

## Law Libraries and Laboratories: The Legacies of Langdell and His Metaphor\*

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*Law librarians and others have often referred to Harvard Law School Dean C.C. Langdell's statements that the law library is the lawyer's laboratory. Professor Danner examines the context of Langdell's statements through his other writings, the educational environment at Harvard in the late nineteenth century, and the changing perceptions of university libraries generally. He then considers how the "laboratory metaphor" has been applied by librarians and legal scholars during the twentieth century and into the twenty-first. The article closes with thoughts on Langdell's legacy for law librarians and the usefulness of the laboratory metaphor.*

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The work done in the [Law] Library is what the scientific men call original investigation. The Library is to us what a laboratory is to the chemist or the physicist, and what the museum is to the naturalist.<sup>1</sup>

### Introduction: Law Librarians, Langdell, and the Laboratory

¶1 Law librarians are fond of the idea “that law is unique among disciplines in the way in which its bibliographic sources constitute a separate body of knowledge accessible and useful only to those within the law school,”<sup>2</sup> and frequently describe the law library “as the laboratory—or, more intimately, the heart—of the law school,”<sup>3</sup> a metaphor first suggested by Christopher C. Langdell near the beginning of his twenty-five-year tenure as Harvard Law School’s first dean.

¶2 The laboratory metaphor<sup>4</sup> has been used to argue not only for the law library’s importance but also for its distinctiveness from other libraries, based on the proposition that “[l]aw libraries are essentially different in kind from general research libraries; a law library is not really a library, but rather a laboratory.”<sup>5</sup> He found that the “insistence on the exclusivity of legal research methodology is rooted in a Langdellian view of the scientific nature of the study of law.”<sup>6</sup> Law librarian references to Langdell’s metaphor go back at least to 1918 when, in a discussion of instruction in legal research, Fred Hicks wrote that the law librarian’s “library is the laboratory for the course, and his office or even the library itself the logical place for holding classes.”<sup>7</sup> The references continued throughout the twentieth century and into the twenty-first.

¶3 It is not surprising that law librarians and others have found Langdell’s comments on the library’s central role in legal education to be important and provocative. Langdell is the primary figure in the history of legal education, and his approach to law study focused on reading and analysis of the original sources of the common law: the published reports of appellate cases, materials found in the library. Despite his lasting influence, however, Langdell said and wrote little regarding his ideas on legal education, law as a science, or the role of the law library. What he had to say about libraries was specifically about the Harvard Law Library and is found in annual reports to the president of Harvard College, an 1886 address to the Harvard Law School Association,<sup>8</sup> and an 1894 issue of the *Harvard Graduates’*

1. C.C. Langdell, *The Law Library*, 49 ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1873–74, at 63, 67 (1875).

2. James G. Milles, *Leaky Boundaries and the Decline of the Autonomous Law School Library*, 96 LAW LIBR. J. 387, 389, 2004 LAW LIBR. J. 25, ¶ 5.

3. *Id.* at 389, ¶ 6.

4. For a thoughtful and entertaining look at metaphorical thinking, see JAMES GEARY, *I IS AN OTHER* (2011). The standard work on the topic is GEORGE LAKOFF & MARK JOHNSON, *METAPHORS WE LIVE BY* (1980). Both are discussed in Susan Bay, Book Review, 11 LEGAL COMM. & RHETORIC: JALWD 189 (2014).

5. Milles, *supra* note 2, at 389, ¶ 5.

6. *Id.*

7. Frederick C. Hicks, *The Teaching of Legal Bibliography*, 11 LAW LIBR. J. 1, 7 (1918).

8. *Professor Langdell’s Address*, in HARVARD LAW SCH. ASS’N, REPORT OF THE ORGANIZATION AND OF THE FIRST GENERAL MEETING AT CAMBRIDGE, NOVEMBER 5, 1886, at 48 (1887) (celebrating the “Two Hundred and Fiftieth Anniversary of the Founding of Harvard College”), reprinted at 3 L.Q. REV. 123 (1887) and in slightly shorter form at 21 AM. L. REV. 123 (1887).

*Magazine*.<sup>9</sup> The library as laboratory metaphor appears twice in his small body of published works, initially in his 1873–1874 annual report,<sup>10</sup> then with slightly greater elaboration in the 1886 address.

¶4 This article examines what Langdell said about the law library, the changing educational environment at Harvard after 1870, and the implications of his comments about the importance of the Harvard Law Library. What did Langdell mean when he compared the law library to the laboratories used by the “scientific men” of the natural sciences? Did he mean to emphasize the importance of law libraries in the ways suggested later by law librarians, or did he characterize the library as a laboratory merely as part of his arguments to establish law as a scientific discipline? Are law libraries significantly different from other research libraries? Was he alone in his view that the law library was the lawyer’s laboratory?

¶5 The following section focuses on the Harvard Law Library during the twenty-five years of Langdell’s deanship. It briefly describes the state of the library prior to Langdell’s appointment as dean in 1870 and the changes he instituted; it then examines Langdell’s published comments about the law library during his tenure as dean; the career of John Himes Arnold, who served as law librarian under Langdell for nearly all of his deanship; and the impacts on the law library of the case method of instruction. The next section of the article provides broader context for Langdell’s impact on the law library through discussions of the role played by Harvard president Charles W. Eliot and the influences of changing perceptions of university libraries in the last quarter of the nineteenth century. The article then looks at later uses of the laboratory metaphor outside of law, as well as by legal scholars and law librarians. It concludes with thoughts on Langdell’s influences and the usefulness of metaphors for law librarians.

## The Harvard Law Library in the Late Nineteenth Century

### Langdell at Harvard

¶6 Langdell studied law at Harvard from 1851–1854. Like other students before him, he served as law librarian from 1852–1854, performing well enough to earn tuition remission in 1853–1854.<sup>11</sup> His successor as dean, James Barr Ames, would write that the student Langdell “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.”<sup>12</sup>

9. C.C. Langdell, *The Harvard Law School, 1869–1894*, 2 HARV. GRADUATES’ MAG. 490 (1894).

10. Langdell, *supra* note 1, at 63, 67.

11. Samuel F. Batchelder, *Christopher C. Langdell*, 18 GREEN BAG 437, 437–38 (1906); *see also* 2 CHARLES WARREN, *HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA* 179–80 (1908).

12. James Barr Ames, *Christopher Columbus Langdell*, in *LECTURES ON LEGAL HISTORY* 467, 471 (1913). Warren wrote that “it has been well said of him that: ‘He browsed among the reports as a hungry colt browses among the clover. The year books in particular enthralled him.’” 2 WARREN, *supra* note 11, at 179. More recently, Richard Neumann observed that “[a]s a student and as a teacher, Langdell’s attachment to books and libraries seemed so guileless as to be endearing.” Richard K. Neumann, *Osler, Langdell, and the Atelier: Three Tales of Creation in Professional Education*, 10 LEGAL COMM. & RHETORIC: JALWD 151, 174 (2013).

¶7 The law school relied on student librarians until Langdell himself appointed the first full-time librarian in 1870.<sup>13</sup> His own tenure as student librarian came during a lengthy period of decline for the library following the death of Dane Professor of Law Joseph Story in 1845 and Simon Greenleaf's resignation from the faculty in 1848.<sup>14</sup> Between Story's death and Langdell's return to Harvard in 1870, expenditures for books averaged less than \$1000 per year, and many of the volumes purchased were textbooks supplied to students.<sup>15</sup>

¶8 In 1861, the law library became the subject of a dispute between a visiting committee for all university libraries and the law school visiting committee over missing volumes and the general condition of the law library.<sup>16</sup> The university library visiting committee criticized the performance of the student librarian and found that the janitor John Sweetnam was acting as "executive officer of the Law Library as well as the factotum of the Law School."<sup>17</sup> Samuel Batchelder described the pre-1870 law library as a place occupied only by a "handful of enthusiasts," who rented stools from the janitor and "knew enough and cared enough to use the library in a continuous and systematic way." It was difficult to find books on the

In a 1933 article highly critical of Langdell's approach to legal education, Jerome Frank used the stories about Langdell's love for the library as evidence both of the dean's limited vision and his general strangeness. Not only had "law school law come to mean 'library law,'" but the man himself "had an obsessive and almost exclusive interest in books." For Langdell: "The raw material of law . . . was to be discovered in a library and nowhere else; it consisted as he himself said, solely of what could be found in the pages of law reports. . . . A great part of the realities of the life of the average lawyer was unreal to him." Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 908 (1933) [hereinafter Frank, *Clinical*]; see also Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1304 (1947) [hereinafter Frank, *A Plea*] (referring to Langdell's "neurotic escapist character"); Jerome Frank, *What Constitutes a Good Legal Education*, 19 A.B.A. J. 723 (1933) [hereinafter Frank, *Good Legal Education*].

13. For a full list of students who were employed as librarian, see J.H. Arnold, *The Harvard Law Library*, 16 HARV. GRADUATES' MAG. 230, 240 (1907). The employment of law students as librarians was not unique to Harvard. See, e.g., Hobart Coffee, *The Law Library*, in 4 THE UNIVERSITY OF MICHIGAN: AN ENCYCLOPEDIA SURVEY 1397, 1399 (Walter A. Donnelly, ed., 1958) (noting that at Michigan a permanent librarian was first appointed in 1883. Prior to the appointment, "the main duties of the student-librarian . . . were to open and close the Library and keep order in the reading room. . . . He was a custodian, pure and simple."); see also Christine A. Brock, *Law Libraries and Librarians: A Revisionist History; or More Than You Ever Wanted to Know*, 67 LAW LIBR. J. 325, 347 (1974) ("There were three sources from which law schools drew their first law librarians—students, janitors, and old men . . .").

14. See THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL: 1817–1917, at 94–96 (1918) [hereinafter CENTENNIAL HISTORY]. Although no author is credited, Bruce Kimball reports that the book's chapter on the library was written by Professor Joseph H. Beale. Bruce A. Kimball, *The Langdell Problem: Historicizing the Century of Historiography, 1906–2000s*, 22 LAW & HIST. REV. 277, 292 (2004).

15. CENTENNIAL HISTORY, *supra* note 14, at 95; see also 2 WARREN, *supra* note 11, at 333; Harry S. (Terry) Martin, *The First Librarian*, HARV. L. SCH. BULL., Fall 1982, at 26, 32. Warren noted that "lack of funds, during the War Period, had greatly retarded the growth of the Library." 2 WARREN, *supra* note 11, at 483.

16. See JOEL PARKER, THE LAW SCHOOL OF HARVARD COLLEGE 41–47 (1871).

17. Martin, *supra* note 15, at 32 (quoting the 1861 visiting committee). The *Centennial History* notes that in 1855 the Harvard Corporation withdrew from the law faculty the power to establish regulations for the library, "and from that time the library rules were made in theory by the Corporation, in practice by the janitor." CENTENNIAL HISTORY, *supra* note 14, at 23. On Sweetnam, see also Samuel F. Batchelder, *Old Times at the Law School*, 90 ATL. MONTHLY 642, 654–55 (1902). On the performance of the student librarians and janitor, see generally Martin, *supra* note 15, at 30–33.

shelves, and those who hoped to study in the library were subject to interruption by moot courts and occasionally by real court proceedings. For Batchelder, those interruptions, plus some students' heavy use of the "almost universal 'chaw' of tobacco [with] no receivers for the ensuing liquidation" made the library "a decidedly uncomfortable work-room."<sup>18</sup> Nonetheless, the library was regularly praised by the law school's visiting committees for much of the period prior to Langdell's return.<sup>19</sup>

¶9 After leaving Harvard in 1854, Langdell practiced law in New York. He rarely appeared in court but developed a reputation as "an industrious worker and brilliant briefwriter [sic]," who spent most of his time in the New York Law Institute Library.<sup>20</sup>

¶10 In January 1870, Langdell returned to Harvard as Dane Professor of Law and was named the law school's first dean in September.<sup>21</sup> He taught contracts using the case method, "requir[ing] students to read original sources rather than textbooks, to analyze particular controversies rather than general propositions, to formulate their own interpretations in response to questions, and to respond to hypotheticals and opposing views."<sup>22</sup> He published the first part of his contracts casebook in October 1870.<sup>23</sup>

¶11 Langdell would later characterize the library at the time of his appointment to the faculty as "nearly a wreck." In the year of his return, a law school visiting committee report citing deficiencies in the library was published in a Boston newspaper.<sup>24</sup> Langdell found that no professor since Greenleaf had taken personal interest in the library; books purchased were selected by booksellers rather than school personnel; and little attention was paid to binding and repair. Most important, perhaps, he observed "a degree of freedom from restraint in the use of the library. . . . It was kept open constantly from 9 A.M. to 9 P.M.; and yet there was no one to exercise any supervision or control over those who might choose to resort to

18. Batchelder, *supra* note 17, at 654.

19. See WILLIAM P. LAPIANA, *LOGIC AND EXPERIENCE* 9 (1994); 2 WARREN, *supra* note 11, at 336–38. Warren concluded that "[t]he prevailing ideas that the Law Library was brought into existence later under the Langdell regime, and that it was not of much account prior to that time, are readily dispelled by the constant enthusiastic praise of the Library made in the Annual Reports to the Overseers." 2 WARREN, *supra* note 11, at 335.

20. Marcia Speziale, *Langdell's Concept of Law as Science: The Beginning of Anti-Formalism in American Legal Theory*, 5 VT. L. REV. 1, 10 (1980).

21. Langdell became Dane Professor on January 6, 1870, and was elected dean on September 27. Harvard had recently started requiring each professional school to have a dean to perform administrative tasks. Although there is little doubt that Langdell was President Eliot's choice for the post, there were probably also no viable alternatives. Charles W. Eliot, *Langdell and the Law School*, 33 HARV. L. REV. 518, 518 (1920).

22. BRUCE A. KIMBALL, *THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL* 131 (2009).

23. C.C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS WITH REFERENCES AND CITATIONS* (1870). On the contracts casebooks generally, see KIMBALL, *supra* note 22, at 87–95.

24. See LAPIANA, *supra* note 19, at 9; 2 WARREN, *supra* note 11, at 485. The 1870 report, along with an *American Law Review* article critical of the pre-Langdell law school, prompted Joel Parker's 1871 pamphlet: *The Law School of Harvard College*, which reprinted the report. See PARKER, *supra* note 16, at 33–34; see also *Harvard University Law School*, 5 AM. L. REV. 177 (1870); *The Law School of Harvard College*, 5 AM. L. REV. 563 (1871).

it.” He concluded that “the condition of the library had come to be so ruinous . . . that some radical change in its administration was imperatively called for.”<sup>25</sup>

### *Langdell’s Writings about the Law Library*

¶12 It is well known that Langdell wrote little and said little publicly regarding his ideas either about substantive legal issues or about the study of law. His primary published works include several contributions to *Bouvier’s Law Dictionary*;<sup>26</sup> case-books and related materials published between 1870 and 1883; and law journal articles, published mostly from 1888 to 1906.<sup>27</sup>

¶13 Langdell also published several short commentaries late in his career. These included the text of an address offered at the first meeting of the Harvard Law School Association in 1886,<sup>28</sup> comments about the law school in an 1894 issue of the *Harvard Graduates’ Magazine* devoted to the twenty-fifth anniversary of Charles Eliot’s tenure as Harvard president,<sup>29</sup> and remarks to the Harvard Law School Association marking the twenty-fifth and final year of his deanship in

25. See Langdell, *supra* note 9, at 494. LaPiana speculates that because of the publicity regarding the shortcomings of the library, Langdell’s interest in books and libraries might have been a consideration in his appointment to the faculty. LAPIANA, *supra* note 19, at 10–11.

Despite its condition at the time of Langdell’s arrival, Harvard remained the largest academic law library in the country, and had been at least since the days of Story and Greenleaf. In a 1987 article, Kent Newmyer wrote:

[Story] realized that to write books one needed books and accordingly made a great library the first order of business at the Law School. Complete runs of federal and state court reports and federal and state statutes were secured. Treatise literature old and new, in all areas of law and equity, from England, the Continent, and even the Far East was procured. Long before Christopher Columbus Langdell advertised the library as the laboratory of law, Story and Greenleaf operated on that premise.

R. Kent Newmyer, *Harvard Law School, New England Legal Culture, and the Antebellum Origins of American Jurisprudence*, 74 J. AM. HIST. 814, 822 (1987). For discussion of Story’s interest in the library, see John P. Dawson, *The Harvard Collections of Foreign Law: Changing Dimensions of Legal Study*, 16 HARV. L. BULL. 101, 102–04 (1968). For holdings of American law libraries in 1876, see Stephen B. Griswold, *Law Libraries, in U.S. DEP’T OF EDUC., BUREAU OF EDUC., PUBLIC LIBRARIES IN THE UNITED STATES OF AMERICA: THEIR HISTORY, CONDITION, AND MANAGEMENT: SPECIAL REPORT, PART I, at 161, 169–70 (1876).*

26. JOHN BOUVIER, *A LAW DICTIONARY ADAPTED TO THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA* (12th ed. 1868). The articles were on alimony, condonation, divorce, nullity of marriage, promise of marriage, and separation *a mensa et thoro*.

27. Perhaps the most complete bibliography of Langdell’s writings was compiled by Bruce Kimball for his 2009 biography of Langdell. See *Bibliography*, in KIMBALL, *supra* note 22, at 353, 385–89. An earlier version is at Kimball, *supra* note 14, at 331.

Kimball also reports that a large store of Langdell’s unpublished works is available at the Harvard Law Library, although “some 3,000 papers” were discarded in 1941. Kimball, *supra* note 14, at 281. The Harvard finding aid states: “The bulk of the collection consists of Langdell’s handwritten notes and drafts for lectures, articles, and some of the case briefs that would appear in his books,” as well as some correspondence, “the bulk of which is between Langdell and Joseph R. Webster and dates to Langdell’s pre-Harvard private practice.” C.C. (Christopher Columbus) Langdell Research Notes and Correspondence, 1852–1902: Finding Aid (2008), [http://oasis.lib.harvard.edu/oasis/deliver/findingAidDisplay?\\_collection=oasis&inoid=4926&inoid=4926&histno=0](http://oasis.lib.harvard.edu/oasis/deliver/findingAidDisplay?_collection=oasis&inoid=4926&inoid=4926&histno=0). For a thorough discussion of how later scholars have used Langdell’s writings and other sources, see generally Kimball, *supra* note 14.

28. *Professor Langdell’s Address*, *supra* note 8.

29. Langdell, *supra* note 9, at 490.

1895.<sup>30</sup> Much of what he said about legal education is found in these later articles and in the preface to his contracts casebook. Those sources (other than the 1895 remarks<sup>31</sup>), along with discussions of law library concerns in his annual reports to the Harvard president, also provide the primary sources for his thoughts on the role and importance of the library.

#### ANNUAL REPORTS

¶14 Langdell's first annual report as dean does not mention the library. In his second report, for 1870–1871, Langdell identified several library problems to which he had attended during the year.<sup>32</sup> Among these was a lack of supervision of the library, particularly in the evenings, which meant that access to the collections was unrestricted. This was solved with the appointment of a permanent librarian who (or whose assistant) would be in attendance during all hours the library was open.

¶15 Of greater importance to Langdell, however, were the problems he saw with the physical arrangement and accessibility of the collection. When he arrived, the entire collection was shelved in a single alphabetical arrangement, fully accessible “to all persons,” with “no systematic attempt to provide duplicates of such books as were in constant use.”<sup>33</sup> In summer 1870, he divided the law library collections into a general library and a working library. The general library was closed to students, but books could be retrieved on request and access to the stacks could be granted when the librarian was present. A railing separated the general collection from the new working library, which included duplicate copies of “the most important English reports, of the Massachusetts reports, of the reports of the Supreme Court of the United States, of all the most important New York reports, of the most important Digests and abridgements, and of a good number of standard treatises.”<sup>34</sup>

¶16 The following year, Langdell noted that these changes “were of so radical a character that they have produced a very complete revolution in the Library in almost every particular.” Although they had caused “more or less temporary inconvenience and embarrassment . . . the Library is now in an eminently satisfactory

30. Dean C.C. Langdell's Address, in HARVARD LAW SCH. ASS'N, REPORT OF THE NINTH ANNUAL MEETING . . . IN ESPECIAL HONOR OF CHRISTOPHER COLUMBUS LANGDELL 41 (1895), *partially reprinted as The 25th Anniversary of Prof. C.C. Langdell as Dean of Harvard Law School*, 29 AM. L. REV. 605 (1895).

31. The published versions of his 1895 remarks to the Harvard Law School Association do not mention the library. See *id.*

32. C.C. Langdell, *The Law School*, 46 ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1870–71, at 59, 63–64 (1872).

