letter suggests a *terminus ante quem* which makes the New York years probable.

⁴³ LAPIANA, *supra* note 1, at 78.

⁴⁴ *Id.*

⁴⁵ The new dean continued to indulge his passion for legal history. Langdell “was quoted as speaking of ‘a comparatively recent case decided by Lord Hardwicke,’ and he was believed to regard modern decisions as beneath his notice.” CENTENNIAL HISTORY, *supra* note 11, at 233. In his mortgages course, apparently taught in strict chronological order, he passed the entire first semester without mentioning the right of redemption. *Id.* Langdell seems to have accepted the need for his school’s graduates to gain practice experience by working in a law office, as witnessed by his position in New York state’s debate over bar admissions. LAPIANA, *supra* note 1, at 87-88, 132. While continuing to recognize the need for training in legal craft and process, he had moved the locus of such instruction outside the academy. *Id.*

⁴⁶ LAPIANA, *supra* note 1, at 57.

⁴⁷ *Id.* at 92-99.

⁴⁸ *Id.* at 94. The transformation of Harvard Law School, however, was part of a broader transformation of Harvard University under President Charles Eliot. Indeed, LaPiana maps out the great extent to which changes traditionally attributed to Langdell should really be ascribed to Eliot. *Id.* at 7-18, 101-02.

The Langdellian case method came to Columbia in 1891.⁴⁹ It came to the University of Chicago in 1902 and to Yale Law School in 1912.⁵⁰ Scattered pockets of resistance were overrun at the University of North Carolina (1923) and the University of Virginia (1932).⁵¹ But if Langdellian scientism became the new orthodoxy, it never quite achieved hegemony. No sooner had it been accepted than it came under criticism from those who felt jurisprudence was sociological rather than scientific, and then by those who felt real-world functions counted for more than doctrinal distinction.⁵²

Langdell's call for clarifying doctrine by studying the cases became identified with formalistic jurisprudence and political reaction.⁵³ This was erroneous and unfortunate. Once Hugo Black replaced Willis Van Devanter, once Karl Llewellyn settled down to draft the Uniform Commercial Code, the real-world battle against the old order was over, which meant that the intellectual struggle against it intensified. We needed an *éminence grise* to blame for formalism, and so we invented Langdell. Bill LaPiana's admirable book shows that some reinvention is in order.

⁴⁹ *Id.* at 92-99.

⁵⁰ *Id.* at 148-49.

⁵¹ *Id.* Langdell was gone by then. In 1895, failing eyesight led him to resign the deanship, and in 1906 he died, to be buried among honors which included a glowing eulogy in *The Nation*. Eugene Wambaugh, *Professor Langdell—A View of His Career*, 83 *NATION* 29 (July 12, 1906).

⁵² See, e.g., LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 591-92 (1973).

⁵³ See, e.g., DREW PEARSON & ROBERT S. ALLEN, *THE NINE OLD MEN* 186-206, 222-37 (1936) (profiles of Justices Van Devanter, Sutherland, and McReynolds); Roscoe Pound, *Mechanical Jurisprudence*, 8 *COLUM. L. REV.* 605 (1908) (criticizing this approach as contrary to common-law flexibility).

Perhaps the most facile characterization was Grant Gilmore's: "The jurisprudential premise of Langdell and his followers was that there is such a thing as the one true rule of law which, being discovered, will endure, without change, forever." GILMORE, *supra* note 9, at 43. This was, however, not entirely unfair. In the 1890s, novelist Winston Churchill, then a student at Harvard, considered that the law school taught "a static law and a static theology," both of which were centered on the United States Constitution, "a set of concepts that were supposed to be equal to any problems civilization would have to meet until the millenium." WINSTON CHURCHILL, *A FAR COUNTRY* 113-14 (1915).