

bers not of any local, colonial, or state bar but of the bar of their former Inn of Court. They were averse and perhaps too haughty to establish or join a local bar association consisting of lawyers who had not been trained in England. It was only the widely felt revulsion against low professional standards, and a like revulsion against the general political corruption, especially in state and local politics—a corruption which is frequently the concomitant or the result of an unorganized or corrupt bar—which, after the lapse of nearly half a century, led to the revival of the idea of a strongly organized bar.¹⁹⁹

¹⁹⁹ Wickser, "Bar Associations," *loc. cit.*, 396.

IV

TRAINING FOR THE PRACTICE OF LAW

IT HAS ALREADY BEEN POINTED OUT that one of the chief concerns of any organized and skilled profession is, and nearly always has been, the supervision and control of the training and education preparatory to admission to the practice of the profession. In colonial America any person desiring to prepare himself for the practice of law had four major avenues open to him, not counting attendance at one of the few colleges then in existence. He might, by his own efforts and through self-directed reading and study, acquire whatever scraps of legal information were available in books, statutes, or reports; he could work in the clerk's office of some court of record; he could serve as an apprentice or clerk in the law office of a reputable lawyer, preferably one with a law library; or he could enter one of the four Inns of Court in London and receive there the "call to the bar."¹ After the Revolution, and for a long time to come, the chief method of legal education was the apprenticeship served in the office of a lawyer, although there were still some isolated instances of self-directed

¹ Chroust, "The Legal Profession in Colonial America," *loc. cit.*, Part I, 51, 59ff. (1957).

studies² and, on fairly rare occasions, of attendance at the Inns of Court in London.³

Apprenticeship is basically a method of acquiring knowledge and certain skills by close association with, and observation or imitation of, an expert at work: the law student entered the office of a practitioner and "read law." He also did much copying by hand of legal documents, and as a rule he performed many of the small services in or about the law office, including service of process. Lemuel Shaw of Massachusetts, who took into his office a large number of "students," drafted the following rules governing their conduct:

1. Students, on their entrance who have previously been at a Law School, or in any other office as students, will be expected to state particularly what books they have read, the progress they have made in each branch of the law. 2. Students are requested to report to me each Monday in the forenoon the course of their reading the preceding week, and receive such advice and direction as to the pursuits of the current week as the case may require. In case of the absence or engagement of either party on Monday forenoon, such conference to be had as soon thereafter as circumstances will permit. 3. At any and all other times students are invited to call me and enter into free conversation upon subjects connected with their studies, and especially in reference to those changes and alterations of the general law which may have been effected by the Statutes of the Commonwealth and by local usage, and in respect to which therefore little can be found in books. 4. As one of the main objects of the attendance of students in the office of an attorney and counsellor is practice, they will be employed in conveyancing, pleading, copying, and other writing as the business of the office may require. 5. As order, diligence, and industry are essential to success in so laborious a profession, students will accordingly be expected to attend in the office, unless some other arrangement is made in particular cases, during those hours which are usually appropriated to business, and to apply themselves to the appropriate studies and business in the office. 6. If a student proposes to take a journey or to be absent for any considerable [time] he will be expected to give notice of the

² This method actually became more popular during the so-called Jacksonian era. Abraham Lincoln, for instance, chose this method.

³ Also, people still served in the office of the clerk of some court of record.

fact and the probable length of his absence, and if he is confined by sickness or other necessary cause he will be expected to give notice of the fact.⁴

It goes without saying that "apprenticeship training" was of widely varying thoroughness and quality, and that particularly in the lesser law offices much of it was of a purely mechanical type.⁵ As a result the student "is taught by form or precedent rather than by principle. He is made to copy precedents without knowing either their application or those rules on which they are grounded. When he begins to prepare drafts he is led to expect all his information from these forms, and his knowledge is in the end as limited as the means by which he has been instructed."⁶ As a rule, he commenced his studies whenever he wished, studied as much or as little as he pleased, and more often than not was wholly on his own as far as learning the law was concerned. He could read—and in some instances was expected to read—whatever lawbooks were to be found in the office. But he received little formal instruction: theory was hardly ever discussed, and legal principles were seldom expounded. There were no definite requirements or standards, nor was there a systematic program of study. The lawyer who took in "students" might be a conscientious and efficient man who tried to educate them to the best of his ability, or he might be indifferent or lazy and let them shift for themselves. In some rare instances law students, either on their own or prompted by their preceptor, also held moot courts. Thus, in 1825, William A. Graham, while clerking in the office of Thomas Ruffin, informed his preceptor that Ruffin's students on their own had arranged weekly moots which he hoped would prove to be a great value to them "if properly attended to."⁷ Needless to say, the "apprenticeship method" was deficient in many ways, but no one can deny the fact that the vast

⁴ Quoted in Chase, *Lemuel Shaw* 120-21 (1918). Presumably similar rules for students were established in some of the better law offices.