33. *Id.* at 63.

34. *Id.* at 64. Reference works also were included in the working collection. For a description of the working library in Austin Hall, circa 1892, see Robert B. Anderson, *The Harvard Law School Library Under Langdell and Arnold*, 29 HARV. LIBR. NOTES, 281, 281 (1939) [hereinafter Anderson, *Harvard Law School Library*]. Robert Bowie Anderson began working in the law library as a stack-boy in 1892, becoming assistant librarian in 1903 and associate librarian in 1938, retiring in 1942. See [Memorial of] Robert Bowie Anderson, 44 LAW LIBR. J. 141 (1951). In addition to the article noted above, he published two other short pieces that provide colorful descriptions of the Harvard Law Library and Law School in the late nineteenth and early twentieth centuries. See Robert B. Anderson, *The Development of Cataloging in the Law Library*, 32 HARV. LIBR. NOTES 105 (1942); Robert B. Anderson, *The Law School Library in Langdell Hall*, 30 HARV. LIBR. NOTES 326 (1940). Thanks to Terry Martin for alerting me to Anderson's work.

condition.”<sup>35</sup> Were the problem of insufficient funding resolved, “the Library bids fair to resume the position which it occupied twenty-five years ago, namely, that of being the finest law library in the United States.”<sup>36</sup>

¶17 In 1871, Langdell ended the practice of using library funds to purchase textbooks for students,<sup>37</sup> something he attributed to the school’s earlier sense of itself as the model of a law office. Because “students who studied in offices did not have to purchase any books, so the Law School adopted and continued the practice of furnishing every student with a copy of the text-books which he had occasion to study.”<sup>38</sup> Bruce Kimball listed as one of Langdell’s accomplishments as dean “the transformation of the library from a textbook dispensary to a resource for scholarship.”<sup>39</sup> Richard Neumann noted Kimball’s comment, but pointed out that

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35. C.C. Langdell, *The Law School*, 48 ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1871–72, at 60, 63–64 (1873). Warren recounts some of the student unhappiness over the railing’s effects on access to other books. 2 WARREN, *supra* note 11, at 486–87; *see also The Law School of Harvard College*, *supra* note 24, at 563 (“Free access to the books is an absolute necessity.”). As late as 1875, an article in the *Harvard Advocate* bemoaned the amount of time lost by students requesting access to books kept “behind the bar” and urged free access to the entire collection. *See The Law School Library*, 20 HARV. ADVOC. 86 (1875). For a description of the arduous process necessary to check out a book in the Harvard College Library at this time, see Robert E. Brundin, *Justin Winsor and the Liberalizing of the College Library*, 10 J. LIBR. HIST. 57, 64 (1975).

Franklin Fessenden later described the library at the time Langdell returned in 1870 in a more positive light:

Access to the shelves of the library was free and unobstructed. As some of the professors and lecturers used published treatises in books as the bases of their lectures, students were allowed to take such textbooks from the building for the purpose of study. There was a large number of copies of these books in the library for such use.

Franklin G. Fessenden, *Rebirth of the Harvard Law School*, 33 HARV. L. REV. 493, 496 (1920).

36. Langdell, *supra* note 35, at 64. In 1908, Charles Warren would point out that the changes Langdell implemented conformed generally to those recommended by the 1861 and 1870 visiting committees. *See* 2 WARREN, *supra* note 11, at 336–84, 484–86; *see also* Martin, *supra* note 15, at 32 (stating that when he became dean, “Langdell vindicated the [1861] Library Committee.”).

37. Langdell, *supra* note 35, at 65.

38. Langdell, *supra* note 9, at 493. Terry Martin attributed the custom of providing free textbooks to law students to Asahel Stearns, who became Harvard’s first professor of law in 1817. Martin, *supra* note 15, at 31. In 1907, law librarian John H. Arnold estimated that the law library’s reported holdings in 1869–1870 of 15,000 volumes included more than 3000 student textbooks. Arnold, *supra* note 13, at 234; *see also* Bruce A. Kimball, *Students’ Choices and Experience During the Transition to Competitive Academic Achievement at Harvard Law School, 1876–1882*, 55 J. LEGAL EDUC. 163, 164 (2005) (“[T]he library was regarded as a dispensary of textbooks that students borrowed and rarely returned, necessitating an annual restocking of the shelves with the same volumes.”). The law library was probably more generous than the university in supplying textbooks to students. Until the practice was ended just prior to Langdell’s return, the university purchased textbooks at wholesale prices, adding the costs to student bills. KENNETH J. BROUGH, *SCHOLAR’S WORKSHOP: EVOLVING CONCEPTIONS OF LIBRARY SERVICE* 62–63 (1953).

The University of Iowa Law Library also rented textbooks to students who could not afford to purchase them from 1870 to 1924, and ordered and sold them from 1892 to 1914. Ellen J. Jones, *The University of Iowa Law Library: The First 141 Years, 1868–2009*, in *THE HISTORY OF THE IOWA LAW SCHOOL, 1865–2010*, at 343, 357 (N. William Hines ed., 2011).

39. Bruce A. Kimball, *Impoverishing the Greatest Law School in the World: The Financial Collapse of Harvard Law School, 1895–1909*, 61 J. LEGAL EDUC. 5, 7 (2011).



“[i]n Langdell’s time, it was scholarly only as a repository of case law, which was beginning to be compiled into searchable commercial reporters.”<sup>40</sup>

¶18 In his 1872–73 report, Langdell bluntly stated: “The most essential feature of the School, that which distinguishes it most widely from all other schools of which I have any knowledge, is the library. . . . [W]ithout the library, the School would lose its most important characteristics, and indeed its identity.” He was pleased with the administration of the library (“So far as is known, not a single volume was lost during the year, even temporarily.”), its completeness, and the quality of the collections, but seems to have been proudest of the working library, which now contained almost 1300 duplicate volumes of books in most constant use, and “double[d] the working capacity of the library.”<sup>41</sup>

¶19 In 1873–1874, he noted that the heavy use of the library testified not only to “the industry of the School” but to “the *kind* of work that is in vogue”; he then closed the report with the classic statement of the laboratory metaphor quoted earlier: “The work done in the Library is what the scientific men call original investigation. The Library is to us what a laboratory is to the chemist or the physicist, and what the museum is to the naturalist.”<sup>42</sup>

¶20 The following year, Langdell cautioned that library use was “constantly increasing,” bringing wear to the books, making the work of the librarian “very laborious,” and “caus[ing] a considerable inconvenience to all who use the Library.” The problems arose primarily from “the *number* of books consulted, and from the fact that the *same* book is frequently wanted by several persons at the same time.”<sup>43</sup> In 1875–1876, he again highlighted the need for “large additions . . . to the books outside the railing.”<sup>44</sup>

¶21 Beyond a mention regarding the “architectural shortcomings of Dane Hall” in 1878–1879,<sup>45</sup> Langdell did not again discuss the library in his annual reports until 1889–1890. Then, summing up the changes during the twenty years of his deanship, Langdell remembered that when he returned to Harvard “the library was so nearly a wreck that it required to be reconstructed almost from its foundations.” Now it was “believed to be larger (referring only to law-books proper, and excluding

40. Neumann, *supra* note 12, at 174.

41. C.C. Langdell, *The Law School*, 48 ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1872–73, at 60, 63 (1874).

42. Langdell, *supra* note 1, at 67.

43. C.C. Langdell, *The Law School*, 50 ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1874–75, at 73, 76 (1876). As solutions, Langdell noted the importance of both the growing library of duplicates and the ability to produce reprints of selected cases. *Id.* “But this device did not cure the inevitable ill. Illustrative cases which no case book of possible dimensions could contain must still be referred to and read.” CENTENNIAL HISTORY, *supra* note 14, at 101.

The importance of the working library would diminish in the twentieth century. In 1934, librarian Eldon James noted that, while the bulk of the library’s collections were housed in Langdell Hall, “[i]n Austin Hall, there is *only* a working library of English and American material amounting to about 25,000 volumes.” Am. Ass’n of Law Libraries, *Proceedings of the Twenty-Ninth Annual Meeting*, 27 LAW LIBR. J. 51, 157 (1934) (remarks of Eldon James) (emphasis added) [hereinafter *James Remarks*].

44. C.C. Langdell, *The Law School*, 51 ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1875–76, at 70, 73 (1877).

45. C.C. Langdell, *The Law School*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1878–79, at 80, 84 (1880).

statutes), more complete, and in a better condition than any other [academic] law library in the United States.”<sup>46</sup> Two years later, he announced the addition of “another copy of every set of English and American reports which is used to any considerable extent,” and that “[w]e have also availed ourselves, and are still availing ourselves, of every good opportunity to purchase another copy of every set of American reports of which another copy is at all needed.” One result of the continuing efforts to add more duplicate reports was that the lower floor of the library stack area would “have to be given up entirely to reports; and hence all treatises and statutes will have to be relegated to an upper and less accessible floor.”<sup>47</sup> Langdell expressed no regrets about this “relegation.”

#### OTHER WRITINGS

¶22 In an 1886 address to the Harvard Law Association on the occasion of Harvard College’s 250th anniversary,<sup>48</sup> Langdell referred for the second time to the library’s role as laboratory. Building on what he wrote in his 1873–1874 report to the president of Harvard, he noted:

We have also constantly inculcated the idea that the library is the proper workshop of professors and students alike; that it is to us all that the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists.<sup>49</sup>

Tellingly, Langdell also said that since accepting his appointment as dean, “I have not concerned myself with legal education outside the Harvard Law School; but I have tried to do my part towards making the teaching and the study of law in that school worthy of a university.”<sup>50</sup> To accomplish that goal, he had needed to show both that law is a science and that the materials of that science are found in printed books: “the ultimate sources of all legal knowledge.”<sup>51</sup> Accordingly “the law library has been the object of our greatest need and most constant solicitude.”<sup>52</sup>

46. C.C. Langdell, *The Law School*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1889–90, at 126, 133 (1891). He then detailed the library’s practices for purchasing books and for binding and repair.

47. C.C. Langdell, *The Law School*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1891–92, at 113, 122 (1893). The following year, he repeated much of what he had written about the need for more copies of American reports, and reported that 2194 volumes of reports had been added pursuant to the plan outlined in 1891–1892. C.C. Langdell, *The Law School*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1892–93, at 133, 143–44 (1894).

48. See *Professor Langdell’s Address*, *supra* note 8.

49. *Id.* at 51. Howard Schweber has noted that the examples emphasize taxonomical sciences. See Howard Schweber, *The “Science” of Legal Science: The Model of the Natural Sciences in Nineteenth-Century American Legal Education*, 17 LAW & HIST. REV. 421, 459 (1999) (“Botany and zoology were the prototypical taxonomical sciences . . .”). William LaPiana writes that in 1886 “Langdell was still the Baconian scientist, examining the cases, extracting principles from them through inductive reasoning, and then ordering the principles to aid understanding.” LAPIANA, *supra* note 19, at 56.

50. *Professor Langdell’s Address*, *supra* note 8, at 48.

51. Roscoe Pound would later describe this as a “proposition . . . that the law was to be learned through study of the authoritative legal materials themselves, not by study of what others had written about them, no matter how learned or eminent those others might be.” Roscoe Pound, *The Law School: 1817–1929*, in THE DEVELOPMENT OF HARVARD UNIVERSITY 472, 493 (Samuel Eliot Morison ed., 1930). Paul Carrington found Langdell’s premise to be “very questionable . . . assert[ed] in the face of considerable contrary evidence.” PAUL D. CARRINGTON, AMERICAN LAWYERS 279 (2012).

52. *Professor Langdell’s Address*, *supra* note 8, at 50.

¶23 In 1894, the *Harvard Graduates' Magazine* marked the twenty-fifth anniversary of President Eliot's appointment with articles by several Harvard deans. Langdell's contribution noted the law library's early glories and its deterioration between the death of Story in 1845 and the start of Eliot's tenure as president in 1869.<sup>53</sup> He then described some of the changes made in the library under his deanship<sup>54</sup> and the growth of collections, noting particularly that the library now held "at least three copies of all important English and American reports."<sup>55</sup>

### *Langdell's Librarian*

¶24 John Himes Arnold was the third full-time librarian appointed by Langdell, succeeding William Abbot Everett (1870–1871) and Abraham Walter Stevens (1871–1872). Arnold was appointed in 1872 and remained in the position until 1913, through the deanships of Langdell and James Barr Ames, and into that of Ezra Ripley Thayer.<sup>56</sup> He came to his position with little knowledge of law or libraries, reputedly telling his successor Edward Adams that "[h]e knew about as much about law books . . . as a cow."<sup>57</sup>

¶25 When Arnold retired, however, Dean Thayer wrote that his name would always be linked with those of Langdell and Ames: "Working in the closest cooperation with them, and like them utterly devoted to the interests of the School, he did so much to build up the present library that it stands today as a monument to him."<sup>58</sup> In his report for 1892–1893, Eliot praised Arnold's efforts and "remarkable knowledge of legal bibliography and of the best ways to buy law books both old and new."<sup>59</sup> In an article about Arnold's devotion to the library and efforts to build its collections, Joseph Beale concluded: "The library has been his life. In its service he

53. Langdell, *supra* note 9, at 492.

54. *Id.* at 494.

55. *Id.* at 497.

56. Yale's first full-time law librarian, Reverend William Atwater, was appointed in 1873. There is some suggestion that the school would have preferred to hire "some elderly man" at a lower salary. Brock, *supra* note 13, at 347. Columbia's first law librarian, Robert Senftner, was appointed in 1878, but within a year switched positions with the law school registrar. See A HISTORY OF THE SCHOOL OF LAW COLUMBIA UNIVERSITY 426 n.27 (1955). At Iowa, although faculty began advocating for a full-time librarian in 1872, the first full-time librarian, a graduate of the law department, Jennie Wilson, was hired in 1891. Jones, *supra* note 38, at 354. Cornell's first law librarian, Alexander Fraser, a graduate of Dalhousie Law School, was appointed in 1893. E.E. Willever, *Law Library at Cornell University*, 4 CORNELL L.Q. 133, 136 (1919). Michigan appointed Professor Victor H. Lane, who continued to teach, as law librarian in 1899. ELIZABETH GASPARD BROWN, LEGAL EDUCATION AT MICHIGAN 1859–1959, at 369 (1959). Northwestern appointed Frederick B. Crossley as "Secretary and Librarian" in 1901. JAMES A. RAHL & KURT SCHWERIN, NORTHWESTERN UNIVERSITY SCHOOL OF LAW—A SHORT HISTORY 70 (1960). The first law librarian listed for the University of Missouri-Columbia was Ethel Black Kynaston, appointed in 1914. See WILLIAM F. FRATCHER, THE LAW BARN 73 (2d ed. 1988). On the qualifications of early law librarians, generally, see Brock, *supra* note 13, at 347.

57. Edward B. Adams, *John Himes Arnold*, 14 LAW LIBR. J. 95, 95 (1921).

58. Ezra Ripley Thayer, *The Law School*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1912–13, at 120, 122 (1914).

59. Charles W. Eliot, *President's Report for 1892–93*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1892–93, at 32 (1894).

has bought, cared for and protected books for over forty years, until he is well called the 'Nestor of law librarians,' 'the Dean of the profession.'"<sup>60</sup>

¶26 Beale described Arnold's apprenticeship in law book buying under Langdell, emphasizing the small funds available for the library when he arrived at Harvard as well as how "Langdell's canny Scotch thrift saved what money there was from being wasted."<sup>61</sup> Arnold was trained to spend his money wisely at auctions and on visits to booksellers in the United States and abroad. "He has remained throughout an indefatigable searcher and a careful buyer."<sup>62</sup> In 1930, Roscoe Pound credited Arnold with "the present primacy of the Library among the law libraries of the world."<sup>63</sup> Eldon James, who served as law librarian from 1923 to 1942, wrote that "to John Himes Arnold, for 40 years Librarian of the Harvard Law School, more than to any other single person, the credit for the development of the Library must go."<sup>64</sup> Charles Warren gave "chief credit" for growth in the library collections after 1870 to Arnold's "indefatigable labors and expert skill,"<sup>65</sup> but noted that Arnold himself praised Langdell for his "constant interest and affection for [the library,] . . . his great knowledge of the literature of the law, and his willingness to devote much time to consideration of the needs of the Library . . ."<sup>66</sup> Robert Anderson, who began working in the library in 1892, noted that Langdell closely supervised book purchases: "No books were bought until the Dean could be convinced that they were actually needed and were going to be used."<sup>67</sup>

¶27 In 1902, Arnold was awarded an honorary degree by Harvard, which he displayed with his byline in a 1907 article about the library.<sup>68</sup> On his retirement, the Law School Association voted to present his portrait to the school.<sup>69</sup> His biography, based on Beale's 1913 article, was included with those of the law faculty members in *The Centennial History of the Harvard Law School*, published in 1918.<sup>70</sup>

¶28 We know little about Arnold's relationship with Langdell. Warren wrote that in 1891 Langdell described Arnold as "a Librarian whose devotion to the School knew no limits."<sup>71</sup> Yet Warren indicated that the comment was made in reference to Arnold's "making of the catalogue," not in acknowledgment of his work in the library but for compiling the *Quinquennial Catalogue of Officers and*

60. Joseph H. Beale, *How Mr. Arnold Collected the Law Library*, HARV. GRADUATES' MAG., Sept. 1913, at 38, 41, reprinted in large part in CENTENNIAL HISTORY, *supra* note 14, at 189; see also Adams, *supra* note 57, at 95 ("certainly [Arnold] is the first real librarian of a law school in this country . . . the Dean of the profession, the Nestor of law librarians.").

61. Beale, *supra* note 60, at 38. On Arnold's apprenticeship, see also Martin, *supra* note 15, at 36.

62. Beale, *supra* note 60, at 39. Beale describes one of Arnold's book-buying trips to England and Ireland.

63. Pound, *supra* note 51, at 500.

64. James Remarks, *supra* note 43, at 161. James also noted the contributions of Langdell and Ames.

65. 2 WARREN, *supra* note 11, at 489.

66. Arnold, *supra* note 13, at 235.

67. Anderson, *Harvard Law School Library*, *supra* note 34, at 283.

68. Arnold, *supra* note 13, at 241.

69. Beale, *supra* note 60, at 41.

70. See Appendix I: *Lives of Harvard Law School Teachers*, in CENTENNIAL HISTORY, *supra* note 14, at 175, 189.

71. 2 WARREN, *supra* note 11, at 495.

*Students, 1817–89*, which had been published in 1890.<sup>72</sup> In his final report as dean in 1893–1894, Langdell mentioned the death of assistant librarian George Arnold, John’s brother, who had worked at the law school since 1872.<sup>73</sup> None of the annual reports made personal mention of the contributions of John Arnold.

¶29 Pound noted that as dean Langdell served as “executive organ and educational leader” of the law school, “assisted by the Librarian after 1872.”<sup>74</sup> Terry Martin wrote that Arnold served as secretary of the school, while “his staff served as assistant secretaries, reading scholarship applications to Langdell, taking attendance in class, and tabulating grades at examination time.”<sup>75</sup> Over time, the dean’s administrative work increased and “the growth of the Library made it impossible for the Librarian, even with a competent and efficient assistant, to go on doing the work of secretary to the dean.”<sup>76</sup> Even so, Arnold was relieved of his secretarial duties only in 1896, after Ames had succeeded Langdell as dean and a full-time secretary was appointed.<sup>77</sup>

### Library Impacts of the Case Method and the Casebook

¶30 In a report prepared for the Survey of the Legal Profession in 1953, Albert Harno wrote: “Measured by perceptible standards, progress in the legal education in America up to 1870 is disappointing.”<sup>78</sup> Steve Sheppard’s review of nineteenth-century American legal education notes that the courses offered to law students “assumed a variety of forms, occasionally including spontaneous questioning of students, but more often asking for no more than recitation of prepared readings from the treatises.”<sup>79</sup>

¶31 The recitation method required more student participation than lectures.<sup>80</sup> However, unlike the case method, which required students to prepare for class by

72. *Id.* at 156.

73. C.C. Langdell, *The Law School*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1893–94, at 121, 134 (1895).

74. Pound, *supra* note 51, at 505.

75. Martin, *supra* note 15, at 35. When the law school got its first telephone, it was installed in the library. *Id.* at 36. For a full description of the library staff’s role supporting the dean and faculty (whose desks were within the Austin Hall library), see Anderson, *Harvard Law School Library*, *supra* note 34, at 281–85.

76. Pound, *supra* note 51, at 505.

77. *Id.*

78. ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES: A REPORT PREPARED FOR THE SURVEY OF THE LEGAL PROFESSION 52 (1953).