⁵ See Chroust, "The Legal Profession in Colonial America," *loc. cit.*, Part I, 60ff. It will be noticed that Thomas Jefferson (see note 12, Chapter IV, below) and William Livingston, to mention but two instances, had a very low opinion of the apprenticeship method. John Adams, on the other hand, was very enthusiastic about it.

⁶ Quoted in Birks, *Gentlemen of the Law* 167 (1960).

⁷ *The Papers of Thomas Ruffin* 331-32 (Hamilton ed., 1920).

majority of the greatest American lawyers during the early part of the nineteenth century were the product of this training system.⁸

As early as 1642, Harvard College offered lectures on "Ethicks and Politicks." Subsequently other colleges, as they came into existence, introduced courses in "Moral Philosophy," "Natural Law," "Political Philosophy," or "Principles of Law and Government."⁹ In 1756 the College of Philadelphia, now the University of Pennsylvania, gave a course which also included the "civil laws"; and Grotius' *De jure belli et pacis* (of 1625) as well as Pufendorf's *De jure naturae et gentium* (of 1672) became permanent "reading assignments." In 1774, Governor Tryon made a land grant to King's College on the condition that it would establish a Tryonian Professorship of Municipal Law.¹⁰ But it is doubtful whether these scattered attempts at introducing in the colonial colleges some familiarity with the law had anything to do with professional training and preparation for the practice of law. Nevertheless, the fact that some kind of general instruction in law, as distinguished from ethics and politics, was considered to be part of the academic curriculum is in itself worthy of notice.¹¹

To Thomas Jefferson¹² belongs the credit of having introduced into the United States the systematic "academic instruction" in law.¹³ In 1779 he was instrumental in creating the first dis-

⁸ Farmer, "Legal Education in North Carolina, 1820-1860," 28 *North Carolina Historical Review* 275-76 (1951).

⁹ King's College, now Columbia University, introduced such a "course" in 1755; and in 1762 it established a chair of "Natural Law."

¹⁰ Obviously, Governor Tryon wished to follow the example set by the Vinerian Professorship of Law at Oxford. But nothing came of this plan.

¹¹ That this particular idea goes back to practices observed at Oxford and Cambridge (England) as well as in all Continental universities needs no comment.

¹² Thomas Jefferson was always critical of the apprentice system. "It is a general practice to study the law in the office of some lawyer. This indeed gives to the student the advantage of his instruction. But I have ever seen that the services expected in return have been more than the instructions have been worth." 5 *Writings of Thomas Jefferson* 180 (Ford ed., 1903-1904). See note 5, Chapter IV, above.

¹³ It appears that in 1777 the Connecticut legislature proposed to endow a professorship of law at Yale, provided that the legislature would have a voice in the appointment of the new law professor as well as in the general government of the College. Since the Yale Corporation refused to yield any of its powers, nothing came of this plan. 2 Stiles, *Literary Diary of Ezra Stiles* 207ff. (1901).

tinctive law professorship at William and Mary.¹⁴ Jefferson's old friend, preceptor, and fellow revisor of the Virginia statutes, George Wythe,¹⁵ who was Judge of the Virginia Court of Chancery at that time, became the first professor of "Law and Police." The instruction offered by Wythe included "theoretical lectures"¹⁶ and moot court arguments dealing with practical matters.¹⁷ In 1791, on his removal to Richmond, Wythe resigned from his professorship.¹⁸ His influence as a teacher was particularly felt through his students, who included Spencer Roane, John Marshall, St. George Tucker, John Breckenridge, George Nicholas,

¹⁴ In this Jefferson to some extent seems to have followed the Continental pattern of university education.

¹⁵ George Wythe, a signer of the Declaration of Independence, attended William and Mary and studied law with Stephen Dewey, who apparently neglected him badly. Admitted to the bar in 1746, he became associated in practice with John Lewis, a prominent lawyer in Spotsylvania County. In 1754, the year he resided in Williamsburg for a few months, he became acting attorney general of the Colony and a member of the House of Burgesses from 1754 to 1755. At this time he began to study law (and also the classics) in earnest, and was admitted to practice before the General Court. In 1758, Wythe became the intimate friend of Governor Francis Fauquier (a cultured and learned gentleman who also was a Fellow of the Royal Society), William Small (professor of Mathematics and Natural Philosophy at William and Mary), and, somewhat later, Thomas Jefferson. In 1775 he was sent to the Continental Congress, where he ably supported Richard Henry Lee's Resolution for Independence. Together with Thomas Jefferson and Edmund Pendleton he assumed the tremendous task of revising the laws and statutes of Virginia. In 1778 he became one of the three judges of the new Virginia High Court of Chancery. He attended the Constitutional Convention and presided over the Virginia Convention which ratified the federal Constitution. In 1788, on the reorganization of the Virginia judicial system, he became sole chancellor of Virginia.