79. Steve Sheppard, *An Introductory History of Law in the Lecture Hall*, in 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES 7, 20 (Steve Sheppard ed., 1999). For detailed discussion of pre-Langdell teaching methods, see *id.* at 13–23.

John Langbein has noted the recitation method’s early connections to the legal treatise and its role as a significant form of literature in the nineteenth century. See John H. Langbein, *Law School in a University: Yale’s Distinctive Path in the Later Nineteenth Century*, in HISTORY OF THE YALE LAW SCHOOL: THE TRICENTENNIAL LECTURES 53, 54–56 (Anthony T. Kronman ed., 2004) (“Kent and Story . . . , by turning their [lectures] into texts, facilitated the shift to the textbook-based system of instruction that characterized the early university law schools.” *Id.* at 49, n.129); see also Richard A. Danner, *Oh, the Treatise*, 111 MICH. L. REV. 821, 824–32 (2013) (discussing the importance of legal treatises in the nineteenth century).

80. Harvard president Eliot later described lectures in law as “the unaided lecture in the least desirable form.” CHARLES W. ELIOT, UNIVERSITY ADMINISTRATION 178 (1908) (N.W. Harris Lectures for 1908).

reading original sources—the cases themselves—the recitation method asked students to read and memorize commentary on the law found in published treatises.<sup>81</sup> Instructors assigned chapters to be read in advance. In class “students were called on to recite what they had learned and to answer questions about it.”<sup>82</sup> Cases might be used to illustrate points made in the works they studied.<sup>83</sup> Law schools using the case and recitation method purchased multiple copies of practitioner treatises and lent them to students, a practice that continued at Harvard until Langdell’s arrival.<sup>84</sup> By the 1860s, lectures had replaced the text and recitation method as the primary means of instruction at Harvard,<sup>85</sup> but text and recitation continued to be employed at other law schools, notably at Yale.<sup>86</sup>

¶32 Langdell introduced the method of teaching from cases to Harvard in fall 1870, using a preliminary version of his contracts casebook; the first formal edition was published by Little, Brown and Company in 1871. Harno wrote that “case

81. On the connection to using practitioners as part-time instructors, Langbein pointed out that the text and recitation method “effectively transferred the responsibility for coverage from the instructor to the treatise writer. The instructor simply assigned the stuff and then paced the students in recitation sessions, but did not have to be a master of what he taught.” Langbein, *supra* note 79, at 55.

Schlegel wrote that university-affiliated law schools staffed with full-time academic faculty “sprang up like mushrooms after a rain during the years around 1890.” John Henry Schlegel, *Between the Harvard Founders and the American Legal Realists: The Professionalization of the American Law Professor*, 35 J. LEGAL EDUC. 311, 313 (1985); see also WILLIAM R. JOHNSON, *SCHOOLED LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES* 124 (1978) (“A law school which introduced the case method while still relying on practitioners to staff its faculty found itself criticized because only career law professors trained in the approved method could use the case method successfully.”); Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 NEW ENG. L. REV. 251, 274–75 (2005) (attributing the hiring of full-time law professors focused on teaching and research to the influences of German educational methods at Harvard and other universities). However, but for the dean, Yale “would not have its first full-time faculty member until Arthur Corbin in 1903, a generation after Eliot and Langdell had begun moving the Harvard Law School to the model of a full-time faculty.” Langbein, *supra* note 79, at 63.

82. Langbein, *supra* note 79, at 55.

83. FREDERICK C. HICKS, *HISTORY OF THE YALE LAW SCHOOL THROUGH 1815*, at 150 (2001). Hicks originally published his history in four short installments between 1935 and 1938. This and later references are to a compilation edition published in 2001.

84. As noted above, Langdell quickly ended the practice of purchasing library copies of textbooks for loan to students. Langdell, *supra* note 35, at 65.

85. KIMBALL, *supra* note 22, at 130. Rothstein notes that for universities generally, American scholars returning from study at German universities “brought back the use of the lecture and the seminar as teaching devices more appropriate for the pursuit of higher education than the cramping textbook and recitation method hitherto enthroned by tradition.” SAMUEL ROTHSTEIN, *THE DEVELOPMENT OF REFERENCE SERVICES THROUGH ACADEMIC TRADITIONS, PUBLIC LIBRARY PRACTICE, AND SPECIAL LIBRARIANSHIP* 8 (1955).

86. Hicks describes the “Yale System,” which was employed well into the twentieth century, with excerpts from publications of the period describing and justifying the approach. HICKS, *supra* note 83, at 148–51. Only in 1912 did the law faculty formally endorse the use of the case method in all three years of the program for those instructors who preferred it; earlier it was used only in upper class courses. *Id.* at 245–47; see also George Chase, *The New York Law School and the Harvard Law Review*, 26 AM. L. REV. 155, 156–57 (1892) (describing the recitation method at New York Law School).

study and case instruction as an exclusive all-absorbing educational method came in with Langdell.”<sup>87</sup> Erwin Griswold found that, for Langdell,

“the law” was to be found in books. The library of the law school was its laboratory. And the books in which “the law” could be found by the resourceful student were the decisions of courts which spoke with authority. For convenience, and to save wear and tear on the library books, these cases were gathered together into case books. But it was cases that the student studied.<sup>88</sup>

### *At Harvard*

¶33 In the first full edition of his contracts casebook, Langdell stated that to meet his goals as a teacher of law, it was necessary “to make a series of cases, carefully selected from the books of reports, the subject alike of study and instruction.” Sending students to the library to read the cases “was quite out of the question with a large class, all of whom would want the same books at the same time.” Not only would the library have insufficient copies of books to meet the demands of a large class, but

[a]s [a student] would always have to go where the books were, and could only have access to them there during certain prescribed hours, it would be impossible for him to economize his time or work to the best advantage; and he would be liable to be constantly haunted by the apprehension that he was spending time, labor, and money in studying cases which would be inaccessible to him in after life.<sup>89</sup>

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87. HARNO, *supra* note 78, at 54 (citing several earlier instances of using cases for instruction in university law schools); *see also* Sheppard, *supra* note 79, at 25–31. Willard Hurst noted that Langdell was the first to “shape the whole program of a leading law school” with the method. J. WILLARD HURST, *THE GROWTH OF AMERICAN LAW* 261 (1950).

The case method also fit in with Eliot’s reforms at Harvard:

Eliot’s contribution to modern professional education consisted of a struggle on two fronts: against the expository lecture tradition in the schools, on the one hand, and against the independent apprenticeship outside the schools, on the other. The development of laboratory, clinical, and case method instruction in the professional schools (“cultivating the mental powers of close attention through prolonged investigations at close quarters with the facts, and of just reasoning on the evidence”) dealt a fatal blow to both the lecture and treatise academies and the apprentice system. Neither of the latter could guarantee direct student participation in the professional project as well as systematic and comprehensive instruction.

Anthony Chase, *Origins of Modern Professional Education: The Harvard Case Method Conceived as Clinical Instruction in Law*, 5 *NOVA L.J.* 323, 327 (1981).

88. Erwin N. Griswold, *Law Schools and Human Relations*, 1955 *WASH. U. L.Q.* 217, 219. After describing the kinds of cases Langdell selected for his contracts casebook, Paul Carrington observed that “[t]he casebook was in Langdell’s mind a sort of analogue to the laboratory, a place for the testing of hypotheses.” CARRINGTON, *supra* note 51, at 280. Ed Rubin described casebooks as “a portable selection of the primary sources that revealed the principles of common law; if the library was the law student’s laboratory . . . then the casebook was a sampling of its contents, like a box of specimens that students could carry to class and study at home.” Edward Rubin, *Should Law Schools Support Faculty Research*, 17 *J. CONTEMP. LEGAL ISSUES* 139, 157 (2008).

89. C.C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS WITH REFERENCES AND CITATIONS*, at v–vi (1871) [hereinafter *LANGDELL* (1871 ed.)]. The 1871 preface was reprinted in the second edition of the contracts casebook in 1879. C.C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS: WITH A SUMMARY OF THE TOPICS COVERED BY THE CASES*, at [vii] (2d ed. 1879). Langdell’s other casebooks included only short prefaces that discussed neither teaching methodologies nor the benefits of the casebook.

In addition, “the cases which are useful and necessary for this purpose at the present day bear an exceedingly small proportion to all that have been reported. The vast majority are useless, and worse than useless, for any purpose of systematic study.”<sup>90</sup> For Langdell, the law library might be lawyer’s laboratory and printed books “the sources of all legal knowledge,”<sup>91</sup> but the case method of instruction required selected cases packaged in casebooks.

¶34 By 1879, Langdell had compiled casebooks on contracts, sales of personal property, equity pleading, and equity jurisdiction. Because the case method was used only at Harvard, the other casebooks published before 1891 were compiled by Harvard professors James Barr Ames (bills and notes, partnership, pleading at common law, torts, and trusts), John Chipman Gray (property), and William A. Keener (quasi-contracts).<sup>92</sup> Even as other law schools adopted the case method, there was little market for commercially published casebooks compared to the markets for court reports, textbooks, and treatises. As a result, most early casebooks were compiled and published locally by individual instructors.<sup>93</sup>

¶35 What were the impacts of the case method and casebooks on the Harvard Law Library? Langdell pointed out in his contracts casebook preface that sending an entire class of students to the library to read cases “was quite out of the question.”<sup>94</sup> Yet even with casebooks available for some courses,<sup>95</sup> Langdell’s and Eliot’s annual reports regularly described heavy use of the library. Austin Hall, the first building constructed specifically for Harvard Law School, opened in 1883. Eugene Wambaugh noted how the case method contributed to the need for a new building:

It is to the case system, rather than to any increase in the number of students, that one must attribute the next change—the removal from Dane Hall and the building of Austin Hall. The case system had caused, or at least had encouraged, a great growth in the library

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90. LANGDELL (1871 ed.), *supra* note 89, at vi.

91. See *Professor Langdell’s Address*, *supra* note 8, at 50.

92. For a list of casebooks published prior to 1908 (when West Publishing Company began its American Casebook Series), see Douglas W. Lind, *An Economic Analysis of Early Casebook Publishing*, 96 LAW LIBR. J. 95, 111–24, 2004 LAW LIBR. J. 6, app.

93. For discussion of the early market for commercially published casebooks and costs, see *id.* at 97–99, ¶¶ 6–9. Langdell’s own casebooks on contracts and sales were published by Little, Brown; those on equity jurisdiction and equity pleading were privately published. Konefsky and Schlegel found that the “ultimate triumph” of the case method became apparent only after West saw a large enough market to publish a series of casebooks. Alfred S. Konefsky & John Henry Schlegel, *Mirror, Mirror on the Wall: Histories of American Law Schools*, 95 HARV. L. REV. 833, 837 (1982) (citing *The American Casebook Series*, 2 AM. L. SCH. REV. 276 (1909)).

94. LANGDELL (1871 ed.), *supra* note 89, at vi. In 1880, President Eliot noted that faculty reliance on library books for course readings was also problematic elsewhere at Harvard, but he praised law professors for creating casebooks to overcome the problem, while facilitating study of original sources and “emancipat[ing] the student from treatises and other secondhand authorities.” Charles W. Eliot, *President’s Report for 1879–80*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1879–80, at 3, 16 (1881).

95. In 1893, Lloyd McKim Garrison wrote that, at Harvard, “[t]he number of cases to be read has made it necessary for the professors to prepare numberless ‘case-books.’ . . . In the courses in which these case-books do not exist, such as Constitutional Law, the resources of the library are often severely taxed.” Lloyd McKim Garrison, *Methods of Instruction at American Law Schools III: The Law School of Harvard University*, 6 COLUM. L. TIMES 194 (1893).



and in the use of books by the students. It became the students' course of business to spend the whole day in the reading room. It was desirable to have a seat in that room for each student.<sup>96</sup>

The case method seems therefore to have contributed to Harvard students' heavy dependence on the library both as a place to study and to use the collections, primarily the duplicate reports Langdell purchased. The importance of the law library at Harvard in the late 1880s was described in correspondence published in the *Columbia Law Times*. Describing his daily work at Harvard in 1887, a law student identified as M. pointed out: "The work room of the school is in the library itself. On all sides are reports, digests, text books, and statutes. Every student has unrestricted access to these books. Duplicate copies and sets are held in reserve in the inner fire proof stack."<sup>97</sup>

### *Library Use at Columbia*

¶36 Demands on the library were heavy at Columbia even prior to adoption of the case method in 1892. In 1889, a Columbia law student described "the inconvenience attendant upon the use of the law library, so long as the present system exists of leaving the books of reference thrown upon the table . . . [T]he number of readers is entirely disproportionate to the number of books at their disposal."<sup>98</sup> The same year, Theodore Dwight, who led the Columbia law school for more than thirty years, noted with pride that "[t]he library is open to all students every secular day in the year . . . from eight o'clock in the morning until ten o'clock at night. The law students in large numbers make use of the books, not merely in law, but in history and political science."<sup>99</sup>

¶37 The use of the Columbia library in 1892 could be compared with that in the 1870s, as described by Thomas Fenton Taylor:

The law library consisted of but a few hundred volumes in a room supplied with one long table and not over twenty chairs. The books used during the day were left on the table, where by night as many as one hundred volumes might have accumulated. There were, on the average, not more than ten students using the library at one time. The room was usually empty; but just before or after a recitation it was a popular resort. The order was not good, loud conversations—often on politics—were carried on, tobacco was freely used, and there was no place to leave hats or coats. Many of the students never used the library. Those serving in offices hurried to the School just as recitations began, and left the instant they were finished.<sup>100</sup>

¶38 In 1892, George Chase, who left Columbia to found New York Law School after William Keener arrived from Harvard and introduced the case method,<sup>101</sup> noted that it was impossible for the library of a large law school "to enable all the

96. Eugene Wambaugh, *Langdell Hall and the Earlier Buildings of the Harvard Law School*, 20 GREEN BAG 297, 300 (1908).

97. *Correspondence*, 1 COLUM. L. TIMES 24, 24 (1887) (letter from M., describing a law student's daily work at Harvard).

98. *See Correspondence*, 2 COLUM. L. TIMES 180, 182 (1889) (letter from Del.).

99. Theodore W. Dwight, *Columbia College Law School New York*, 1 GREEN BAG 141, 159 (1889).

100. Thomas Fenton Taylor, *The "Dwight Method,"* 7 HARV. L. REV. 203, 205–06 (1893).

101. Sheppard, *supra* note 79, at 21–22.

members of a class to read the same cases on the same day.”<sup>102</sup> The introduction of the case method at Columbia increased students’ difficulties in locating cases assigned for class. The *Columbia Law Times* reported on a “movement toward a less selfish and more systematic use of the volumes in the library,”<sup>103</sup> which was embodied in an agreement signed by many of the students:

We, the undersigned, recognizing the difficulty in obtaining needed reports under the present system in vogue in the library, and having been frequently under the necessity of making a long search over the tables for such books, do hereby agree, for the purpose of mutual benefit, not to remove from the shelves for our personal use more than six books at a time, and to return to its place each book as soon as we, individually, have finished it.<sup>104</sup>

¶39 By 1898, George Kirchwey, who would succeed Keener as dean in 1901, found the law library to be of greater importance than the lecture hall: “To-day the lectures are but incidents in the work of the day, gathering and coordinating work already done and stimulating to further labor—the real workshop of the school, the library, being thronged with earnest students from morning till night.”<sup>105</sup> According to Kirchwey, Columbia students came to the library to read more than cases:

As the sources of the law, [Columbia] finds the reports the most fruitful and stimulating as well as the most authoritative collection of material for study and discussion, but she does not make a fetish of them. Cases, text-books, lectures, briefs, statutes, the wisdom of the wise, the folly of the foolish—all is grist for her mill.<sup>106</sup>

### *Debates at ABA Meetings*

¶40 As more schools considered adopting the Harvard model,<sup>107</sup> the case method was debated in legal journals and at meetings of the American Bar Association (ABA). The implications for library collections and on study space were mentioned only rarely, however.

¶41 In an early article presenting the merits of the case method, Sydney Fisher, who had attended Harvard Law School, pointed out that “the case system, like many other good things in this world, is rather expensive.” A law school needed study space for the students and, while it might not require “a very large assortment of text-books, yet the English reports, the United States reports, and the reports of every State, are absolutely essential. There should be two copies of every volume; and if the students were very numerous, there might have to be three copies.” Fisher

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102. Chase, *supra* note 86, at 157. Despite his opposition to the case method, Chase did not disparage the casebooks used by its advocates: “To avoid this difficulty, I have for some time been engaged, with my associates, in preparing a collection of leading cases upon the various leading topics of chief importance.” *Id.* See also George Chase, *To the Editor of the Harvard Law Review*, 1 COUNSELLOR 82 (1891).

103. Editorial, 6 COLUM. L. TIMES 17, 17 (1892).

104. Notes, 6 COLUM. L. TIMES 18, 18 (1892).

105. George W. Kirchwey, *The Columbia Law School of To-Day*, 10 GREEN BAG 199, 201 (1898).

106. *Id.* at 209.

107. See Schlegel, *supra* note 81, at 314–15 (describing the “missionaries” who brought the case method to other law schools).

concluded that “[t]he expense of the system is always made a serious objection to it; and the only answer is that medical colleges, chemical laboratories, and other apparatus of good education are also expensive.”<sup>108</sup>

¶42 The ABA’s Standing Committee on Legal Education issued major reports on university legal education in 1879,<sup>109</sup> 1891,<sup>110</sup> and 1892,<sup>111</sup> as more law schools began to use the case method. The Section of Legal Education was formed in 1893 and the same year began offering papers and reports at ABA annual meetings.

¶43 The Committee on Legal Education’s lengthy 1892 report focused on the components of “a proper course of study for American Law Schools”<sup>112</sup> and included comments from representatives of the law schools. Iowa’s Emlin McClain, who opposed exclusive reliance on the case method, pointed out:

The study of cases will be greatly facilitated by putting into the hands of students volumes of selected cases reprinted for their use on particular subjects. In a large school this is the only practicable method of enabling students to successfully pursue this kind of study. No matter how large the law library may be, it cannot contain enough duplicate sets of reports to enable all the students within a reasonable time to consult particular cases to which their attention is directed.<sup>113</sup>

¶44 In 1894, McClain’s colleague Martin Joseph Wade made a similar point to the Section of Legal Education:

An ordinary law library with the reported cases of all the States and the English common law reports is not adequate to the needs of an ordinary law student. With 225 students in the University of Iowa, it is impossible for them to get the books they want. I think there should be a collection made of the leading cases and published in convenient volumes so that each student may have one, and thus save him the necessity of waiting his turn in the library to get a book that he may want.<sup>114</sup>

¶45 Also in 1894, Yale Law School professor Simeon Baldwin delivered a paper on “Law Libraries and How to Use Them.”<sup>115</sup> Baldwin was opposed to reliance on the case method,<sup>116</sup> and Yale did not formally endorse the case method for use in all

108. Sydney G. Fisher, *Teaching of Law by the Case System*, 36 AM. L. REG. 416, 419–20 (1888). In contrast, in an 1894 discussion of teaching methods, Edward J. Phelps of Yale pointed out that his ideal law school would require only a small library and would be “jealous of new acquisitions.” Edward J. Phelps, *Methods of Legal Education I*, 1 YALE L.J. 139, 142 (1892).

109. *Report of the Committee on Legal Education and Admissions to the Bar*, 2 ANN. REP. A.B.A. 209 (1879).

110. *Report of the Committee on Legal Education*, 14 ANN. REP. A.B.A. 301 (1891).

111. *Report of the Committee on Legal Education*, 15 ANN. REP. A.B.A. 317 (1892).

112. *Id.* at 317.

113. *Id.* at 374 (comments of Emlin McClain).

114. *Proceedings of the Section of Legal Education*, 17 ANN. REP. A.B.A. 351, 386 (1894) (comments of Martin Joseph Wade).