For his deep ethical convictions as a lawyer and his impartiality as a judge, Wythe was often compared by classically minded Virginians to Aristides "the Just." Possessed of a broad education and culture, he was probably the foremost classical scholar in Virginia in his day. In *Commonwealth v. Caton*, 4 Call 5 (1782), decided in 1782, he was one of the first American judges to enunciate the doctrine of judicial review: ". . . if the whole legislature . . . should attempt to overleap the bounds, prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers, at my seat in this tribunal; and, in pointing to the constitution, will say, to them, here is the limit of your authority; and, hither shall you go, but no further." *Ibid.*, 8.

¹⁶ Blackstone's *Commentaries* were the basis of these lectures.

¹⁷ For an account of these "moots," see 8 *William and Mary Quarterly* 80 (1900).

¹⁸ In Richmond he founded a small law school of his own.

John J. Crittenden, William A. Rives, Benjamin Watkins Leigh, Alexander Campbell, Littleton Waller Tazewell, Henry Clay, and William Munford. In 1780, Wythe had about forty students, an exceptionally large number for the time.¹⁹

Wythe was succeeded at William and Mary by his former pupil, St. George Tucker, whose law lectures became the basis of his edition of Blackstone's *Commentaries*, published in 1803. William Taylor Barry, who became postmaster general in Andrew Jackson's cabinet, had this to say about the teaching of Tucker: "Mr. Tucker is a man more profoundly read in the Law perhaps than any other lawyer of the present time. No person can with more ease and facility clear up or elucidate a knotty or abstruse point of law, and he not only possesses the capacity of doing so, but does it with willingness, and appears solicitous to communicate every information that he is possessed of."²⁰ Tucker, on his election to the Virginia Supreme Court of Appeals, resigned his professorship in 1804, and was succeeded by Judge Hugh Nelson who carried on the system of legal education established by Wythe and Tucker. It was said that during these years the law course at William and Mary was superior to that at Litchfield. On the resignation of Hugh Nelson in 1811, his brother, Chancellor Robert Nelson, took over the professorship until 1818. He was succeeded by Judge James Semple who served from 1819 to 1833, Nathaniel Beverly Tucker (1833-52), George Scarburgh (1852-55), and Lucien Minor (1855-61).²¹ The William and Mary experiment stimulated the organization of similar law schools in the West and in the South throughout the early period of American history. Some of these new foundations proved successful, others abortive.

The curriculum adopted by the College of Philadelphia in 1756 included, as has been shown, the study of "civil law" for seniors in order to give them both knowledge and a practical sense of their position as men and citizens. Obviously, this instruction was not intended to prepare young men for the routine handling of legal matters. On August 17, 1789, on the petition of Charles

¹⁹ In 1793, William and Mary conferred the earliest recorded law degree granted "in course" in the United States.

²⁰ Quoted in Aumann, *The Changing American Legal System* 112n. (1940).

²¹ The Law School of William and Mary continued in existence until 1861, when it closed on account of the Civil War.

Smith, the Trustees of the College of Philadelphia appointed James Wilson, then an Associate Justice of the Supreme Court of the United States, professor of law. Three lectures were to be delivered weekly, with additional "exercises" to be held every Saturday.²² The lectures offered by Wilson were not altogether successful. His violent criticism of Blackstone²³ as well as his ultra-Federalist views concerning the powers of the national government did not meet with general approval on the part of his audience. Nor was his temperament that of an effective teacher and scholar. In addition, the program of instruction which he had initially envisioned was far too ambitious and far too general to be of much use or interest to the practicing attorney.²⁴ He spent the whole first year on introductory generalities by way of a restatement of Blackstone in American terms. The reaction of the practicing lawyer to Wilson's method of instruction is perhaps best expressed by Thomas Loughborough, an articulated clerk and, hence, a man with a practical bent of mind, who had this to say about Park's first law lectures at King's College in London: "I do not think he at all confined himself to Practice but on the contrary was as theoretical, speculative and philosophic as he possibly could be, which is not

²² At the first of the twenty-four lectures which James Wilson delivered in the Hall of the Academy in Philadelphia on December 15, 1789, President George Washington and Mrs. Washington, the Cabinet, Members of Congress, and other persons of distinction were present. Philadelphia was at that time the seat of the federal government.

²³ "I cannot," said Wilson, "consider him [Blackstone] a friend of republicanism. On the subject of government I think I can plainly discover his jealousies and attachments. . . . In public law . . . he should be consulted with cautious prudence. . . . It is of high import to the liberties of the United States that the seeds of despotism be not permitted to lurk at the roots of our municipal law." Wilson, *Works* 21-22 (1804); Waterman, "Thomas Jefferson and Blackstone's *Commentaries*," 27 *Illinois Law Review* 629 (1933). In *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 414, 458-59 (1793), Wilson stated: "A plan of systematic despotism has lately been formed in England. . . . Of this plan, the author of the *Commentaries* was, if not the introducer, at least the great supporter. He has been followed in it, by writers later and less known; and his doctrines have been, both on the other and this side of the Atlantic, implicitly and generally received by those who neither examined their principles nor their consequences."

²⁴ The aim of the course was stated as follows: "The obvious design of the plan is to furnish a rational and useful entertainment to gentlemen of all professions." Blackstone, in the Introduction to his *Commentaries*, used practically the same words.

at all calculated for practising attorneys."²⁵ Although requiring at least three years for its completion, Wilson's course was discontinued before the close of the second year, probably for lack of attendance. Wilson retained his professorship until his death in 1798, although in name only. When in 1792 the College of Philadelphia was merged with the University of Pennsylvania, a new law professorship was established. Wilson was appointed to it, but he gave no lectures.²⁶

In 1817 the idea of a formal three-year law course was revived at the University of Pennsylvania, and Charles Willing Hare was appointed professor. The first year was to be dedicated to the study of "National Jurisprudence"; the second to "International Jurisprudence"; and the third to the "Jurisprudence of the United States and Pennsylvania." But this course, too, was discontinued after one year, presumably because Hare's health broke down. The professorship, remaining vacant for some time, was formally abolished in 1834. Only in 1850, under Judge Sharswood, was the Law Department of the University of Pennsylvania established on a permanent basis.²⁷

King's College, founded in 1754 and renamed Columbia College in 1784, as early as 1762 and again in 1773, had a professorship of "natural law."²⁸ But it is unlikely that anything remotely resembling a methodical or practical training in the common law was taught there. In 1784, when Columbia College became part of a state-wide "University of New York" organization, the Col-

²⁵ Quoted in Birks, *Gentlemen of the Law* 177 (1960).

²⁶ Wilson's lectures delivered in 1790-91 were published in 1804, but because they dealt only with general questions of law, they did not become popular with either the profession or the law students. They were chiefly of interest to the historian as an exposition of Wilson's personal views on the United States Constitution and the federal government.

²⁷ Wood, "History of the University of Pennsylvania from its Origin to the Year 1827," 3 *Memoirs of the Historical Society of Pennsylvania* 109 (1834); Klingelsmith, "History of the Department of Law," *University of Pennsylvania Proceedings at the Dedication of the New Building of the Department of Law* 213ff. (1900); Reed, "Training for the Law," *loc. cit.*, 122ff.

²⁸ John Vardill was appointed "Fellow and Professor of Natural Law" in 1773. *Minutes of the Governors of King's College*, November 11, 1773. But since Vardill sailed for England the same year, it is doubtful whether he ever taught. When the British occupied New York in 1776, this professorship was abolished.

lege was advised to add to its curriculum a faculty of law consisting of three professors: one for the "Law of Nature and Nations," one for "Roman Civil Law," and one for "Municipal Law."²⁹ For want of adequate funds, no further action was taken on this project until December 2, 1793, when the Board of Trustees of Columbia College³⁰ voted to establish a separate professorship of law³¹ with a salary of two hundred pounds per annum, to be paid out of funds appropriated by the New York state legislature.³² The new professor of law was expected to give a brief review of the nature of government in general, of the nature of American government in particular, of the existing "civil" and "criminal" codes, of the federal jurisdiction, of the constitutions of the various states, and particularly of the Constitution of New York, and of the relations of these state constitutions to the federal government. In addition, he was to stress "municipal law" as it related to the rights of private property and to the various forms of administering criminal and civil justice.³³

James Kent, who at that time had a small practice in Poughkeepsie, New York, was appointed to this professorship³⁴ and began to deliver a series of law lectures on November 17, 1794.³⁵ In his inaugural lecture Kent stressed the qualifications of the ideal lawyer: "A lawyer in a free country, should have all the requisites of Quintilian's orator. He should be a person of irreproachable virtue and goodness. He should be well read in the whole circle of

²⁹ The term "municipal law," which had been brought into vogue by Blackstone, signified "public law" or "administrative law."

³⁰ In 1787, Columbia had regained its independence from the "University of New York" system.

³¹ Professor Gross, who also taught history at Columbia, was to give a course in moral philosophy which included "government and international law."

³² 1 *Kent Papers* 187 (Library of Congress).