115. Simeon E. Baldwin, *Law School Libraries, and How to Use Them*, 17 ANN. REP. A.B.A. 431, 433 (1894).

116. See *Proceedings of the Section of Legal Education*, *supra* note 114, at 376–77 (comments of Simeon Baldwin); Simeon E. Baldwin, *Teaching Law by Cases*, 14 HARV. L. REV. 261 (1900); Simeon E. Baldwin, *Study of Elementary Law, the Proper Beginning of a Legal Education*; 13 YALE L.J. 1 (1903) (published version of President’s Address, Association of American Law Schools, Aug. 26, 1903); Simeon E. Baldwin, *Education for the Bar in the United States*, 9 AM. POL. SCI. REV. 448 (1915).

three years of its program until 1912.<sup>117</sup> In his 1894 paper, however, Baldwin sounds much like Langdell in emphasizing the need for a law library to hold comprehensive collections of American and English reports (in duplicate if necessary) and the importance of books and the cases they contain for the science of law:

Our profession is not only explained, like other sciences, in books. For the American and the Englishman it is made by books. It is made up of or from the opinions of Judges in reported cases. Every such report fills to us the place of the specimen to the naturalist. But he may often meet a hundred specimens, in a summer's walk, each like the other in all important characteristics. We can turn to but one case for the introduction of this or that rule or doctrine into our law, or for its best statement or clearest application.<sup>118</sup>

¶46 In 1894, Section of Legal Education chair Henry Wade Rogers offered a “review of the state of legal education,” which pointed out that few law schools provided much information to prospective students about their libraries:

Very many of the Law Schools are content to make no statement of the number of volumes in their libraries. The statement put forth by some of them reads something like this: “The school has a fine and steadily-increasing library of the best of law books. This is expected to be soon greatly enlarged.” This saves the labor of an exact inventory, and seems to answer the inquisitiveness of the average student not yet accustomed to cross-examine.<sup>119</sup>

¶47 Over the next few years, however, there were signs of increasing recognition of the library's importance. In 1895, James Bradley Thayer told the Section of Legal Education that university legal education required “that generous libraries shall be collected at the universities suited to all the ordinary necessities of careful legal research; and it also means gathering at some one point in the country, or at several points, the best law library that money can possibly buy.”<sup>120</sup> In a 1900 paper, Michigan dean Harry Hutchins found that a notable result of the changes in legal education was that “the library of the law school has become its workshop. The student early gets the notion, the value of which the practitioner can certainly appreciate, that nothing should be taken by him second-hand, but that he should go to the sources for the verification of propositions.”<sup>121</sup>

¶48 In 1902, tracking the first ten years of the Section of Legal Education, chair Ernest Huffcut referenced Rogers's 1894 comments about law school libraries, finding “encouraging” evidence of progress in law library development:

From all the sources of information available I estimate that there are now twenty-five schools possessing libraries exceeding five thousand volumes each, and of these there are twelve that number from five to ten thousand, nine that number from ten to twenty thousand, one from twenty to thirty thousand, two from thirty to forty thousand, and one

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117. See HICKS, *supra* note 83, at 245–47. Baldwin's biographer called the 1912 faculty decision to allow the case method in all classes “the severest defeat of all the years he had been associated with the Law School.” FREDERICK H. JACKSON, SIMEON EBEN BALDWIN 128 (1955).

118. Baldwin, *supra* note 115, at 433.

119. Henry Wade Rogers, *Address Before the Section of Legal Education*, 17 ANN. REP. A.B.A. 389, 406 (1894). Rogers provided information regarding libraries at those schools that published it.

120. James Bradley Thayer, *Address Before the Section of Legal Education*, 18 ANN. REP. A.B.A. 409, 427 (1895) (as chair, listing the things needed for university legal education).

121. Harry B. Hutchins, *The Law School as a Factor in University Education*, 23 ANN. REP. A.B.A. 490, 498 (1900).

upwards of sixty thousand. In 1894 our Chairman was able to name but six schools whose libraries exceeded five thousand volumes.<sup>122</sup>

¶49 In 1977, historian Harold Hyman told an audience of law professors that the “new style law libraries” of the late nineteenth century “fit perfectly Langdell’s basic concept that law was a science, and the law library, the law practitioner’s and student’s laboratory.”<sup>123</sup> Eventually, however, some criticized how the case method affected library use. In 1938, William R. (Bob) Roalfe wrote: “Unquestionably conditions are radically wrong in the law schools where the libraries are merely convenient places in which students may read their case books . . . .”<sup>124</sup> Tom Woxland found that the case method had become antithetical to the central role of the library proclaimed by Langdell. For Woxland, “the case method . . . was designed to get the students back to the law’s primary sources, and the library had always been the repository of those sources.” Yet reliance on casebooks for instruction eventually “made library research . . . largely irrelevant in modern legal education” and turned law libraries into “study halls for students carrying casebooks, rather than working collections heavily researched by student-scholars.”<sup>125</sup> Others disagreed. In 1951 attorney Laurent Frantz, who would become an editor with Bancroft-Whitney, wrote:

Langdell himself recognized the library implications of his methods much more rapidly than did many of his imitators. Among the first steps in his reform program [was] the launching of the most spectacular library expansion program in the school’s history. . . . The case method revolution converted the library from a minor appendage of legal pedagogy into its central organ.<sup>126</sup>

¶50 Anthony Chase argued that “Eliot and Langdell both know [sic] well enough that the law library was not the proper workshop of professional legal education nor were the printed books which were, in effect, the laboratory manuals of case method teaching to be found in the library.”<sup>127</sup> Students prepared for class with their casebooks, not the books shelved in the library.

122. Ernest W. Huffcut, *A Decade of Progress in Legal Education*, 25 ANN. REP. A.B.A. 529, 540 (1902).

123. Harold M. Hyman, *No Cheers for the American Law School—A Legal Historian’s Complaint, Plea, and Modest Proposal*, 71 LAW LIBR. J. 227, 228 (1978). In a follow-up comment, he noted the connections between Langdell’s educational reforms, the bar’s concerns regarding reporting of cases, the impacts of West Publishing Company, and “professional librarianship,” pointing out that the first edition of the Dewey Decimal System was published during the first decade of Langdell’s deanship at Harvard. *Id.*

124. William R. Roalfe, *The Relation of the Library to Legal Education*, 31 LAW LIBR. J. 141, 149 (1938).

125. Thomas A. Woxland, *Why Can’t Johnny Research—or It All Started with Christopher Columbus Langdell*, 81 LAW LIBR. J. 451, 456 (1989). Despite his concerns, Woxland also found Langdell to be “the pivotal figure [both] in the history of law school pedagogy [and] in the development of the modern law school library . . . . It was his vision that the library should become the central organ of the law school, rather than a superfluous appendage.” *Id.*

126. Laurent B. Frantz, *The Education of the Law Librarian*, 44 LAW LIBR. J. 94, 95 (1951).

127. Chase, *supra* note 87, at 333–34.

## Harvard and the Changing Environment of University Libraries

### President Eliot's Role with the Law School and Library

¶51 Any consideration of Langdell's impacts at Harvard and on legal education must acknowledge both the educational environment at Harvard under the forty-year presidency of Charles W. Eliot and Eliot's role in what Langdell accomplished.<sup>128</sup> The changes at the law school aligned with Eliot's own interest in scientific analysis and his background as a scientist, and mirrored those in other departments and schools at Harvard during his long tenure as president.<sup>129</sup>

¶52 Eliot hired Langdell as Harvard's first law school dean within a year of his own return to the university and always credited Langdell, not his own influence, for the changes instituted in the law school in the 1870s. He had known Langdell when both were Harvard students, recalling later that Langdell "told me that law was a science: I was quite prepared to believe it. He told me that the way to study a science was to go to the original sources. I knew that was true, for I had been brought up in the science of chemistry myself."<sup>130</sup> Samuel Batchelder described the student Langdell's early enthusiasm for this proposition:

To his cronies he would dilate on this conviction with all the strength and fascination of his budding powers. Law was a science—a branch of human reasoning co-ordinated, arranged, and systematized. . . . At least one of his listeners has told how, standing before the fireplace at dusk, young Langdell would expound the scientific basis of law, totally forgetting in his intellectual enthusiasm the frugal bowl of bread and milk he had prepared for his physical supper.<sup>131</sup>

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128. Eliot served as Harvard president from 1869 to 1909. Prior to his presidency he presented his views on university and professional education in Charles W. Eliot, *The New Education*, 23 ATL. MONTHLY 199 (1869). On Eliot's appointment as Harvard president and early interactions with the law school, see 2 WARREN, *supra* note 11, at 354–62. On Eliot generally, see David S. Clark, *Tracing the Roots of American Legal Education—A Nineteenth-Century German Connection*, 51 RABELS ZEITSCHRIFT FÜR AUSLÄNDISCHES UND INTERNATIONALES PRIVATRECHT 313, 319 (1987) ("Of the two men [Langdell and Eliot], Charles Eliot was easily the more important."). See also Anthony Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HIST. 329, 346 (1979) ("Eliot . . . saw the changes which took place in legal education around 1870, and which are associated with Langdell's name, as part of something rather more complex. Historians and theorists of legal education have generally been unwilling to do so.").

129. Anthony Chase wrote:

Eliot was actively engaged in initiating and supporting reform in three different areas of the university—in the undergraduate science curriculum, in the law school and in the medical school. In all three areas, his reform efforts had the same objective: that of teaching students the methods and modes of analysis by which scientists, lawyers and doctors did their work rather than merely imparting information which a man in possession of those methods and analytic tools could readily obtain.

Chase, *supra* note 128, at 342–43.

130. *President Eliot's Address*, in HARVARD LAW SCH. ASS'N, *supra* note 8, at 60, 61. Later, he wrote: "Professor Langdell's method resembled the laboratory method of teaching physical science, although he believed that the only laboratory the Law School needed was a library of printed books." CHARLES WILLIAM ELIOT, A LATE HARVEST: MISCELLANEOUS PAPERS WRITTEN BETWEEN EIGHTY AND NINETY 54 (1924). In 1920, he observed that Langdell's "method of teaching was a direct application to intelligent and well-trained adults of some of their methods for children and defectives." Eliot, *supra* note 21, at 523 (referring to the teaching methods of Maria Montessori and others).

131. Batchelder, *supra* note 11, at 438–39. "Himself a scientific man, [Eliot] was ready to subscribe to the proposition that the law is a science. He accepted, too, the corollaries [sic] that law must be studied from the original sources, namely, the reports . . ." *Id.* at 439.

¶53 Eliot not only hired Langdell and appointed him dean, but himself “guided the internal transformation of the [law] school in conformity with his view of a properly rigorous academic environment.”<sup>132</sup> According to Anthony Chase, “Eliot, more than anyone else during the next fifteen years, not only defended the Law School and the case method but was in a position to do so effectively.”<sup>133</sup> In his history of American legal education, Robert Stevens found that Langdell “frequently seemed unaware of the revolution he was engendering,” and that it was because of Eliot’s efforts that Harvard’s method was eventually accepted at other schools.<sup>134</sup>

¶54 Roscoe Pound wrote that “one who reads the annual reports of Langdell in comparison with those of Eliot must feel a conviction that Langdell’s work was only part of a large and far-reaching plan of University development.”<sup>135</sup> Eliot’s own reports to Harvard’s overseers often highlighted matters raised in Langdell’s reports or elaborated on what the dean had written; sometimes his comments anticipated what Langdell would write later.

¶55 In his 1870–1871 annual report, before Langdell said it in print, Eliot wrote: “Law is emphatically a science, with a method and a history; it has a language of its own, and a voluminous literature.” The thought that law students were simply “‘Reading Law’ is therefore an absurdly inadequate description of legal study wisely conducted.”<sup>136</sup> In this environment the law school’s “rich Library is an indispensable aid to the student.”<sup>137</sup> In 1873, Eliot established his own law library metaphor. After noting that the law school’s “unsurpassed library makes [students] thoroughly familiar with the use of the tools of the profession,” he wrote: “The [Harvard]

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For an outline of the history of legal science, see Robert W. Gordon, *Legal Thought and Legal Practice in the Age of American Enterprise: 1870–1920*, in PROFESSIONS AND PROFESSIONAL IDEOLOGIES IN AMERICA 70, 82–97 (Gerald L. Geison ed., 1983) (The view that “legal science was just a weird fantasy of Langdell’s which caught on because science was prestigious in the late nineteenth century . . . is woefully misleading.” *Id.* at 82.). See also JOHNSON, *supra* note 81, at 104–05 (comparing Story’s conception of legal science as classification of legal doctrine with Langdell’s, which emphasized “a method of legal study and investigation”); Thomas C. Grey, *Langdell’s Orthodoxy*, 45 U. PITT. L. REV. 1, 5 (1983) (discussing continuity between Langdell’s ideas of legal science and those of Blackstone and Story).

132. LAPIANA, *supra* note 19, at 7. “For Eliot, Langdell’s love for the primary sources was not dangerous innovation but intelligent progress.” *Id.* at 26. “Both men accepted the proposition that law was a science best investigated and taught through examination of its original sources, the cases found in the books.” *Id.* at 16.

133. Chase, *supra* note 128, at 336 (1979) (“[I]n the face of considerable criticism from students, law professors, and members of the bar, the Harvard model for legal education could never have secured through [Langdell’s] virtual silence the ten to twenty years which were necessary for the institution to establish itself.” *Id.* at 339.).

134. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA* 36 (1983). William Keener, who became dean at Columbia in 1891, was also a major advocate of the case method:

Where Langdell and Ames remained silent under attacks and misrepresentations, Keener took up the cudgel and fought stoutly in print and before bar associations. His controversial writings were a chief factor for a better understanding of instruction through cases and accelerated the general acceptance of Langdell’s system with came later.

CENTENNIAL HISTORY, *supra* note 14, at 222–23.

135. Pound, *supra* note 51, at 478.

136. Charles W. Eliot, *President’s Report for 1870–71*, 46 ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1871, at 3, 17 (1872).

137. *Id.* at 18.

Corporation recognize that the library is the very heart of the School.”<sup>138</sup> Like Langdell’s laboratory metaphor, the heart metaphor is also cited by law librarians and others.<sup>139</sup> The following year, when Langdell first used the laboratory metaphor in his own annual report, Eliot argued that the usual comparisons between training in medicine and in law were fallacious. For law students, “the law library, and not the court or the law office, is the real analogue of the hospital for medical students.”<sup>140</sup>

¶56 In 1889–1890, when Langdell offered a detailed look at the twenty years of his deanship, Eliot’s own report referred the overseers to Langdell’s comments, highlighting the dean’s description of the law library that “will interest any one [sic] who habitually uses a professional library.”<sup>141</sup> In 1890–1891, Eliot wrote in greater detail about the library, first noting the need for a larger reading room<sup>142</sup>

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138. Charles W. Eliot, *President’s Report*, 48 ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1872–73 at 3, 16, 17 (1874). He also highlighted the hiring of “a responsible and competent librarian (not, as formerly, a student) who devotes his whole time to the delivery and care of the books.” *Id.* at 17.

139. See especially Beatrice A. Tice, *The Academic Law Library in the 21st Century: Still the Heart of the Law School*, 1 UC IRVINE L. REV. 157 (2011). In 1962, Myron Jacobstein wrote that, at least in terms of budgets, “the law library is not the heart of the law school, but it is treated like an appendix and is the first item to be cut.” J. Myron Jacobstein, *The Role of the Law Schools in the Education of Law Librarians*, 55 LAW LIBR. J. 209, 211 (1962); see also Jill Mubarek, Diane Sapienza & Robert Shimane, *Gerontology and the Law: A Selected Bibliography*, 73 LAW LIBR. J. 255, 270 (1980) (“When the first modern American law school was founded a century ago, at Harvard under Christopher Columbus Langdell, the law library was deemed the heart of the school.”).

In 1940, the ABA Council of Legal Education and Admissions to the Bar published a list of “factors for consideration in approving law schools . . . for its own guidance, and that of schools applying for approval.” STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION: FACTORS BEARING ON THE APPROVAL OF LAW SCHOOLS BY THE AMERICAN BAR ASSOCIATION 2 (1940). The factors included a statement that “[i]t is a basic principle of legal education that the library is the heart of a law school,” *id.* at 6, which appeared in later editions of the pamphlet published between 1943 and 1952. In 1957, the statement changed to “[i]t is a basic principle of legal education that the library is the laboratory of a law school . . . .” STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION: FACTORS BEARING ON THE APPROVAL OF LAW SCHOOLS BY THE AMERICAN BAR ASSOCIATION 7 (1957). The reference to “laboratory” remained until new standards were promulgated in 1972. See generally GLEN-PETER AHLERS, THE HISTORY OF LAW LIBRARIES IN THE UNITED STATES: FROM LABORATORY TO CYBERSPACE 91–101 (2002).

140. Charles W. Eliot, *President’s Report*, 49 ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1873–74, at 3, 27 (1875); see also Clark, *supra* note 128, at 326 (“Eliot favored a classroom laboratory method, with its inductive reasoning process. . . . Instructors and students were to work together in developing general principles from concrete cases.”).

141. Charles W. Eliot, *President’s Report for 1889–90*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1889–90, at 3, 24 (1890).

142. Charles W. Eliot, *President’s Report for 1890–91*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1890–91 at 3, 20 (1892). Eliot expressed concern on several occasions over the impacts of the new method of instruction on the law library facilities. In 1876–1877, he noted that the library’s room was “already uncomfortably small for the number of readers who resort to it [and] it ought to be secured in a fire-proof building.” Charles W. Eliot, *President’s Report for 1876–77*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1876–77, at 3, 31–32 (1878). The following year he praised Langdell for an “inexpensive addition to the library-room [that] will probably make it possible to postpone for a time the erection of a new building.” Charles W. Eliot, *President’s Report for 1877–78*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1877–78, at 3, 38 (1879). Still, by 1879–1880 he found the building to be “inadequate in every respect,” perhaps particularly for the library, which was “exposed to destruction by fire,” and could properly accommodate “neither professors nor students.” Charles



and then turning to what he termed “the consumption of valuable books, due simply to the incessant use of them by the numerous students. It is not a large proportion of the books of the library which are being destroyed; but it is the books most referred to by the teachers.” The problem persisted despite “a considerable provision of duplicates.”<sup>143</sup> Eliot then acknowledged the importance of the library to the law school:

It is necessary to keep the library good at whatever cost; for it is the principal means of instruction. It must be confessed that the standard of the School is high in regard to the comfort and convenience of its students and their free access to books; but these are characteristic merits of the School . . . .<sup>144</sup>

¶57 The following year, after describing an enlargement of the library reading room reported by Langdell, he pointed out that “[t]he library and reading-room constitute the sole laboratory which the Law School needs; and it is the intention of the Faculty to keep that one laboratory in the most servicable [sic] condition possible.”<sup>145</sup>

¶58 When Langdell left the deanship, Eliot spoke at the Harvard Law School Association celebration of the dean’s accomplishments. He cited three “memorable achievements” of Langdell’s deanship: the first and “most extraordinary . . . the introduction and acceptance of a new mode or method of teaching law”; the second, his early advocacy of “the appointment as teachers of law of young men who had no experience whatsoever in the active profession”; the third, “the extraordinary pecuniary success of the Law School,” which included administration of “a more ample and better maintained library than any other of the [Harvard] professional departments.”<sup>146</sup> In 1901, after noting the library’s growing collections, Eliot

W. Eliot, *President’s Report for 1879–80*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1879–80, at 3, 33 (1881). In 1882–1883, he declared the new Austin Hall to be “by far the most ornate building which the University possesses,” Charles W. Eliot, *President’s Report for 1882–83*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1882–83, at 3, 38 (1884), and noted the following year that “[s]even eighths of the Law students live in Cambridge within easy walk of the Law Library, and board nearby; and this is undoubtedly the best way for a student in this School to live,” Charles W. Eliot, *President’s Report for 1883–84*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1883–84, at 3, 35 (1885).

143. Charles W. Eliot, *President’s Report for 1890–91*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1890–91, at 3, 20 (1892).

144. *Id.*

145. Charles W. Eliot, *President’s Report for 1891–92*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1891–92, at 3, 25 (1893). In his 1894–1895 annual report, Eliot noted Langdell’s retirement as dean, calling his tenure as dean “remarkable” in four areas: inventing a new method of teaching law; adopting a new mode for training law teachers; a great, though gradual, elevation in the standard of the law degree; and success in number of students, increased endowment, improved equipment, and tuition income. Charles W. Eliot, *President’s Report for 1894–95*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1894–95, at 3, 26 (1896). He did not mention the law library specifically.