³³ *Ibid.*

³⁴ 2 *Kent Papers* 191 (Library of Congress). "It was the character I had insensibly acquired as a scholar and a Federalist and a presumed (though it was not true) well-read lawyer," Kent wrote in October, 1793, to his brother Moss Kent, "that the very first year that I removed to New York I was appointed a Professor of Law at Columbia College. The influence of Dr. S. Bard, of Judge Hobart, of B. Livingston, Edward Livingston and probably Chief-Justice Jay, procured me the appointment." Kent, *Memoirs and Letters of James Kent* 58 (1898).

³⁵ The inaugural lecture, entitled "An Introductory Lecture to a Course of Law Lectures (1794)," is reprinted in 3 *Columbia Law Review* 330-43 (1903).

the arts and sciences. He should be fit for the administration of public affairs, and to govern the commonwealth by his councils, establish it by his laws, and correct it by his example."³⁶ In addition, Kent believed that the lawyer should be well read in the Greek and Latin classics, have some knowledge of civil law, develop his powers of reasoning by the study of logic and mathematics, be grounded in moral philosophy, and possess the art of public speaking.³⁷

Following the pattern established by Blackstone (and Wilson), Kent's lectures were thrown open to the general public and addressed to "every Gentleman of Polite Education";³⁸ they were not designed specifically for future law practitioners.³⁹ During the first academic year (1794-95) Kent delivered twenty-six lectures,⁴⁰ which were attended by seven college students and thirty-six lawyers and students not connected with Columbia College.⁴¹ Kent himself considered them "to have been slight and trashy productions."⁴² Also, he felt himself unable to complete the whole program—he intended to include the law of personal property, commercial law, and criminal law—and, in his own words, "was obliged to leave this first course imperfect."⁴³ In 1795-96 he delivered thirty-one lectures in his law office to three students, including his own clerk, while in 1796-97 he had no students at all, and only six or eight in 1797-98.⁴⁴ Discouraged by the failure of

³⁶ *Ibid.*, 338.

³⁷ *Ibid.* John Duer, in his *Discourses before the Bar of New York*, delivered on April 12, 1848, describes the introductory lecture of Kent as "written with great vigor of style and compass of thought," and "the views that it unfolds of the true nature and province of the law, and of the advantages to be derived from its study," as "judicious, discriminating and comprehensive." Kent, *Kent Papers* 63 (Library of Congress). John Adams, in a letter addressed to his son, Charles Adams, dated April 14, 1795, wrote: "I am much pleased with the lecture and esteem the talents and Character of the Professor." *Ibid.*, 64.

³⁸ See note 24, Chapter IV, above.

³⁹ *The Present State of Learning in the College of New York* 10 (1794).

⁴⁰ See Kent's letter to Moss Kent, dated March 1, 1795, Kent, *Kent Papers* 74 (Library of Congress). See also *ibid.*, 77.

⁴¹ *Ibid.*, 77ff.

⁴² *Ibid.*, 62.

⁴³ *Ibid.*, 74. Kent proposed, however, to remedy this situation the following year. *Ibid.*

⁴⁴ In his letter of resignation, addressed to the Trustees of Columbia College and dated May 2, 1797, Kent stated that "[t]he second course . . . commanded

his first professorship, Kent resigned from this position in 1798.⁴⁵ The failure of the undertaking, aside from the fact that Kent was called upon to perform more important duties, may be ascribed to two factors: first, Kent himself soon tired of the whole program;⁴⁶ and secondly, he did not pursue in his lectures a definite aim that might have attracted future practitioners. It has also been maintained that his lectures were too much saturated with Federalism, which did not sit well with local lawyers. The fate of the whole enterprise, however, seems not to have been exceptional. With all his learning, enthusiasm, and experience, Isaac Parker at Harvard⁴⁷ met with no better success. Like James Wilson at the College of Philadelphia (whose efforts suffered the same fate as those of Kent and for essentially the same reasons) eight years before, Kent was too diffuse, too general, and too impractical as regards the needs and demands of the day. A course in "the law of nature and na-

only two students. . . . The commencement of a third annual course, in November, was duly announced in the public print, but no student appeared . . . and the trial was abandoned." *Ibid.*, 78. An outline of the whole lecture course, which apparently was to be completed in one year, was published in 1795. This "outline" contains thirty-seven lectures: three dealing with introductory problems; ten with the Constitution and the laws of the United States (including the organization of the federal government and the practice in the federal courts); and twenty-four with the Constitution and laws of the state of New York, including the governmental organization of the state, and the usual common law topics. In 1795, Kent also published a volume based on the first three lectures delivered in 1794-95, namely, *Theory, History, and Duties of Civil Government; History of the American Union; and Law of Nations*.

⁴⁵ On May 2, 1797, Kent had attempted to tender his resignation in a letter addressed to the Trustees of Columbia College. He stated that "[t]he institution has not been attended with all the success which you had intended and which I have endeavored to produce." He concluded the letter by expressing his hope "that the general principles of our Constitution and Laws may still be academically taught, and that the institution . . . under abler professors, and in more auspicious times, be crowned with happier success." Kent, *Kent Papers* 77ff. (Library of Congress). The Trustees, however, refused to accept his resignation and, on May 3, 1797, awarded him "the Degree of Doctor of Laws." *Ibid.*, 79. But they accepted his resignation a year later, when he was made a judge of the New York Supreme Court.

⁴⁶ In 1795 he wrote: ". . . I should not have had the courage to undertake it had I fully anticipated the pains which have been bestowed." *Ibid.*, 74ff. In 1796 he commented: "The small encouragement with which my lectures have been received by the public this year has cooled and dulled my ardor. . . . I . . . feel little ambition about them." *Ibid.*, 76.

⁴⁷ See below.

tions," subsequently incorporated in the "Philosophy Department," was carried on at Columbia for a while.

In 1824, upon his retirement from the bench at the age of sixty, Kent resumed his law professorship at Columbia,⁴⁸ which in the meantime had "lain dormant."⁴⁹ He undertook, though

⁴⁸ In his inaugural lecture, delivered on February 2, 1824, Kent pointed out that "a sound law education is as important in this country, as in any other, where order and justice have established their dominion. If I do not deceive myself, it is even more so, owing to the very popular character of our governments. . . . [I]n our own country, the law is taught in a classical manner in public schools, and in some of the universities out of this state, with great credit and success. Why, then . . . should not this state, and even this city, be capable of supporting a collegiate law institution, upon a large and liberal plan? . . . [S]urely it is most desirable, and of very great importance, that the principles of a science which protects every interest, and binds every relation in civil society . . . and touches every cord of human sympathy, should be thoroughly studied, and diffusely known. The end and design of a course of academical lectures, is to give to the law the attention and cultivation of a liberal science. It is to direct the researches of the student; to inspire him with a thirst of knowledge, and a noble emulation to excel; to raise the standard of merit, and to cast contempt upon ignorance, and idleness, and dissipation. The sure and certain consequence of a well-digested course of juridical instruction, will be to give elevation and dignity to the character of the profession. . . . A course of lectures on the science of law ought to comprehend: 1. A general outline of the principles and usages of the law of nations. 2. A full and accurate view of what may be termed the constitutional law of the United States. 3. The municipal law of this state, or its domestic jurisdiction. . . . [A knowledge of the law of nations] is especially to be acquired by becoming familiar with the doctrines of . . . [the] great masters of public law. . . . I place at the head of these illustrious jurists the learned *Grotius*. . . . *Puffendorf*, *Barbeyrac*, *Bynkershoek*, *Burlemaqui*, *Wolfius*, *Vattel*, *Heineccius*, *Montesquieu*, *Rutherford*, and *Martens*, may be selected as his most illustrious disciples in the school of public law. . . . The law of nations is likewise to be studied in the body of the civil law. . . . [E]very well educated gentleman and scholar, and especially every lawyer and statesman, ought to be early and perfectly instructed in the doctrines of his national jurisprudence. The other head of the course . . . is the constitutional law of this country. . . . [W]e must investigate thoroughly the principles of the union of this great assemblage of communities . . . [t]he true construction of that instrument . . . and the exact extent and circumscribed limits of the residuary authorities of the states . . . from the final determination of the Supreme Court of the United States. . . . The judicial power of the union is the ultimate expounder of the constitution. . . . And when we reflect . . . on the many cases in which the powers of the federal and state governments may be brought in collision with each other . . . the magnitude of the trust confided to the judicial [powers] of the union will be apparent. . . . The decisions of the federal courts ought therefore to be studied." Kent, *A Lecture, Introductory to a Course of Law Lectures in Columbia College, Delivered February 2, 1824* (1824), reprinted in part in Miller, *Legal Mind* 95-105 (1962), especially at 97-104.