146. *President Eliot’s Address*, in HARVARD LAW SCH. ASS’N, *supra* note 8, at 70, 71, 72. In 1913, Eliot wrote to A.V. Dicey that “[t]he Law School is the most successful department of the entire University and enjoys a reputation throughout the nation which is higher than that of any other Department.” Letter from Charles W. Eliot to A.V. Dicey (May 2, 1913), in C.W. Eliot Papers, Harvard University Archives, *quoted in* Gordon, *supra* note 131, at 130 n.22.

wrote that “[t]he chief distinction of the Harvard Law School—after its professors—is its admirable library.”<sup>147</sup>

¶59 In a 1920 tribute to Langdell in the *Harvard Law Review*, Eliot elaborated on Langdell’s role with the law library, noting that the dean “regarded a well-selected, well-kept, and ample library as the one essential piece of apparatus for any law school, and especially for the Harvard Law School he hoped for.”<sup>148</sup> As Eliot described them, Langdell’s library principles called for “protection and safe management for the library” and for enlarging the collection, mostly to supply duplicates of reports and other books in high demand. He also pointed out that “it was not till 1873, when Mr. John Hines Arnold became librarian, that the future of the Law School library conducted on Langdell’s principles was assured.”<sup>149</sup>

### Changing Perceptions of University Libraries

¶60 Eliot and Langdell assumed positions of leadership at Harvard at a time when American universities were beginning to change in ways that dramatically affected the roles libraries would play to support both curriculum and research. In his book, *Scholar’s Workshop*, Kenneth Brough described a new “conception of the library as a central and vitalizing force” in American universities in the late nineteenth century.<sup>150</sup> Historian Arthur Bestor characterized the period after 1875 as one in which American scholarship was transformed.<sup>151</sup> Prior to that time, scholarship in the United States was not closely or directly associated with college teaching or with libraries at colleges or universities. To pursue their research, serious scholars took it upon themselves to build their own collections of books, supplemented for some areas of study by the libraries of specialized societies.<sup>152</sup>

¶61 Between 1875 and 1900, new structures for scholarly and scientific research developed in American universities, influenced by the approaches of German universities.<sup>153</sup> In the United States, universities began to accept greater responsibility

147. Charles W. Eliot, *President’s Report for 1900–01*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1900–01, at 5, 25 (1902).

148. Eliot, *supra* note 21, at 521.

149. *Id.*

150. BROUGH, *supra* note 38, at 23.

151. Arthur E. Bestor, Jr., *The Transformation of American Scholarship, 1875–1917*, 23 LIBR. Q. 164, 165 (1953). Edward Shils identified “a fundamental change in institutional structure” between the Civil War and the end of the First World War. Edward Shils, *The Order of Learning in the United States: The Ascendancy of the University*, in THE ORGANIZATION OF KNOWLEDGE IN MODERN AMERICA, 1860–1920, at 19, 19 (Alexandra Oleson & John Voss eds., 1979).

152. Samuel Rothstein found research activity in the mid-nineteenth century to be insignificant, with no structures in place for “the promotion, training, and support of scholarship. What scholarship existed at the mid-century was the scholarship of the gifted amateur.” ROTHSTEIN, *supra* note 83, at 7. On the role of society libraries, see Edward G. Holley, *Academic Libraries in 1876*, 37 COLL. & RES. LIBR. 15, 26–28 (1976).

153. Bestor, *supra* note 151, at 168–69; see also Alexandra Oleson & John Voss, *Introduction*, in THE ORGANIZATION OF KNOWLEDGE IN MODERN AMERICA, *supra* note 151, at 7, 10 (In studying the late nineteenth century “efforts to build a new order of learning . . . [o]ne can scarcely overlook the imprint of the German ideal of scholarship—or more properly the American image of it.”); Mark Bartholomew, *Legal Separation: The Relationship Between the Law School and the Central University in the Late Nineteenth Century*, 53 J. LEGAL EDUC. 368, 378 (2003) (“The arrival of Christopher Columbus Langdell as dean of the Harvard Law School signaled the arrival of German education in the legal lecture hall.”).

for research and the development of knowledge. As Edward Holley put it, higher education moved “from a classically oriented and culturally elitist posture, to a more vocational, scientific, and democratic stance.”<sup>154</sup> These changes “revolutionized the matter of providing the faculties and resources for research” and led to “the development of well-equipped scientific laboratories (for research and not mere demonstration), of great collections of specimens and artifacts, and of libraries” on university campuses.<sup>155</sup> In addition, at Harvard (and at other universities) “great changes in instructional methods were underway. . . . [T]he student was ‘encouraged and required to consult authorities for himself, to compare the opinions of different writers and draw his own conclusions.’”<sup>156</sup> Such methods were not unlike those Langdell introduced at Harvard Law School.

¶62 Library use increased, requiring expanded collections for study and research, creating the need for newer and larger facilities to house them, and spurring the creation and refinement of classification systems and catalogs to use the collections effectively.<sup>157</sup> Changes in the curriculum and greater emphasis on research also forced libraries to grant students access to the growing collections of books traditionally shelved in closed stacks, separated from reading areas.<sup>158</sup> In a study of nineteenth century library architecture, John Boll found that during the first three-quarters of the century, library designers “were united in separating the public from the bulk of the collection”; by the 1850s, they often were advocating use of railings or counters, such as Langdell installed at Harvard.<sup>159</sup> By the 1870s, the physical

154. Holley, *supra* note 152, at 16.

155. Bestor, *supra* note 151, at 172. In his 1908 lectures on university administration, Eliot discussed some of the similarities in the roles played by laboratories, libraries, and museums at modern universities. See ELIOT, *supra* note 80, at 250–53.

156. Brundin, *supra* note 35, at 63. Rothstein notes that growing appreciation for the role of libraries in supporting research was not limited to universities influenced by German-trained scholars. ROTHSTEIN, *supra* note 85, at 11 (citing comments about the importance of the library by President Timothy Dwight of Yale, which was “relatively remote from German influence in the nineteenth century.”).

157. As Bestor put it: “A catalog becomes a necessary finding tool, not a mere record of holdings. Classification and cataloging were the first great problems of the new library profession.” Bestor, *supra* note 151, at 176.

158. Holley, *supra* note 152, at 29–35. Henry Petroski traces “[t]he idea of keeping books in stacks out of sight of general library patrons” to European libraries in the early 1800s. HENRY PETROSKI, *THE BOOK ON THE BOOKSHELF* 169 (1999). For descriptions of designs for book stacks in nineteenth century libraries in Europe and North America, see generally PETROSKI, *supra*, at 167–84.

The practice of housing books in closed stacks was common in earlier decades of the nineteenth century, in part due to conceptions of libraries as storehouses of treasures and a “desire to protect collection[s] from harm.” See John J. Boll, *Library Architecture, 1800–1875: A Comparison of Theory and Buildings with Emphasis on New England College Libraries* 58 (1961) (unpublished Ph.D. thesis, University of Illinois) (“the desire to protect the collection from harm [due to] fire, water, theft, humidity, and dust . . . determined the building’s location, the choice of building materials, the arrangement of areas within the building, and the service to readers.”). See Boll, *supra*, at 401–03, for descriptions of how these concerns impacted designs of nineteenth-century college library buildings. The struggle to light Harvard’s Gore Hall is traced in William Coolidge Lane, *The Harvard College Library, 1877–1928*, in Morison, *supra* note 51, at 624–25.

159. Boll, *supra* note 158, at 403. Boll concluded, however, that in practice, even in the early nineteenth century, “librarians were not as meticulous in denying public access as the theoreticians desired.” *Id.* at 404.

barriers began to be removed at college libraries, even as they continued to be used in public libraries.<sup>160</sup>

¶63 In his study of the state of academic libraries in 1876, Holley discussed the leading role of Harvard University librarian Justin Winsor (1877–1897) in efforts to improve student access to the books.<sup>161</sup> Winsor has been called the “chief apostle” of the idea that books were collected to be used, not merely preserved.<sup>162</sup> Yet Winsor and others had to be mindful that greater access to library stack areas increased risks of damage and loss.<sup>163</sup> In an 1879–1880 review of methods of instruction at Harvard, President Eliot noted that the faculty’s reliance on library books for course readings was problematic, presenting “grave inconvenience” to students and ensuring that the books themselves would be “destroyed in a few years by excessive use upon a number of pages perhaps inconsiderable in proportion to the whole bulk of the volumes.”<sup>164</sup> Once at Harvard, Winsor initiated a program of stack privileges, issuing admission cards to sixty students. Previously, no students were admitted to the book stacks.<sup>165</sup> As discussed above, on assuming the deanship of the law school, Langdell ended free access to the law library’s general collection but installed a working collection of the books, mostly reports, that were most in demand. Law students could request entry to the general collection at a time when the librarian was present.<sup>166</sup>

160. *Id.* at 406.

161. Holley, *supra* note 152, at xx.

162. BROUGH, *supra* note 38, at 28. Winsor’s predecessor, John Langdon Sibley, Harvard librarian from 1856 to 1877, despite his many accomplishments, is remembered for the apocryphal story of his meeting President Eliot one day in Harvard Yard. Upon being asked where he was going, Sibley supposedly “replied with some enthusiasm that all the books were in the library but two and he was on the way to fetch those.” Holley, *supra* note 152, at 15. For another telling of the story, suggesting that it “illustrates not the librarian’s personal attitude, but the attitude of an age,” see John Y. Cole, *Storehouses and Workshops: American Libraries and the Uses of Knowledge*, in *THE ORGANIZATION OF KNOWLEDGE IN MODERN AMERICA*, *supra* note 151, at 364, 366.

Holley also discusses the leading role of Otis Hall Robinson, librarian at the University of Rochester (1868–1889). Robinson is credited with the idea of dealing with the library users’ tendency to remove catalog cards from their drawers, and then put them back in the wrong order or not return them at all, by punching a hole in the lower left corner of each card, then running a rod through the holes to prevent removal of the cards. See *Otis Hall Robinson (1835–1912), Rochester University Librarian*, LIBRARY HISTORY BUFF BLOG, Dec. 3, 2010, <http://libraryhistorybuff.blogspot.com/2010/12/otis-hall-robinson-1835-1912-rochester.html>.

163. While serving as superintendent of the Boston Public Library prior to his appointment at Harvard, Winsor had argued that “to insure a certainty of the book being in its place, it is necessary to exclude the public from the shelves for the reason that most prowlers among shelves do not restore books they have taken down to the exact place from which they took them.” JUSTIN WINSOR, LIBRARY BUILDINGS, IN PUBLIC LIBRARIES 465, 466 (1876).

164. Eliot, *supra* note 94, at 16.

165. Brundin, *supra* note 35, at 62.

166. Langdell, *supra* note 35, at 64. The Yale Law Library was less restrictive. In his 1894 paper before the ABA Section of Legal Education, Simeon Baldwin stated that “[t]he cardinal rule in library administration . . . is to give every student as free access to the shelves as is reasonably possible. . . . At Yale, we have never found it necessary to exclude our own men from free access to all the books we own, with the exception of a few rare volumes or editions.” Baldwin, *supra* note 115, at 435. In 1899, a Yale student wrote: “As a practical help in our law work, I might note that we have direct access to the library shelves,—a great help in looking up cases. This item will be appreciated by those who are obliged to get their books through the intervention of a librarian.” *Correspondence*, 3 COLUM. L. TIMES 16, 17 (1889) (letter from Yale law student Z.).

## The Laboratory Metaphor

¶64 Langdell twice called the law library a laboratory: in his 1873–1874 annual report to the president of Harvard and again in his 1886 address to the Harvard Law School Association. The first reference was published in 1875 in one of the annual reports from President Eliot and the Harvard deans and directors, compiled for the Board of Overseers. The 1886 comments were published in local newspapers and in a volume compiled by the Law School Association<sup>167</sup> and reprinted in the *American Law Review* and the *Law Quarterly Review*.<sup>168</sup>

## Applied to Other Libraries

¶65 Langdell was not alone in characterizing libraries as laboratories. Nor were the comparisons limited to law libraries. Recognition of the library's growing importance for instruction and research spawned new metaphors to describe its role in the university and elsewhere.<sup>169</sup> Samuel Rothstein connected the popularity of what he termed the laboratory “catchphrase” to its corollary that in the late nineteenth century libraries should no longer be viewed as a mere “store-houses of books.” Rather, “[t]he concept of the library as a laboratory implied its use as a tool for investigations.”<sup>170</sup> By the turn of the century, the laboratory idea was used to describe both public and academic libraries. In 1897, John Cotton Dana wrote: “The [public] library is no longer looked upon as a storehouse of learning, to be used by the few already learned. . . . It is accordingly widening its business of book distribution by the addition of the powers possible to it as a laboratory of general learning.”<sup>171</sup>

167. See *Professor Langdell's Address*, *supra* note 8.

168. See 3 *LAW Q. REV.* 124 (1887); 21 *AM. L. REV.* 123 (1887). Langdell also made only three references to the idea that law is a science: first in the preface to his 1871 contracts casebook, then in the two instances where he also compared the law library to the laboratory. See Appendix 2, in KIMBALL, *supra* note 22, at 349. Steve Sheppard described the 1886 talk as “Langdell’s most specific recorded consideration of law as a science,” Sheppard, *supra* note 79, at 60 n.275, while Robert Stevens calls it the “most coherent exposition of [Langdell’s] own particular scientific theory,” STEVENS, *supra* note 134, at 53. Bruce Kimball noted that “Stevens’s implication [was] that Langdell prepared it for publication in the *Law Quarterly Review* of London” but added that “[s]ince there is no evidence that Langdell expected the analogy to go beyond the local HLS audience to which it was originally addressed, Stevens’s implication seems to exaggerate Langdell’s intent.” Bruce Kimball, *A Young Christopher Langdell, 1826–1854: The Formation of an Educational Reformer*, 52 *J. LEGAL EDUC.* 189, 212 (2002) (citing STEVENS, *supra* note 134, at 53).

Kimball examined Langdell’s “published works, his letters, and about ten thousand pages of loose or bound manuscripts” and found no other comparisons of law and science. Appendix 2, in KIMBALL, *supra* note 22, at 350. He concluded that the references were so few as to be anomalous, and noted that each had been offered “in a popular rather than a technical statement,” which led him to suggest that the references could have been inserted on those occasions for the benefit of President Eliot. *Id.* at 351. The same might be said of the references to the library as laboratory.

169. See generally Robert F. Nardini, *A Search for Meaning: American Library Metaphors, 1876–1926*, 71 *LIBR. Q.* 111 (2001); Joseph Z. Nitecki, *Metaphors of Librarianship: A Suggestion for a Metaphysical Model*, 14 *J. LIBR. HIST.* 21 (1979).

170. ROTHSTEIN, *supra* note 85, at 13 (quoting HERBERT B. ADAMS, *THE STUDY OF HISTORY IN AMERICAN COLLEGES AND UNIVERSITIES* 46 (1887)).

171. *John Cotton Dana*, 51 *APPLETON'S POPULAR SCI. MONTHLY* 242, 245 (1897). Dana continued: “The store house idea must be discarded at once. What is wanted is a workshop, a place for readers and students, not a safety-deposit building.” *Id.* at 247.

¶66 Brough argued that an understanding of the library's central role became firmly rooted at Harvard in the 1870s.<sup>172</sup> In his first report as Harvard University librarian, Winsor wrote: "Books may be accumulated and guarded . . . but if books are made to help and spur men on in their own daily work, the library becomes a vital influence; the prison is turned into a workshop."<sup>173</sup> In 1877–1878, he elaborated, stating that "a great library should be a workshop as well as a repository. It should teach the methods of thorough research, and cultivate in readers the habit of seeing the original sources of meaning."<sup>174</sup> In 1879, Winsor broadened his concept to encompass the idea of the library as laboratory:

The library will become the important factor in our higher education that it should be. Laboratory work will not be confined to the natural sciences; workshops will not belong solely to the technological schools. The library will become, not only the storehouse of the humanities, but the arena of all intellectual exercises.<sup>175</sup>

¶67 The laboratory metaphor was also employed on at least three occasions by Harvard history professor Ephraim Emerton. In an 1883 essay, Emerton wrote that "[l]ibraries must become the laboratories in these sciences in which the head plays the most important part. The library must cease to be the store-house for books and become the working-place where the historian, the philosopher, and the philologist of the future are to get their most effectual training."<sup>176</sup> In an expanded version of his essay published the following year, Emerton used language that echoed Langdell: "What the library is to physical science, that the library must be to moral science. The library must become, not a store-house of books, but a place for work. Books must exist not so much to be read as to be studied, compared, digested . . ."<sup>177</sup> In 1899, arguing for better library facilities at Harvard, Emerton noted among the newly common phrases used to describe the library's importance, "[e]specially the laboratory figure has been worked with effect to show that the Library is no longer a mere storehouse of books, but a great workshop, wherein scholars of all grades, teachers and learners alike, have their places."<sup>178</sup> For Emerton,

172. BROUGH, *supra* note 38, at 23–24. Brough also notes later references to the central role of the university library at Chicago, Columbia, and Yale. *Id.* at 24.

173. Justin Winsor, *To the President of the University*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1876–77, at 109, 109 (1878). In 1876, prior to the first meeting of the American Library Association, Melvil Dewey employed the workshop metaphor, adding to it the conception of the librarian's educational role:

The time *was* when a library was very like a museum, and a librarian was a mouser in dusty tomes. The time *is* when the library is a school, and the librarian is in the highest sense a teacher, and the visitor is a reader among the books as a workman among his tools.

Melvil Dewey, *The Profession*, 1 AM. LIBR. J. 5, 5–6 (1876).

174. Justin Winsor, *To the President of the University*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1977–78, at 104, 105 (1879).

175. Justin Winsor, *College and the Other Higher Libraries*, 4 LIBR. J. 399, 402 (1879), *quoted in* BROUGH, *supra* note 38, at 31.

176. Ephraim Emerton, *The Historical Seminary in American Teaching*, in *METHODS OF TEACHING HISTORY* 191, 200 (G. Stanley Hall ed., 1883).

177. EPHRAIM EMERTON, *THE PRACTICAL METHOD IN HIGHER HISTORICAL INSTRUCTION* 59–69 (1884).

178. Ephraim Emerton, *A Blot in the "Scutcheon,"* 7 HARV. GRADUATES' MAG. 509, 509 (1899), *quoted in* BROUGH, *supra* note 38, at 32. His other examples were "laboratory of the humanities"; "heart of the university"; brain of the academic body." *Id.*

a university library must be “the daily workshop of those sciences whose material is necessarily chiefly to be drawn from books.”<sup>179</sup>

¶68 Citing later uses by Melvil Dewey and by university presidents in the early 1900s, Brough claims that by 1900, “[t]he laboratory figure had become the most popular metaphor used to describe the library.”<sup>180</sup> He noted Langdell’s 1886 reference to the library as laboratory,<sup>181</sup> but not the dean’s earlier use of the metaphor in the 1873–1874 annual report and suggested that the idea originated with Winsor’s 1879 *Library Journal* article.<sup>182</sup>

### Early Applications in Law

¶69 Whether or not it was first, Langdell’s description of the law library as a laboratory in his 1873–1874 report was surely one of the earliest uses of the comparison in law or elsewhere. Yet although his second use of the metaphor in 1886 was more widely published than the first in an annual report, it was rarely cited by late-nineteenth-century legal educators. Even as discussions of the merits of the case method became more frequent in the late 1880s, the metaphor was mentioned only rarely in law journal articles or at ABA meetings.

¶70 The first mention may have been in an 1888 letter regarding the “purpose of law schools” published in the *Columbia Law Times*, in which Harvard law student G.E. Foss paraphrased Langdell’s metaphor: “The single case is to the student what the experiment is to the chemist, or the specimen to the botanist. The law library is the laboratory and the workshop of the law student.”<sup>183</sup> The preface to the 1891 fourth edition of Melville Bigelow’s treatise, *Elements of the Law of Torts*, pointed out that the text was “a guide to the authorities, and the student should therefore take it with him to his laboratory, the law library, and there carry on his work. He should [see] the cases given in the text as examples, and go as much further into the Reports as possible.”<sup>184</sup>

179. *Id.* at 510.

180. BROUGH, *supra* note 38, at 31–33. Christine Brock later commented that during this period even “the Harvard athletic director aspired to be a scientific man and announced that the gymnasium was a laboratory where he was seeking to find the law as to the physical side of man’s nature.” *The Proposed Legal Education Library*, 71 LAW LIBR. J. 619, 629 (1978) (comments of Christine Anderson Brock) (citing LAURENCE VEYSEY, *THE EMERGENCE OF THE AMERICAN UNIVERSITY* 174 (1965)).

Nardini found that by 1908 the laboratory metaphor may have begun to fall out of favor. Nardini, *supra* note 169, at 131–32 (citing W.E. Henry, *The Library as Educational Equipment*, 13 PUB. LIBR. 291, 292–94 (1908)) (noting that such statements as “The library is the laboratory of the humanities” were not only “grossly false, but injuriously so,” because they diminished the library’s importance to the educational process).

181. BROUGH, *supra* note 38, at 31.

182. *Id.* at 31–32. Winsor was not at Harvard but still at the Boston Public Library when Langdell’s 1873–1874 report was published in 1875. In his 1886 remarks, Langdell himself employed Winsor’s original workshop metaphor. “We have also constantly inculcated the idea that the library is the proper workshop of professors and students alike . . .” *Professor Langdell’s Address*, *supra* note 8, at 50–51.