against his own inclination, "to write and deliver law lectures."⁵⁰ But after a year and a half, "having got heartily tired of lecturing,"⁵¹ he gave up teaching again (in 1826). Between February 6 and May 18, 1824, Kent had delivered thirty lectures which were attended by thirty-three "gentlemen" and fourteen private students. The latter underwent a private examination every Saturday on the two preceding lectures of the week.⁵² Between November 8, 1824, and April 13, 1825, he delivered fifty lectures, attended by twenty-one "gentlemen" and fifteen students. In addition, he gave each week two "Private Lectures" on the "College Lectures." Between April 13 and April 27, 1825, he continued to offer a course of private lectures on the "Practice of the Courts." During the early part of this second course of law lectures he also instituted a moot or debating club which met every Saturday.⁵³ Beginning the fourth Monday in October, 1825, until April 22, 1826, he delivered his third course of law lectures to thirteen students. These lectures were held daily, five days a week.⁵⁴ Although his name was carried in the catalogue until his death, Kent delivered no more lectures after April, 1826. During his second tenure at Columbia, Kent simply read to his "audience." He held no regular examinations except for his "private" students, and no more law degrees were conferred. Kent himself admits that his law lectures "give me a good deal of trouble and anxiety. I am compelled to study and write all the time, as if I was under the whip and spur."⁵⁵

The withdrawal from active teaching gave Kent ample leisure to produce—at the insistence of his son, as he himself admits⁵⁶—his well-known *Commentaries* in four volumes, which appeared be-

⁴⁹ Kent, *Kent Papers* 186, 193 (Library of Congress). See also *Minutes of the Trustees of Columbia College*, November 3, 1823.

⁵⁰ Kent, *Kent Papers* 186-87 (Library of Congress). See also the letter of James Kent to Moss Kent, dated January 4, 1824, 5 *Kent Papers* 1259 (Library of Congress), and *ibid.*, 1267, 1272, 1291. Kent, *Memorandum*, reprinted in Hicks, *Man and Books Famous in the Law* 149 (1921).

⁵¹ Kent, *Kent Papers* 187 (Library of Congress).

⁵² Kent, *Memorandum*, reprinted in Hicks, *Man and Books* 149 (1921).

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Letter of James Kent to Moss Kent, dated November 9, 1824, Kent, *Kent Papers* 192 (Library of Congress).

⁵⁶ *Ibid.*, 187.

tween 1826 and 1830. After Kent's retirement, William Betts, a prominent New York lawyer, was appointed to the second professorship. It is not known whether Betts ever delivered any regular lectures; his relations to legal education seem to have been purely nominal.⁵⁷ John Duer, himself a lawyer, lectured for a while on constitutional law.⁵⁸ But in the main nothing came of the Columbia University Law School project until 1858⁵⁹ when the whole program of academic instruction in law was put on a regular and efficient basis by the appointment of Theodore W. Dwight, who had been teaching law at Hamilton College, which at the time possessed a law school.⁶⁰

In 1799, the year after it was chartered, the Transylvania University at Lexington, Kentucky, appointed George Nicholas, a graduate of the law school of William and Mary, its first "Professor of Law and Politics." Nicholas, who died the same year, was succeeded by James Brown (1799-1804) and Henry Clay (1804-1807). Subsequently, John Monroe, John Pope, John Boyle, Joseph Cabell Breckenridge, and George Robertson⁶¹ held this law professorship. For some time Transylvania remained the only

⁵⁷ Dwight, "Columbia College Law School, New York," 1 *The Green Bag* 141, 144 (1889). Betts seems to have managed, however, intermittently to deliver a few law lectures. See Burdick, *The School of Law, History of Columbia University, 1754-1904* 342 (1904).

⁵⁸ Duer was president of Columbia College from 1830 to 1842.

⁵⁹ For the early period of the Columbia University Law School, see, in general, *A History of the School of Law, Columbia University* 3-29 (Goebel ed., 1955).

⁶⁰ See the text corresponding to note 155, Chapter IV, below.

⁶¹ George Robertson accepted this law professorship in 1834, and resigned from it in 1858. The services he rendered the Transylvania University were practically without compensation and brought him no rewards beyond the satisfaction of aiding the many young men who came under his instruction in preparing themselves for a successful career at the bar or on the bench. These services earned him an enviable distinction, and endeared him to the young lawyers of his own and succeeding generations. As a teacher he influenced more than twelve hundred prospective lawyers scattered throughout the United States, but principally in the Southwestern and Western states or territories. He also delivered lectures on legal ethics, thus anticipating by several years Judge Sharswood's famous *Compendium of Lectures on the Aims and Duties of the Profession of the Law* (1854), which was republished several times under the title of *An Essay on Professional Ethics*.

law school west of the Alleghenies.⁶² The success of this school, which was thoroughly influenced by the William and Mary experiment, is attested by the fact that, though starting with only nineteen students, by 1842-43 it had seventy-five, being second in enrollment at that time only to Harvard.⁶³ Because of the Civil War the school closed in 1861. Subsequent attempts to re-establish the school⁶⁴ had no permanent success.