183. [G.E. Foss], *Purpose of Law Schools*, 1 COLUM. L. TIMES 123, 124 (1888) (letter from G.E. Foss describing case method as used at Harvard). Foss’s name appears in the volume index, not with the letter itself. Apparently a graduate of Harvard College in 1885, he served in Congress in Illinois. See *News from the Classes*, 20 HARV. GRADUATES’ MAG. 701, 724 (1912).

184. MELVILLE M. BIGELOW, *ELEMENTS OF THE LAW OF TORTS: FOR THE USE OF STUDENTS*, at v (4th ed. 1891). Bigelow taught at Boston University Law School, which Steve Sheppard suggests was

¶71 In 1892, Christopher Tiedeman saw the library as having a limited role as laboratory. He acknowledged that study of cases was essential for “teaching how law is evolved, or how to extract the law from adjudicated cases, or how to apply it to new cases.” Yet reading cases in the library was not the way to learn “what is the law, what are the principles, general and special, which give logical shape to all systems of jurisprudence.” Comparing the work of the lawyer to that of the scientist, Tiedeman wrote: “If the chemist or physicist, or biologist, wants to learn what is already known about their [sic] respective sciences, he goes to the treatises in which are recorded the results of the investigations of others. . . . He goes to his library, instead of to his laboratory.”<sup>185</sup> The library and laboratory served different purposes both for scientists and for lawyers.

¶72 In 1894, Langdell’s disciple William Keener offered his own version of the metaphor, arguing not that the library was a laboratory but rather that “the case is, to the student of law, *both* a laboratory and a library.” For Keener: “The facts of the case correspond to the *specimen*, and the opinion of the court announcing the principles of law to be applied to the facts correspond to the *memoir* of the discoverer of a great scientific truth, and constitute the library.”<sup>186</sup> Although not presented as criticism of Langdell, Keener’s idea seems to contradict his mentor’s. If the case itself is both laboratory and library, how can the library be the lawyer’s laboratory?<sup>187</sup>

### Early Criticisms

¶73 The first decades of the twentieth century legal literature also saw few references to the laboratory metaphor. The preface to a 1901 treatise on women and the law noted that “[a] law library is both a mine of raw material and a laboratory for the work of analysis and comparison, but unless one knows what to expect and how to look for it, such a library seems nothing more than an accumulation of tiresome volumes.”<sup>188</sup> In 1908, Horace Wilgus noted that there was no intrinsic reason not to offer evening instruction in law, in part because it requires “no laboratory but the library.”<sup>189</sup>

¶74 Some writers cited the metaphor to justify the importance of the law library. In 1905, the dean of the John Marshall Law School wrote: “Unlike medicine

founded in 1872 “under the direction of Harvard expatriate Nicholas St. John Green, as a refuge from the ‘particularly technical and historical’ instruction across the river.” Sheppard, *supra* note 79, at 31.

185. Christopher G. Tiedeman, *Methods of Legal Education III*, 1 YALE L.J. 150, 153 (1892). Tiedeman also noted:

Like the student of the different sciences, the law student must learn how to make original investigations for himself, and diagnose, so to speak, the principles of law from the cases in actual litigation. . . . But the instructors of these sciences have not discarded the treatise; they have only supplemented the use of the treatise with the resort to the laboratory and operating room.

*Id.* at 156.

186. William A. Keener, *The Inductive Method in Legal Education*, 17 ANN. REP. A.B.A. 473, 477–78 (1894), reprinted in 28 AM. L. REV. 709 (1894).

187. For discussion of Keener’s metaphor, see Edwin W. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL EDUC. 1, 4 (1951) (citing Hans Kelsen, *The Pure Theory of Law*, 50 L.Q. REV. 474, 476 (1934)); Speziale, *supra* note 20, at 27–28; G. Edward White, *The Impact of Legal Science on Tort Law, 1880–1910*, 78 COLUM. L. REV. 213, 226–28 (1978).

188. 1 GEORGE JAMES BAYLES, *WOMAN AND THE LAW*, at v–vi (1901).

189. Horace L. Wilgus, *Legal Education in the United States*, 6 MICH. L. REV. 647, 658 (1908).



and scientific branches of learning, the law can be taught only through the printed page and the living voice. . . . The library is its laboratory, the teacher its expositor—the two factors that, combined with a sound method of instruction, make up a good school.”<sup>190</sup> In a 1925 book review, Michigan professor Edwin C. Goddard wrote: “The law library is the lawyer’s laboratory. To know the apparatus of that laboratory and how to use it is of importance to every lawyer.”<sup>191</sup> In another book review, Tulane professor Leonard Oppenheim wrote: “Perhaps it is dealing in clichés to point out that the library is the lawyers’ laboratory or that legal bibliography concerns itself with the tools of the profession, but that does not detract from the correctness of such statements.”<sup>192</sup>

¶75 Others, however, challenged the validity of comparisons between scientific and legal research and between laboratories and libraries. In his 1914 report to the Carnegie Foundation on the common law and the case method, Josef Redlich discussed the inaccuracy of “the analogy between legal science and physical science so frequently drawn by modern American lawyers,”<sup>193</sup> and then added in a footnote: “The same may be said of the comparison, so frequently made, between the law library with its thousands of volumes and the laboratory of the chemist and the research institute of the physiologist.” For Redlich:

The [science of positive law] is not an applied science in the sense that chemistry, for instance, is . . . [Natural phenomena] are the result of forces of nature that are to be investigated. Judicial decisions, on the other hand, are special acts of the will, which have been reached by a process of logical interpretation from a more general declaration of the will, contained in each positive legal principle.<sup>194</sup>

In his 1921 report for the Carnegie Foundation, Alfred Reed cited Redlich for suggesting that “a superficial analogy between law and the physical sciences, between the case method and laboratory work” might have facilitated adoption of the case method.<sup>195</sup>

¶76 Discussing research in American law schools at the 1925 meeting of the Association of American Law Schools (AALS), Edwin Patterson commented:

In the laboratory sciences, the term “research” has, I think, a commonly accepted meaning, namely, an investigation of the data of the science under a high degree of human control, control exercised with a particular problem in view, so that the conditions may be varied, in order to determine the factors in the particular results. But law schools have no such laboratories in this sense, because the data of juristic science are human conduct, and we have no way of measuring human conduct in the law school laboratory under conditions of adequate control.<sup>196</sup>

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190. Edward T. Lee, *The Evening Law School*, 37 CHI. LEGAL NEWS 651, 651 (1905); see also [Advertisement for] *The Detroit College of Law*, 17 LAW STUD. HELPER 156 (1909) (“The library is the lawyer’s laboratory. It occupies a place of supreme importance in legal education.”).

191. E.C.G. [Edwin C. Goddard], Book Review, 23 MICH. L. REV. 440, 440 (1925).

192. Leonard Oppenheim, Book Review, 1 J. LEGAL EDUC. 324, 324 (1948).

193. JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS* 55 (1914).

194. *Id.* at 55 n.1.

195. ALFRED Z. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* 371 (1921).

196. *Minutes of the Twenty-Third Annual Meeting*, 1925 AALS PROCEEDINGS 5, 40 (comments of Edwin W. Patterson).

Patterson noted that a previous speaker “seemed to intimate that the data of our science are the law books, but I don’t agree with that. Sometimes we speak of the law library as the law students’ laboratory. I think that is misleading.”<sup>197</sup> In 1927, Jacob Landman wrote: “[J]udicial decisions are products of the mind that have been formed by a process of logical interpretation and may vary from one set of facts to another. Certainly, then, the laboratory is not analogous to the law library.”<sup>198</sup>

¶77 In 1951, Patterson again argued that the comparison between what lawyers do in the library and scientists in their laboratories was inaccurate:

A judicial decision is not a controlled experiment of the kind that one can make in physics or chemistry, because one cannot repeat the judicial “experiment” with the same or varying conditions. At best one can say that reported cases are the reports of “experiments” made by others. . . . As Professor Hans Kelsen has pointed out, a basic difference between law and the natural sciences is that the “data” of positive law, the acts of officials, ordinarily carry with them a statement of their significance.<sup>199</sup>

He added: “Yet in none of these discussions was it recognized that a rule or principle of law is primarily normative or prescriptive in meaning, whereas scientific propositions are either true or false upon the basis of empirical observations.”<sup>200</sup>

¶78 Others saw Langdell’s emphasis on the library as evidence of his limited vision of the law and lack of interest in the society in which law was created and lawyers practiced. In 1923, E.F. Albertsworth noted that a possible cause for what he considered to be “imitative and apocryphal reasoning of courts is to be seen in the teachings of law teachers, who tell their students that the ‘law library is the laboratory of the student,’ and not the economic and social conditions of the times. . . .”<sup>201</sup> The most persistent critic in this vein was probably Jerome Frank. At a 1933 ABA annual meeting panel with Roscoe Pound and Arthur Vanderbilt, Frank stated:

[The law schools] must repudiate the absurd notions that the heart of a law school is its library, that what distinguishes one law school from another is the number and kind of books on its library shelves, that the library is the lawyer’s laboratory, that the “living founts” for the lawyer are to be found in inert paper covered with printer’s ink. They must learn to see that libraries and books are on the outer edge of matters lawyerlike, and that at the center is the conduct of human beings.<sup>202</sup>

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197. *Id.*

198. Jacob Henry Landman, *Anent the Case Method of Studying Law*, 4 N.Y.U. L. REV. 139, 160 (1927).

199. Patterson, *supra* note 187, at 4.

200. *Id.*; see also Wai Chee Dimock, *Rules of Law, Laws of Science*, 13 YALE J.L. & HUMAN. 203, 210 (2001) (because he forgot “that the rise of modern science had begun with an explicit repudiation of book-learning, a repudiation of a scholastic tradition based on exegesis and syllogism, Langdell saw no tension at all between the laboratory and the library.”); Jennifer S. Taub, *Unpopular Contracts and Why They Matter: Buying Langdell and Enlivening Students*, 88 WASH. L. REV. 1427, 1463 (2013) (posing “other more suitable metaphors. Law is an art, a social science, a profession, a system to perpetuate hierarchy, a set of rituals, a system of signs, an expression of values, and more.”).

201. E.F. Albertsworth, *Imitative and Apocryphal Reasoning of Courts*, 8 CORNELL L.Q. 229, 242 (1923).

202. Roscoe Pound, Jerome N. Frank & Arthur T. Vanderbilt, *What Constitutes a Good Legal Education*, 7 AM. L. SCH. REV. 887, 900 (1933) (address of Jerome N. Frank); see also Frank, *Clinical*,

¶79 As late as 1951, Frank argued that “law schools go astray when they still follow Langdell in considering the library the student’s sole laboratory. It is, of course, one of his laboratories. But his chief laboratories should be the courts (particularly the trial courts), the legislative committees, the administrative agencies, and the law offices.”<sup>203</sup>

### More Recent Applications

¶80 References to the metaphor were frequent throughout the twentieth century and into the twenty-first. Many later references offered neither praise nor criticism for Langdell or his comment. Deans and others stressed the importance of a well-stocked library/laboratory in competing for the best students and faculty.<sup>204</sup> A 2014 article noted that “[f]ocusing on library resources is particularly appropriate since the library was at the heart of the Langdellian model.”<sup>205</sup>

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*supra* note 12, at 908 (1933); Frank, *Good Legal Education*, *supra* note 12, at 723; Frank, *A Plea*, *supra* note 12, at 1304 (referring to Langdell’s “neurotic escapist character”). Frank also belittled Langdell’s love of books. See *supra* note 12.

203. Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20, 26 (1951). In 1936, the chief justice of the Mississippi Supreme Court urged lawyers to adopt “the methods of thought and action of the sociological jurist,” stating that “[i]n order to do this you must discard the theory that ‘the law library is the (sole) laboratory of the student.’ The law library is an indispensable part of that laboratory, but another indispensable part of it is a knowledge of social and economic conditions.” Sydney Smith, *The State and the Social Process*, 9 MISS. L.J. 147, 155 (1936); see also Sydney Smith, *The State and the Social Process*, 35 BRIEF 297, 310 (1936). Smith cited a 1906 article by James Henderson, stating “[w]e may not go all the way with the late Professor Henderson . . . but we can agree with him that ‘Reformation does not come from a law library, which has its useful function in conservatism; it comes from a complete mastery of the real world, and a moral judgment as to what ought to be and is not yet’” (citing Henderson, *Review* (1906) 2 AM. J. SOCIOLOGY 847).

204. For laboratory references by deans or others describing their law schools, see, e.g., Albert Coates, *A Century of Legal Education*, 24 N.C. L. REV. 307, 358 (1946); Joseph T. Votava, *Address of the President: The Lawyer in the Modern Era*, 27 NEB. L. REV. 135, 146 (1948) (proceedings of the Forty-Eighth Annual Meeting of the Nebraska Bar Association); Roger B. Thurrell, *College Close Up: University of Wisconsin Law School: Law and the Wisconsin Idea*, 2 STUDENT LAW. J. 10, 10 (1956); Edward T. Fagan, *Legal Education at St. John’s: A Modern Approach*, 33 ST. JOHN’S L. REV. 48, 69 (1958); John E. North, *Creighton Law School—A Private Institution in the Public Service*, 4 CATH. LAW. 77, 79 (1958); *Legal Education in Tennessee*, 29 TENN. L. REV. 325, 333 (1962) (comments of William Wicker, Dean, University of Tennessee College of Law); Mason Ladd, *Report of the Dean of the Iowa Law School to the Bar*, 51 IOWA L. REV. 1, 12 (1965); Ralph C. Barnhart, *Legal Education: Objectives, Plans, and Programs of the University of Arkansas Law School*, 20 ARK. L. REV. 42, 43 (1966); Eugene F. Scoles, *Challenge and Response in Legal Education*, 48 OR. L. REV. 129, 138 (1969); Peter W. Martin, *Report to the President of the University for the Year 1983–84*, CORNELL L.F. (faculty ed.), Oct. 1984, at 2, 3; Louis M. Brown, *If I Were Dean*, 35 J. LEGAL EDUC. 117, 122 (1985); John W. Fisher II, *The Legacy of Your Gifts*, 6 W. VA. LAW. 6, 8 (1992) (remarks of Camille M. Riley); Joyce A. McCray Pearson, *A Brief History of the University of Kansas School of Law Library*, 51 U. KAN. L. REV. 873, 895 (2003); Charles H. Oates, *The Regent University Law Library: The First Thirty Years*, 21 REGENT U. L. REV. 229, 238 (2008).

One dean used the laboratory analogy to argue for more secretarial help. See James K. Logan, *Law School Dean’s Report*, 11 U. KAN. L. REV. 1, 8 (1962) (“We have a dire need of more secretarial assistance. At present the Law School has only two classified civil service personnel to perform all of the office secretarial work of the entire school. Our laboratory is the library. We work with words.”); see also David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 115 n.57 (2003) (“Langdell, equating the law library with the scientist’s laboratory, helped secure and bolster the law library.”).

205. Olufunmilayo B. Arewa, Andrew P. Morriss & William D. Henderson, *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941, 974 n.181 (2014).

¶81 The metaphor continued to be cited in criticisms of Langdell's views of law as a science. John Henry Schlegel found that Langdell's approach succeeded in part because of "the aura of modern science that was curiously attached to the idea that to look at real cases in the classroom and library was to look at specimens of law under 'laboratory' conditions."<sup>206</sup> In 2004, Rob Atkinson wrote: "Law, for [Langdell and other formalists] was a science, but a very peculiar, self-enclosed science. The data of that science were in the books of law, mostly the reports of judicial decisions; the lawyer's laboratory was the library, a library with no windows and highly artificial lighting."<sup>207</sup>

¶82 Others criticized the metaphor for its suggestion that legal education required no more than the study of cases in books. James Kirby wrote that "[u]nder Langdell's views . . . [t]he library is our only laboratory, despite its sterile isolation from so many of the human problems of the world . . . outside the library, into the society in which the law operates and the impact of law upon human behavior."<sup>208</sup> Brannon Denning asked: "How were students to be trained to look past mere paper rules for the law in action if law schools were still peddling Langdellian nostrums like the idea that appellate cases were the elements of law and the library its laboratory?"<sup>209</sup> Lisa Eichorn saw that "Langdell's method of education omitted one important scientific ingredient: the practical experiment. Langdell's legal scientist lacked clinical experience."<sup>210</sup>

206. John Henry Schlegel, *Langdell's Legacy Or, the Case of the Empty Envelope*; 36 STAN. L. REV. 1517, 1524 (1984).

207. Rob Atkinson, *Growing Greener Grass: Looking from Legal Ethics to Business Ethics, and Back*, 1 U. ST. THOMAS L.J. 951, 979 (2004); see also RICHARD A. COSGROVE, *OUR LADY THE COMMON LAW* 30 (1987) ("For all the emphasis on law as science, Langdell's declarations had the curious result of limiting the field of legal inquiry rather than expanding it."); Ronald Benton Brown, *A Cure for Scholarship Schizophrenia: A Manifesto for Sane Productivity and Productive Sanity*, 13 NOVA L. REV. 39, 53 (1988) ("Langdell's thesis [was] that the law was a natural science which could be studied by scientific methods in the library which he considered to be the equivalent of the scientific laboratory. Few would still cling to that antiquated model. . . ."); Rudolph J. Gerber, *Legal Education and Combat Preparedness*, 34 AM. J. JURIS. 61, 63 (1989) ("Though Langdell confused science as an empirical and as a rational activity, he never wavered in his belief."); John Henry Schlegel, *Langdell's Auto-da-fe*; 17 LAW & HIST. REV. 149, 149 (1999) ("[Langdell] seems to be confused, for the laboratory of an empirically based science of law would needs be focused, not in the library, but in the courts, legislatures, agencies, and law offices where the law in action is made.").

For similar references, see Rob Atkinson, *Law as a Learned Profession: The Forgotten Mission Field of the Professionalism Movement*, 52 S.C. L. REV. 621, 628 (2001); Talbot D'Alemberte, *Teaching About Justice and Social Contributions*, 40 CLEV. ST. L. REV. 363, 364 (1992); Robert P. Merges, *The Nature and Necessity of Law and Science*, 38 J. LEGAL EDUC. 315, 319 (1988).

208. James C. Kirby, Jr., *The Teaching and Research Missions of the University Professional School*, 32 OHIO ST. L.J. 253, 263 (1971).

209. Brannon P. Denning, *The Yale Law School Divisional Studies Program, 1954-1964: An Experiment in Legal Education*, 52 J. LEGAL EDUC. 365, 367 (2002).

210. Lisa Eichorn, *Writing in the Legal Academy: A Dangerous Supplement*, 40 ARIZ. L. REV. 105, 109, 138 (1998); see also John J. Costonis, *MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 160 (1993) ("The casebook and the library, not the law office or courtroom, were the law school's laboratory. . . . Langdell's vision ended by being indifferent, if not hostile, both to the university and to the bar."); Martin Levine, *Four Visions of the Law School: Law and Aging as a New Legal Field*, 31 J. LEGAL EDUC. 424, 436 (1981-1982) ("The law library, Langdell notwithstanding, is not the law's only laboratory. Lawyers must master data on society, beyond the scope of case reports."); Edward Rubin, *What's Wrong with Langdell's Method, and What*

### Uses by Law Librarians

¶83 Law librarian references to the metaphor have been plentiful, often to support arguments for the centrality of the library's role to legal education. In 1919, E.E. Willever concluded his history of the Cornell Law Library with: "[t]he working tools of our laboratory must be kept up regardless of the ever increasing cost of legal publications."<sup>211</sup> In 1954, Marian Gallagher wrote that the law library "is not a library in the ordinary sense, but a laboratory equipped for the research essential to everyday preparation for class or practice."<sup>212</sup> Miles Price argued in 1960 that a law library differed from other professional school libraries because of its holdings, which made for its "uniqueness . . . as a laboratory, with such highly specialized types of books as to require special knowledge and techniques for their effective utilization in serving the clientele."<sup>213</sup>

¶84 Morris Cohen said in 1973: "We are all familiar with the truism that the law library is the laboratory of the legal profession and the center of virtually all legal scholarship. As such, it offers the basic resources for the conduct of any serious inquiry into the law. . . ."<sup>214</sup> George Grossman found that Langdell's premise that the materials of law as a science are contained in printed books "place[d] the law library at the heart of legal education and legal research. In this view, law books are all that legal scholars have to resort to, or, as the saying goes, the law library is the 'laboratory' of the legal profession."<sup>215</sup> Robert Giblin noted that Langdell "installed the law

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to *Do about It*, 60 VAND. L. REV. 609, 639 (2007) ("[S]tudents of politics learned a great many lessons in the forty years after 1870, among them the idea that the real world, and not a library, is the true laboratory of the human sciences. Legal academics needed another seventy years or so to learn this."); Speziale, *supra* note 20, at 1–2 ("Having said that the lawyer's library was his research laboratory and that the university was a proper place for legal study, Langdell came to be seen as a dry logician, 'divorced from society and life.'"); Book Review, 12 TEX. TECH L. REV. 1019, 1019 (1981) ("Too often the legal scholar mistakenly relies on appellate decisions as his primary source materials, . . . believing not only that appellate decisions accurately portray reality but also that they are the whole of reality. *But see* Nancy B. Rapoport, *Is Thinking Like a Lawyer Really What We Want to Teach?*, 1 J. ASS'N LEGAL WRITING DIRECTORS 91, 96 (2002) (noting that "[w]hat the law students of [Langdell's] time were doing was much the same as what mathematics students were doing, or chemistry students, or even philosophy students.").

For similar references, see Thomas C. Arthur, *Workable Antitrust Law: The Statutory Approach to Antitrust*, 62 TUL. L. REV. 1163, 1176 (1987–1988); Brown, *supra* note 207, at 53; Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 WIS. INT'L L.J. 295, 298–99 (2006); Edward McGlynn Gaffney, Jr., *On Not Rendering to Caesar: The Unconstitutionality of Tax Regulation of Activities of Religious Organizations Relating to Politics*, 40 DEPAUL L. REV. 1, 4 (1990–1991); Susan Pace Hamill, *From Special Privilege to General Utility: A Continuation of Willard Hurst's Study of Corporations*, 9 AM. U. L. REV. 81, 85 n.8 (1999); Robert S. Redmount, *A Conceptual View of the Legal Education Process*, 24 J. LEGAL EDUC. 129, 169 n.84 (1971–1972).

211. Willever, *supra* note 56, at 137; see also Hicks, *supra* note 7, at 7.

212. Marian G. Gallagher, *The Law Librarian's Education and the Autonomous Library*, 47 LAW LIBR. J. 114, 117 (1954). In 1969, Gallagher noted that some expressions about the law library had become clichés. Marian G. Gallagher, *The Law Library in a New Law School*, 1 TEX. TECH L. REV. 21, 21 (1969) ("A lawyer's books are his tools; the library is the law school laboratory; the library is the heart of the law school; the Lord is my Shepard; etc.").

213. Miles O. Price, *The Place of the Law School Library in Library Administration*, 13 J. LEGAL EDUC. 230, 231 (1960).

214. Morris L. Cohen, *Computerizing Legal Research*, 14 JURIMETRICS J. 3, 3 (1973).

215. George S. Grossman, *Clinical Legal Education and the Law Library*, 67 LAW LIBR. J. 60, 61 (1974).

library as the core for his curriculum . . . [d]esignating the law library as the principal resource of the law school for the learning of and relating to the law.”<sup>216</sup> Louis Brown referred to “Langdell’s notion . . . that all of the science of law is contained in the library.”<sup>217</sup>

¶85 In 1987, Bob Berring noted that “[w]hen Christopher Columbus Langdell stated that the library was the laboratory of the law and that law books were the ‘stuff’ of legal research he was stating a proposition that was not only descriptive but prescriptive.”<sup>218</sup> He later wrote: “After all, the whole corpus of legal education is constructed around Dean Langdell’s theory that the law library, the place where the law student conducts research, is the laboratory of the law.”<sup>219</sup>

¶86 In the twenty-first century, well after dependence on access to print books in the law library had diminished, law librarians continue to cite the metaphor to show the importance of the library. In 2005, Berring wrote: “Ever since Dean Christopher Langdell . . . declared that the law library was the laboratory of the law . . . the law library has notionally been at the center of legal education.”<sup>220</sup> In 2010, quoting the laboratory metaphor, Michael Slinger and Rebecca Slinger wrote:

Dean Langdell articulated a new role for the law library. He argued that the law library should be placed in a position of paramount importance within the law school because the practice and study of law was dependent on access to the written law as posited by courts and legislators and as commented upon by legal experts such as law professors.<sup>221</sup>

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216. Robert Giblin, *Changes and Challenges: Law School, the New Legal Education and the Law Library*, 73 LAW LIBR. J. 693, 700 (1980).

217. Louis M. Brown, *Lawyering Decisions: New Materials for Law Libraries to Collect*, 87 LAW. LIBR. J. 7, 11 (1995).

218. Robert C. Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 CALIF. L. REV. 15, 15 (1987).

219. Robert C. Berring, *Collapse of the Structure of the Legal Research Universe: The Imperative of Digital Information*, 69 WASH. L. REV. 9, 9 (1994).

220. Robert C. Berring, *Deconstructing the Law Library: The Wisdom of Meredith Willson*, 89 MINN. L. REV. 1381, 1386 (2005).

221. Michael J. Slinger & Rebecca M. Slinger, *The Law Librarian’s Role in the Scholarly Enterprise: Historical Development of the Librarian/Research Partnership in American Law Schools*, 39 J.L. & EDUC. 387, 400 (2010). Some librarians were less ambitious in their claims for the metaphor. See Steven M. Barkan, *Deconstructing Legal Research: A Law Librarian’s Commentary on Critical Legal Studies*, 79 LAW. LIBR. J. 617, 636 (1987) (“Jurisprudence has moved far from the Langdellian position that viewed law as a science and considered the library to be the laboratory of the law. But the structure of legal research tools . . . has not changed since Langdell’s time.”); *Current Comments*, AALL NEWSL., Aug. 1986, at 27, 27 (quoting Jack Ellenberger as describing his position as head of a prominent law firm library as being the “head of a working laboratory for the construction of legal precedents and arguments.”); Richard A. Danner, *Law Librarians Should Define Information System Needs*, SYLLABUS (ABA Section of Legal Education and Admissions to the Bar), Dec. 1989, at 6, 6 (“If the library was the lawyer’s laboratory in the early years of the Harvard Law School, it remains so today.”); John W. Fisher II, *The Legacy of Your Gifts: Remarks by Prof. Camille R. Riley*, W. VA. LAW. Dec. 1992, at 6, 7–8; see also Fisher, *supra* note 204; McCray Pearson, *supra* note 204; Oates, *supra* note 204.

The metaphor was also cited by librarians in other countries. See, e.g., Yemisi Dina, *Academic Law Library Collections in Africa: Comparative Notes on Nigeria and South Africa*, 30 INT’L J. LEGAL INFO. 454, 454 (2002) (“Unlike other disciplines where the library is just one of a number of supporting overhead services provided to enable the researcher and student to do their work, the law library is like a laboratory, thus making it an essential service to legal research.”); Juergen Christoph Goedan, *Legal Comparativists and Computerized Legal Information Systems, General Problems and the Present German Status of Computerized Legal Information*, 14 INT’L J. LEGAL INFO. 1, 2 (1986) (“For centuries,

¶87 In 2011, Beatrice Tice argued that Langdell viewed the library as a repository of information in which “information was to be provided in a structured and professionally supervised setting with an ambience of scholarly erudition that garnered respect. As such, the library was also expected to play an influential part in all of the activities of the law school.”<sup>222</sup> Although “the full scope of Langdell’s vision of a centrally influential academic law library” was not immediately realized at Harvard under his deanship,<sup>223</sup> now, in the twenty-first century, “[t]he indefinable ambience of the law library as an environment for work of great consequence—as the ‘laboratory of the law school’—is felt and understood by those who use the library, even in the information age.”<sup>224</sup>

¶88 In January 2014, a letter commenting on proposed changes to the *ABA Standards* from Steven Anderson, president of the American Association of Law Libraries (AALL), to the ABA said: “In the formative years of legal education, Christopher Columbus Langdell referred to the library as the laboratory of the law. With legal education in a state of flux, the innovation championed by law library directors makes this even truer today.”<sup>225</sup>

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the laboratory of the lawyer has been a library. Words are the stuff of his profession: ‘The words of a statute are the ‘law.’”); Beth Wilson, *Interview with Ted Glasson, Director of the Law Library, Monash University, Australia*, 21 INT’L J. LEGAL INFO. 123, 127 (1993) (“Do you think that the managers outside of the law faculties and the law libraries understand the very special nature of the law collection? For example, a law library can be likened to a laboratory, by which I mean that it is a body of authority which continually grows.”).

222. Tice, *supra* note 139, at 165.

223. *Id.*

224. *Id.* at 171.

225. Letter from Steven P. Anderson, President, Am. Ass’n of Law Libraries, & Darcy Kirk, Am. Ass’n of Law Libraries Rep. to the ABA Section of Legal Educ. & Admissions to the Bar, to Barry A. Currier, Managing Dir. of Accreditation & Legal Educ., Sec. of Legal Educ. & Admissions to the Bar, Am. Bar Ass’n (Jan. 31, 2014) [hereinafter Anderson & Kirk Letter].

Two articles in the Summer 2013 issue of *Law Library Journal* featured the laboratory metaphor: Genevieve Blake Tung stated: “Firm in the conviction that ‘law is to be learned almost exclusively from the books in which its principles and precedents are recorded, digested, and explained,’ Langdell and Harvard president Charles William Eliot praised libraries as the laboratories of legal science.” Genevieve Blake Tung, *Academic Libraries and the Crisis in Legal Education*, 105 LAW LIBR. J. 275, 281, 2013 LAW LIBR. J. 14, ¶ 15. David Walker noted that, because Langdell saw law as a science, “the law library served as the lawyer’s laboratory, and appellate cases published in reporters were the materials with which the lawyer would conduct his experiments.” David C. Walker, *A Third Place for the Law Library: Integrating Library Services with Academic Support Programs*, 105 LAW LIBR. J. 353, 356, 2013 LAW LIBR. J. 17, ¶ 9.

Commenting in the Spring 2014 issue of *LLJ* on Yale Law professor Simeon Baldwin’s 1894 thoughts about how law libraries should be used, Theodora Belniak suggested that Baldwin was “[a]dopting a Langdellian approach of ‘library as laboratory.’” Theodora Belniak, *The History of the American Bar Association Accreditation Standards for Academic Law Libraries*, 106 LAW LIBR. J. 151, 161, 2014 LAW LIBR. J. 9, ¶ 32 (citing Baldwin, *supra* note 115, at 433). Baldwin’s paper remains interesting today, but despite his comments on the importance of the law library, which are well presented by Belniak, he did not adhere to Langdell’s belief in the case method of instruction.

## Conclusion: Langdell, Metaphors, and Law Libraries

### Langdell and the Harvard Law Library

¶89 In his 1920 tribute to Langdell in the *Harvard Law Review*, Charles Eliot made clear that to Langdell “books had a kind of sacrosanct character. They were to be handled carefully, preserved from dust and heat, and never defaced by pencil marks or words written in the margins of the pages.”<sup>226</sup> Throughout his deanship, Langdell was presumably free to choose books needed to develop the Harvard law library collection as he saw fit. As Eldon James told an audience of librarians in 1934,

it must be remembered that the Harvard Law School Library is not the law library of Harvard University. That is, it never has been charged with the duty of collecting, preserving, cataloguing and making available for use whatever legal publications may come into the possession of the University. It is merely a departmental library, the library of the Harvard Law School.<sup>227</sup>

¶90 As dean, Langdell did not overindulge his passion for books. In his 1908 history of the law school, Warren reported Langdell’s claim that in 1873–1874 (due in part to a gift) more money had been spent on books than in any earlier year.<sup>228</sup> Warren’s table of expenditures for library books shows that \$4,141.60 was spent in 1873–1874, a total higher than what was spent in the four previous years. Yet annual expenditures for books quickly dropped to about where they had been previously and were not as high again until 1891–1892. The table shows significant increases in expenditures for books only after Langdell left the deanship in 1895.<sup>229</sup> The library’s holdings increased from 16,907 volumes in 1877–1878 to 35,615 in 1894–1895; they then rose dramatically to 102,826 by 1906–1907.<sup>230</sup>

¶91 On Langdell’s retirement from teaching in 1900, Dean Ames wrote that “[h]e found here the wreck of a library. He leaves a library without peer among the law libraries of the world.”<sup>231</sup> Yet Langdell’s emphasis on case law and his desire to furnish students with multiple copies of important American and English reports led to shortfalls in other parts of the collections.<sup>232</sup> According to James,

226. Eliot, *supra* note 21, at 522. Eliot went on to note that librarian John Arnold “shared these sentiments of the Dean, especially in regard to books which had been obtained at high cost and could not certainly be replaced.” *Id.*

227. *James Remarks*, *supra* note 43, at 158.

228. 2 WARREN, *supra* note 11, at 489 n.2 (citing Langdell, *supra* note 1, at 67).

229. *Id.* at 492–93.

230. *Id.* at 491–92.

231. James Barr Ames, *The Law School*, ANN. REP. PRESIDENT & TREASURER HARV. COLL. 1899–1900, at 168, 172 (1901). In 1899, several years after Langdell stepped down as dean, Albert Venn Dicey of Oxford College wrote that the Harvard Law Library “constitutes the most perfect collection of the legal records of the English people to be found in any part of the English-speaking world.” A.V. Dicey, *The Teaching of English Law at Harvard*, 76 CONTEMP. REV. 742, 743 (1899). Eldon James would later note that “the Anglo-American field . . . was the first side of the Library to be developed and into it Mr. [John] Arnold put almost exclusively the full energy of his first twenty-five years as librarian.” *James Remarks*, *supra* note 43, at 158.

232. Terry Martin described Langdell’s collection development plan: “(1) to acquire in triplicate the basic Anglo-American reports, sending the librarian to England when necessary; (2) to fill the general collection as cheaply as possible by attending auction sales and visiting bookseller’s



[t]he Library possessed almost nothing in the field of legislation, even Anglo-American legislation, until after 1892. Dean Langdell held the firm opinion that books of statute law were not law books “properly so-called” and that, therefore, they should not be allowed a place on the shelves of a law library. After the Faculty had voted in 1892 to include legislation in the Library’s collections, books of legislation not only from the United States and the British Empire, but from other countries as well were acquired in large numbers.<sup>233</sup>

¶92 In his 1967 history of the law school, Sutherland noted: “There is more to the law than lawsuits; more to it than opinions. . . . But in 1870 the great rush of legislation, state and national, was mostly in the future.” As a result, “Langdell was training young men in the law as he had seen it, not as it would be in a day which he and his contemporaries foresaw dimly, . . . if at all.”<sup>234</sup> Others have suggested that legislation was a source of law during the time Langdell was active at Harvard.<sup>235</sup> Historian Thomas Garden Barnes concluded that “[l]egislation, [Langdell] felt, was a nuisance, the intervention of non-legal purpose in the law which would corrupt the ‘axioms’ of the ‘science’ and should be tailored (or butchered, if necessary) to fit the cases.”<sup>236</sup>

¶93 In 1968, John Dawson wrote that, despite their early strengths, Harvard’s foreign law collections did not benefit from Langdell’s interest in the library: “An expanded ambition to include the law of the world that was not expressed in English,

[sic] shops routinely; (3) to accept all gifts.” Martin, *supra* note 15, at 35. In an 1893 portrait of the law school in *Green Bag*, Louis D. Brandeis wrote: “The library now contains twenty-three thousand volumes, and is believed to be in some respects the best equipped law-library in America.” Louis D. Brandeis, *The Harvard Law School*, 1 *GREEN BAG* 10, 23 (1889) (emphasis added).

233. James Remarks, *supra* note 43, at 158. In addition, James noted that “[t]he non-Anglo-American collections date back only to 1899.” *Id.* The Law School’s *Centennial History* noted that at the time Langdell retired from the faculty, “the collection of the laws passed by the various legislatures of the United States since the Revolution was good, was even very good, but a considerable number of the rarer sessions were still lacking.” *CENTENNIAL HISTORY*, *supra* note 14, at 114. Robert Anderson remembered preparing comparative tables of the session law holdings of the law library and the Harvard College Library in 1898, which facilitated combining the collections in the law library. Anderson, *Harvard Law School Library*, *supra* note 34, at 286. In 1951, Pound wrote that “under Ames, collections of statutes and of text books were given like development” to that of the law reports under Langdell. Roscoe Pound, *The Harvard Law Library*, 5 *HARV. L. BULL.* 290, 290 (1951).

234. ARTHUR E. SUTHERLAND, *THE LAW AT HARVARD* 177 (1967). The Harvard Law Library was not alone in its emphasis on reported case law:

During the early period of development of most American law libraries little attention seems to have been given to the importance of statutory law. . . . At Michigan no effort to collect statutes seems to have been made before 1886. . . . No organized effort was made to secure the early statutes or session laws of the states until almost twenty years later.

Coffee, *supra* note 13, at 1400.

235. William Popkin has argued that legislation was an important source of law in the states throughout the nineteenth century, and that its growing importance at the national level in the last quarter of the century is evidenced by the first codification of federal law, the *Revised Statutes of the United States* (published in 1874) and the first official publication of congressional debates in the *Congressional Record* in 1873. See WILLIAM D. POPKIN, *STATUTES IN COURT* 60–61 (1999); see also GRANT GILMORE, *THE AGES OF AMERICAN LAW* 63 (1977) (noting that in the post-Civil War period “[t]he legislatures, stirred by populist discontents, experimented with social legislation—regulating the hours and conditions of employment, restricting the exploitation of women and children, and so on.”).

236. THOMAS GARDEN BARNES, *HASTINGS COLLEGE OF THE LAW: THE FIRST CENTURY* 111 (1978).

had to await the appointment of Ames as dean in 1895.<sup>237</sup> In his 1920 reminiscence, Eliot noted that when Ames wished to expand the collection to include more books on Roman law, Langdell was reluctant, “but was ultimately convinced that a great law library should include even that somewhat remote or detached subject.”<sup>238</sup> By 1907, librarian John Arnold proudly described Harvard’s collections as rich and extensive, not only in Anglo-American case law and statutory law, but in trials, legal periodicals, civil and foreign law, and treatises.<sup>239</sup>

¶94 In 1982, Terry Martin praised the growth of the library collections during Langdell’s time, but offered at best grudging approval for his overall contributions to the library.<sup>240</sup> Martin praised the role of Langdell’s successor as dean, James Barr Ames:

It was Ames’ ambition to build the greatest law library in the world, for the use of scholars everywhere. He freed the Librarian from other administrative duties except for those directly related to the Library. He put no limits on the directions in which the collections should grow and persuaded the faculty and students that building a great library was a proper use of school funds.<sup>241</sup>

¶95 Martin’s comments on Ames mirror those in Ames’s biography in the 1908 *Centennial History* of the law school, which noted that “Langdell had greatly increased the library, both in number of books and in quality during his deanship, and had wonderfully improved it considering the small funds available for its extension.”<sup>242</sup> Ames provided little evidence of his enthusiasm for the law library in his annual reports to the president, which generally offered less narrative than Langdell’s and usually provided little comment beyond recording the number of

237. Dawson, *supra* note 25, at 105. Robert Anderson recalled that “Dean Langdell took very little if any interest in our foreign law books, which . . . had been kept in a poorly lighted, unheated store-room.” Ames, on the other hand, “actively undertook the task of bringing this collection up to date.” Anderson, *Harvard Law School Library*, *supra* note 34, at 286.

Yet on the basis of the collections developed under Story, the article on law libraries in the Bureau of Education’s 1876 report on the state of libraries in America noted that “[p]erhaps no library in this country has such a rich collection of works on early Roman law and the commercial law of continental Europe as this.” Griswold, *supra* note 25, at 168.

238. Eliot, *supra* note 21, at 523. Langdell’s reluctance to fulfill Ames’s request contrasts dramatically with the goals for the Yale Law Library posed in 1874 by former university president Theodore Woolsey in an address marking the fiftieth year of the law school’s connection with Yale. Woolsey believed that the law library should not be confined “to reports of English and American courts, to the text-writers of our system of law, and to collections of statutes.” THEODORE D. WOOLSEY, *HISTORICAL DISCOURSE* 13 (1874). Rather, the library

should aim successfully at exhaustive comprehension, so as to include civil law with its best expounders in every language, ecclesiastical law, the digests, codes, reports and systems of all the leading European nations, with whatever is valuable on the theory of legislation, on the doctrine of rights and the State, on the history of governments and institutions. . . .

*Id.* Then, as the law school flourished, “[I]et the plan for the library be expanded, so that it shall furnish the best books on all branches and topics connected with law, legislation, and government.” *Id.* at 23–24. Yale’s largely successful efforts to raise funds to support the law library after 1870 are detailed in HICKS, *supra* note 83, at 166–72.

239. See Arnold, *supra* note 13, at 238–39. For a later list, see John H. Arnold, *The Harvard Law Library and Some Account of Its Growth*, 5 *LAW LIBR. J.* 17, 21–22 (1912).

240. Martin, *supra* note 15, at 34–35.

241. *Id.* at 36.

242. See *CENTENNIAL HISTORY*, *supra* note 14, at 184–85.

volumes added and held each year. He did occasionally report on progress in completing the duplicates collection, significant gifts, and overcrowding prior to the construction of Langdell Hall.

¶96 When Langdell became dean in 1870, he moved quickly to correct the problems he saw in the library. He reorganized the collections and restricted access to parts of them, ending up with practices similar to those of other university libraries, which were opening formerly closed collections to researchers. William LaPiana described student reactions to Langdell's changes, concluding that "[a]s far as administering the public services aspect of the library went . . . Eliot made a bad bargain."<sup>243</sup> LaPiana does not explain what he meant by "public services," although he does cite the example of a student's protest about the rail separating the collections, and refers to "Langdell's failures as a day-to-day administrator."<sup>244</sup> Moving less-used books behind the rail reduced access to the whole collection, but probably made it easier for law students to locate the books they most needed. The priority Langdell gave to collecting multiple copies of reports responded to the demands of the case method. Even as more Harvard professors followed his lead and compiled casebooks for their classes, demand on the library remained heavy.

¶97 Langdell's real legacy for law librarians lies less in the laboratory metaphor than in building the foundations not only for the great library at Harvard, but the other great law libraries that followed, and in promoting the sense that law libraries were vital to legal education and to the profession they serve, whether they were laboratories or not. His most important reference to libraries was not the laboratory metaphor, but came earlier in his career as dean, when he wrote: "The most essential feature of the School, that which distinguishes it most widely from all other schools of which I have any knowledge, is the library. . . . [W]ithout the library, the School would lose its most important characteristics, and indeed its identity."<sup>245</sup> Of course, anything Langdell said about the "library" was probably meant to describe only the Harvard Law School Library. As he later noted, "I have not concerned myself with legal education outside the Harvard Law School."<sup>246</sup>

¶98 Just as significant as his understanding of the importance of legal information was Langdell's early recognition of the need to have a full-time librarian to administer the library. As late as 1938, Roalfe described "the fairly common belief that, except for a few of the larger libraries, almost any person is qualified to act as librarian, whether such person be an untrained but deserving widow of some professor, a broken down lawyer or teacher who has not made good, or a clerk."<sup>247</sup> At

243. LAPIANA, *supra* note 19, at 13.

244. *Id.* at 14. The idea of public services as librarians know it today was largely unknown at the time. In his study, *The Development of Reference Services*, Samuel Rothstein wrote that, even as the importance of university libraries grew, "reference service was never seen as more than a secondary responsibility in the nineteenth century research library." ROTHSTEIN, *supra* note 85, at 19. Rather, "librarians . . . gave their chief attention to the problems of acquisitions, cataloging and classification, and circulation." *Id.*

245. CENTENNIAL HISTORY, *supra* note 14, at 100.

246. Christopher C. Langdell, *Teaching Law as Science*, in 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES 514, 514 (1999).

247. William R. Roalfe, *The Essentials of an Effective Law School Library Service*, 31 LAW LIBR. J. 348, 350 (1938). For similar comments, see Brock, *supra* note 13, at 346–47.

Harvard, despite his inexperience at the time of his appointment, his need to follow Langdell's principles, and his assumption of law school duties beyond the library, it seems clear that John Himes Arnold was fully the law librarian and was highly regarded by the law faculty for his efforts, even if he was not publicly acknowledged for them by Langdell.

### Metaphors and Law Libraries

¶99 The library as laboratory metaphor became popular among librarians in the last decades of the nineteenth century as libraries began to be viewed as something other than storehouses for published works, as places in which books were to be used for learning and the development of knowledge. "Workshop" might more accurately have described what was going on in the Harvard Law Library under Langdell's deanship, but "laboratory" better conveyed the aura of science sought by both Eliot and Langdell. As Langdell said in 1886, his focus was on "making the teaching and the study of law worthy of a university." To accomplish this goal, "it was indispensable to establish that . . . law is a science."<sup>248</sup> He explicitly compared the work of lawyers in the library to the work of scientists in laboratories, museums, or botanical gardens. James Geary noted that "[t]he paradox of metaphor is that it tells so much about a person, place, or thing by telling us what that person, place, or thing is not."<sup>249</sup> For Langdell, the library was neither a storehouse nor a workshop: it was a laboratory.

¶100 In law, Langdell's metaphor seems to have been little noted in the 1890s debates over the case method of instruction. In the early 1900s, its validity was challenged, along with Langdell's views on law as a science. Some critics also saw the metaphor as evidence of Langdell's lack of interest in exposing lawyers to the societal and economic conditions in which they would practice. Ronald Dworkin noted that the library was important for academic lawyers who do not see legal research "as a branch of research in the social sciences" but limited themselves to "the rich but nevertheless insulated world of precedents and statutes."<sup>250</sup>

¶101 Throughout the twentieth and into the twenty-first century, the laboratory metaphor was cited often to make the case for the law library's importance in legal education. Many references were by law librarians, including some of the major figures in the field: Marian Gallagher and Miles Price each argued that, because they were laboratories, law libraries played roles that distinguished them from other research libraries; Bob Roalfe lamented that law schools failed fully to recognize this unique role of the law library; Bob Berring saw Langdell's proposition as both descriptive and prescriptive, and concluded that the "whole corpus of legal education" was constructed around the idea that the library "is the laboratory of the law."<sup>251</sup>

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248. *Professor Langdell's Address*, *supra* note 8, at 49.

249. GEARY, *supra* note 4, at 12.

250. Ronald M. Dworkin, *Legal Research*, DAEDALUS, Spring 1973, at 53, 53–54.

251. In 2005, Berring himself suggested that, although for many "[t]he library building . . . stands as a metaphor for knowledge and wisdom," the concept of "library" takes in more than physical space: "Library is a metaphor for a bundle of ideas that include a building, its content, and the activity that goes on within its walls." Berring, *supra* note 220, at 1385, 1389.

¶102 It was not surprising for AALL president Steven Anderson to refer to the metaphor when commenting on proposed changes to the *ABA Standards* for libraries in 2014. Yet after citing Langdell in passing, Anderson wrote that “[w]ith legal education in a state of flux, the innovation championed by law library directors makes [the metaphor] even truer today.”<sup>252</sup> His reference to innovation made clear that Anderson was not thinking of twenty-first century law libraries as laboratories in the sense Langdell had in the nineteenth, but saw them as places for experimentation and improvement in learning and research, places characterized by what Tice called “[t]he indefinable ambience of the law library as an environment for work of great consequence.”<sup>253</sup> Lee Peoples’s 2014 article on designing library space to encourage learning mentioned neither Langdell nor laboratories, but saw law libraries as essential spaces for developing new approaches to learning in law school.<sup>254</sup> In the twentieth-first century, law libraries have evolved to become spaces for collaborative as well as individual work, designed for learning. If the laboratory metaphor is still apposite, it is because law libraries are no longer laboratories in the sense Langdell had in mind 150 years ago.

¶103 In his study of the metaphors employed by librarians between 1876 and 1926, a period marking the first fifty years of the American Library Association (ALA), Robert Nardini found that at the start of the period the word *library* “carried little meaning for the public at large, and what meanings there were had connotations to avoid.”<sup>255</sup> The new metaphors of the late nineteenth century—library as laboratory and others—moved conceptions of libraries away from the idea that they were merely storehouses or museums. Yet Nardini read the 1926 address of ALA president Charles Belden as “tacit acknowledgement” that those metaphors “no longer sustained the profession” and that reliance on metaphors had left libraries without a clear vision of what they had actually become. Did the metaphors “mask what was essential in the library itself?”<sup>256</sup> Nardini suggested that even “successful metaphors live on to do damage when words become no more than words and prevent clear vision on the part of those who use them, hear them, or read them.”<sup>257</sup>

¶104 Metaphors are not always helpful. In a 1938 discussion of the library’s role in legal education, Duke law librarian Roalfe wrote that although “in legal education the library should assume a role not altogether dissimilar to that of the laboratory in the study of the natural sciences,” in the sciences “this fact is more generally

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252. Anderson & Kirk Letter, *supra* note 225.

253. Tice, *supra* note 139, at 171.

254. Lee F. Peoples, *Designing a Library to Encourage Learning*, 4 J. LEGAL EDUC. 612 (2014).

255. Nardini, *supra* note 171, at 114 (citing Dewey’s 1876 comment regarding libraries as museums and librarians as “mouser[s] in dusty tomes,” Dewey, *supra* note 173, at 5–6).

256. *Id.* at 132–33 (discussing Charles F.D. Belden, *President’s Address: Looking Forward*, 20 BULL. AM. LIBR. ASS’N 273 (1926)). Belden was the director of the Boston Public Library and had served as assistant librarian at the Harvard Law Library. See Anderson, *Harvard Law School Library*, *supra* note 34, at 287–88; see also Henry, *supra* note 180, at 293 (arguing that of the four types of “equipment” necessary for an educational institution—faculty, laboratory, library, and museum—“the library is the most vital, as it holds more of life and the world.”).

257. Nardini, *supra* note 169, at 134.

recognized.”<sup>258</sup> In 1951, he wrote that “[t]he law schools quite generally pay lip service to the idea that the library plays a role analogous to the laboratory in medical education. Much can and should be done to give this ideal a greater semblance of reality.”<sup>259</sup> As Myron Jacobstein noted, despite the resonance of the heart metaphor, when it comes to budgets, “the law library is not the heart of the law school, but it is treated like an appendix and is the first item to be cut.”<sup>260</sup> In the twenty-first century, law librarians might consider concerning themselves less with repeating or updating old metaphors, or creating new ones, than with articulating in their own terms the actual roles law libraries play today.

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258. Roalfe, *supra* note 124, at 147.

259. William R. Roalfe, *Law School Library—Facts and Fancies*, 11 J. LEGAL EDUC. 346, 355 (1958–1959) (arguing that law libraries can play a “vital part in the diversification of methods and approaches to legal education and quoting the ABA standard note about library/laboratory at 346).

260. Jacobstein, *supra* note 139, at 211.

## Appendix

### A Note on Other Law Schools and Their Libraries

¶105 In his history of American law schools, Robert Stevens wrote (with obvious reference to Harvard) that “[i]n the fifty years from 1870 to 1920, one school was intellectually, structurally, professionally, financially, socially, and numerically to overwhelm all the others.”<sup>261</sup> There is also more published material on the history of Harvard Law School than on others. Because this article focuses on Langdell’s comments regarding law libraries, I have concentrated on his writings and on the environment at Harvard in the last quarter of the nineteenth century. However, I have reviewed available materials on the histories of the other charter member AALS law schools and their libraries, and have referenced those sources in the article where I thought they would be helpful.

¶106 In 1890, about 70 law schools were operating in the United States; by 1900, there were nearly 110, most of which were affiliated to some extent with a college or university.<sup>262</sup> In 1901, 32 law schools became charter members of the AALS, which had been organized at the 1900 annual meeting of the ABA and met for the first time the following year.<sup>263</sup>

¶107 According to Reed’s list, the charter member schools had been established as early as 1817 (Harvard) and as recently as 1899 (Stanford). Three were established before 1859; five in the 1850s; four in the 1860s; five in the 1870s; six in the 1880s; nine in the 1890s. Nearly half were fewer than twenty years old; twenty of the thirty-two had started after Langdell became dean at Harvard and began to emphasize the importance of the law library. According to Bruce Kimball, fifteen of the thirty-two charter AALS members had adopted the case method by the end of 1901; an additional six did so by the end of 1915.<sup>264</sup>

261. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA* 41 (1983). Paul Carrington wrote that in the 1860s, two law schools, Columbia and Michigan, “emerged as preeminent, each attracting students by the hundreds.” Paul D. Carrington, *Hail! Langdell!*, 20 *LAW & SOC. INQUIRY* 691, 699 (1995).

262. See list in REED, *supra* note 195, at 423–28. Reed noted that for “many schools connected with a college or university the connection is so slight that it would be misleading to draw a hard and fast line between such institutions and those that are avowedly independent.” *Id.* at 423. His list outlines the history of those connections for schools in operation in 1921. Schlegel wrote that university-affiliated law schools staffed with full-time academic faculty “sprang up like mushrooms after a rain during the years around 1890.” Schlegel, *supra* note 81, at 313.

Konefsky and Schlegel have estimated that “[i]n 1890 over fifty university-affiliated law schools, with over four thousand students, supplied perhaps a quarter to a third of the new lawyers entering practice.” Konefsky & Schlegel, *supra* note 93, at 837 (1982) (citing REED, *supra* note 195, at 442; 1 *REPORT OF THE COMMISSIONER OF EDUCATION MADE TO THE SECRETARY OF THE INTERIOR FOR THE YEAR 1890-91*, at 414–32 (1894) (detailed review of curriculum at law schools)).

For a history of the correspondence law schools that flourished for a period from the late 1890s before fading away in the first decades of the twentieth century after actions of the ABA Section of Legal Education, see Bernard Hibbitts, *Missionary Man: William Sprague and the Correspondence Law School*, *LEGAL HIST. BLOG* (Feb. 26, 2014, 7:00 AM), <http://legalhistoryblog.blogspot.com/2014/02/missionary-man-william-sprague-and.html>.

263. The number of charter members includes both those schools represented at the first meeting in 1900 and five additional schools that had applied for membership since the 1900 meeting. ASS’N OF AM. LAW SCH., *MINUTES OF THE FIRST ANNUAL MEETING* 1, 3–4 (1901).

264. Bruce A. Kimball, *The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell’s Emblematic “Abomination,” 1890–1915*, 46 *HIST. EDUC. Q.* 192, 210 (2006). In 1914, a

¶108 The Articles of Association adopted by the AALS law schools required each member to “own, or have convenient access to during all regular library hours, a library containing the reports of the state in which the School is located and of the United States Supreme Court.”<sup>265</sup> Volume counts published in 1912 for the libraries at twenty-eight of the AALS charter members show a range from 3300 volumes (Maine) to 150,000 (Harvard), with a median count of 15,000.<sup>266</sup> Harvard was by far the largest of the reporting libraries, with more than three times as many volumes as Iowa (45,000) and Cornell (44,000). Yale reported 35,000 volumes. Of fifteen libraries with 15,000 or more volumes in 1912, eleven had been established in 1872 or earlier. Other than Cornell (1887), the schools with the ten largest libraries (each over 23,250 volumes) were established in 1868 or earlier.

¶109 In 1938, Roalfe noted: “In reviewing the now quite considerable body of literature on the subject of legal education, one is struck by the almost total absence of references to law libraries . . . .”<sup>267</sup> This remains generally true, but the institutional histories of American law schools, most of which were written after Roalfe’s comments, usually contain at least some information about their libraries. Book-length histories of the AALS charter schools have been published at least for Columbia, Harvard, Hastings, Iowa, Michigan, Minnesota, and Yale; journal articles of varying length and usefulness can be found for all thirty-two of the first AALS member schools.<sup>268</sup> Law schools and their libraries are also featured to some

U.S. Bureau of Education report found that “the case method remains the principal, if not the exclusive method of teaching in all of the stronger law schools of the country.” HENRY M. BATES, RECENT PROGRESS IN LEGAL EDUCATION 225, 235 (1915), reprinted from 1914 annual report of the U.S. Commissioner of Education; see also LAPIANA, *supra* note 19, at 148–52 (describing the continuing growth of the case method in the early twentieth century).

265. *Association of American Law Schools*, 23 ANN. REP. A.B.A. 569, 572 (1900). The first ABA Standards of Legal Education issued in 1921 stated that each law school “shall supply an adequate library for the use of the students.” AHLERS, *supra* note 139, at 88; Belniak, *supra* note 225, at 156.

266. See *List of Law Libraries in the United States and Canada*, 5 LAW LIBR. J. 35 (1912). Of the thirty-two AALS charter members, Hastings, Indiana (Bloomington), Pittsburgh, and Tennessee are not included. Earlier volume count figures reported without source for a few schools seem generally to support the numbers for 1912: “Thirty-three schools now have over 5,000 volumes each. In 1898, Yale had 12,000 volumes; now, 30,000; University of Pennsylvania, 1898, 19,000; now, 40,000; Columbia, 1898, 25,000; now, 32,000; Cornell, 1898, 26,000; now, 37,500; Harvard, 1898, 44,000; now, 90,000.” Wilgus, *supra* note 189, at 651.

267. Roalfe, *supra* note 124, at 141. In 1928, Frederick Hicks had criticized Alfred Z. Reed for dismissing the importance of law libraries in the latest Carnegie Foundation report. See Frederick C. Hicks, *Law Libraries and Legal Education*, 14 A.B.A. J. 678 (1928) (citing ALFRED ZANTZINGER REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA 110 n.1 (1928)); see also Deborah Mayo Jeffries, *A History of Struggle: NCCU School of Law Library*, 36 N.C. CENT. L. REV. 168, 169 (2014) (“Although the law library was historically extolled as the ‘heart’ or ‘laboratory’ of a law school, written histories of law schools are oftentimes quiet, if not silent, about the events and circumstances that contributed to the development of their libraries.”).

268. The histories of the libraries at some early AALS law schools are summarized in Brock, *supra* note 13, at 342–43. On the general failure of law schools to preserve their histories, see also *The Proposed Legal Education Library*, *supra* note 180, at 629.

The published histories can be selective in what they include. For example, a history of the Hastings College of Law notes: “The directors authorized the Dean, on May 31, 1901, to apply for admission to the Association of American Law Schools. The College thus became a charter member of the organization which has done the most to maintain high standards for legal education



extent in institutional histories of their universities. Particularly interesting for the period I studied is a series of articles published in the *Green Bag*, mostly between 1889 and 1890, that often feature photographs of the law schools and their libraries.<sup>269</sup>

¶110 Langdell's annual reports provide more insight into student use of the Harvard Law Library than do most of the published histories. Letters by students describing their schools, sometimes with comments about the libraries, were published in the *Columbia Law Times*. Law faculty scholarship seems to report little about how faculty members used the library. In their 1982 review of law school histories, Konefsky and Schlegel wrote:

To the extent that students who do not become faculty live at all, they seem to do so only on the law review and the moot court board, though they are sometimes reincarnated as alumni. The faculty themselves are treated as faceless teaching clones who produce uniformly interesting, high quality scholarship in total isolation from each other and who collaborate only occasionally to raise academic standards or reorganize the curriculum.<sup>270</sup>

¶111 Hopefully, more will be discovered and written about the many "faceless" librarians and other staff who built the great law libraries, supported legal scholarship, and contributed to the education of generations of American lawyers.

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throughout the country." Edward A. Hogan, *History of the Hastings College of Law*, 4 HASTINGS L.J. 89, 95 (1953). The article fails to mention that in 1916 Hastings withdrew from AALS membership because it relied on access to the local county library to meet an "'imperative requirement' recently made by the Association that every school should own a law library of not less than 5,000 volumes." See REED, *supra* note 267, at 28–29; see also AALS HANDBOOK 28, 85 (1916); THOMAS GARDEN BARNES, HASTINGS COLLEGE OF THE LAW: THE FIRST CENTURY 148–50 (1978) (describing the lack of library and AALS situation). Hastings was reinstated in 1920, largely because the San Francisco County Law Library was located in the same building and on the same floor as the College of Law, AALS HANDBOOK 21, 32 (1920), then dropped again for other reasons in 1927, REED, *supra* note 267, at 29 n.1, and reinstated in 1949.

269. See Brandeis, *supra* note 232; George R. Swasey, *Boston University Law School*, 1 GREEN BAG 54 (1889); C. Stuart Patterson, *The Law School of the University of Pennsylvania*, 1 GREEN BAG 99 (1889); Dwight, *supra* note 99; Henry Wade Rogers, *Law School of the University of Michigan*, 1 GREEN BAG 189 (1889); Leonard M. Daggett, *The Yale Law School*, 1 GREEN BAG 239 (1889); Charles Clafin Allen, *The St. Louis Law School*, 1 GREEN BAG 283 (1889); Charles P. Norton, *The Buffalo Law School*, 1 GREEN BAG 421 (1889); Harry B. Hutchins, *The Cornell University School of Law*, 1 GREEN BAG 473 (1889); Irving Browne, *The Albany Law School*, 2 GREEN BAG 153 (1890); William S. Pattee, *Law School of the University of Minnesota*, 2 GREEN BAG 203 (1890); Lamar C. Quintero, *The Law School of the Tulane University of Louisiana*, 2 GREEN BAG 116 (1890); Kirchwey, *supra* note 105.

270. Konefsky & Schlegel, *supra* note 93, at 838.