From its very beginning the University of Virginia, founded in 1826⁶⁵ by Thomas Jefferson, on the advice of Joseph Story had a law professorship or "law school"⁶⁶ to teach "the common and statute law, that of the Chancery, the laws Feudal, Civil, Mercatorial, Maritime and of Nature and Nations, and also the Principles of Government and Political Economy."⁶⁷ The University of Virginia Law School, as might be expected, followed the "system" established at William and Mary. Thomas Jefferson, who was actively interested in the establishment of this school, considered the selection of its first professor to be of greatest importance. "In the selection of our Law Professor," he wrote to James Madison on February 7, 1826, "we must be vigorously attentive to his political principles. You will recollect that before the Revolution, Coke Littleton was the universal elementary book of law students, and a sounder Whig never wrote, nor of profounder learning in the orthodox doctrine of the British constitution, or in what is called English liberties. You remember also that our lawyers were then all Whigs. But when his black-letter text, and uncouth but cunning learning got out of fashion, and the honeyed Mansfieldism of Blackstone became the students' hornbook, from that moment, that profession (the nursery of our Congress) began to slide into toryism, and nearly all the young brood of lawyers now are of that hue. They suppose themselves, indeed, to be Whigs, because they no

⁶² Some of the outstanding "Western" lawyers were connected with this school during its earlier history.

⁶³ See, in general, Lewis, *History of Higher Education in Kentucky* (1899); Peter, *Transylvania University: Its Origin, Rise, Decline, and Fall* (1896).

⁶⁴ From 1892 to 1895, and from 1905 to 1912.

⁶⁵ Although the University of Virginia was granted a charter in 1819, it was not until 1826 that the University and the Law School were opened to the public.

⁶⁶ In 1851 an additional professorship was created.

⁶⁷ *Enactments by the Rector and Visitors of the University of Virginia, 1825*.

longer know what whiggism or republicanism means. It is in our seminary that that vestal flame is to be kept alive; it is thence that it is to spread anew over our own and the sister States."⁶⁸ The new Law School, like the whole University, in the words of Jefferson, was to "be based on the illimitable freedom of the human mind. For here [at Virginia] we are not afraid to follow truth wherever it may lead, nor to tolerate error so long as reason is left free to combat it."⁶⁹ Only those schools which have found the courage and possessed the wisdom to heed Jefferson's admonition have succeeded in becoming truly great law schools.

The first law professor at Virginia was John Taylor Lomax, who assumed the position in 1826, after it had been declined by Francis W. Gilmer and William Wirt.⁷⁰ In 1830, Lomax was succeeded by John A. G. Davis, who served until 1840. During the next year, the chair was held by N. P. Howard on a temporary appointment. In 1841, Henry St. George Tucker received a regular appointment, and in 1845, John Barbee Minor succeeded him. Minor soon came to be regarded as one of the great law teachers in America. His teaching method was that of searching analysis, and all his life he remained an ardent admirer of the common law. Under his direction academic standards were greatly raised at Virginia. At the same time, the student enrollment increased considerably.⁷¹

The first efforts in legal education under the direction of Lomax were designed to afford the students the broadest education possible, rather than a mere professional training along practical lines. In 1829, however, a demand arose that the work at the school be reorganized to meet the practical needs of the students.

⁶⁸ 16 *The Writings of Thomas Jefferson* 155f. (Memorial ed., 1904). See also Lile, "The Law School of the University of Virginia," *The Centennial of the University of Virginia* 153 (1921); Adams, *Thomas Jefferson and the University of Virginia* 139 (1888).

⁶⁹ Quoted in Barth, *The Loyalty of Free Men* 212 (1951).

⁷⁰ The difficulties in securing the proper man to fill the first professorship at Virginia were great indeed. Aside from Gilmer and Wirt, the position was offered to Chancellor James Kent, Henry St. George Tucker, P. P. Barbour, Judge Carr, and Judge Dade. Jefferson's personal choice seems to have been Gilmer.

⁷¹ Minor's greatest work is his *Institutes of Common and Statute Law* (1875-95), which was cited in all American courts as an authority.

As a result some of the more theoretical subjects were lopped off. John A. G. Davis was inclined to put considerable emphasis on the several aspects of public law that were deemed important at that time. In 1851 the Department of Law, then known as the "School of Law," was divided into two distinct schools. From its inception the Law School at the University of Virginia enjoyed a fairly large student attendance, attracting students from every part of the United States. When it opened in 1826, twenty-six students enrolled, and the average enrollment down to the Civil War was about sixty students a year.

As early as 1777, President-elect Ezra Stiles of Yale proposed the establishment of a law professorship at the College, insisting that such a professorship was no less desirable than a professorship in medicine or, for that matter, in any other academic subject. For a knowledge of the law qualified a man to become a better citizen and public servant, while the teaching of law would not only improve the professional training of future lawyers, but also assist in "forming *civilians*. . . . It is scarcely possible to enslave a Republic," Stiles insisted, "where the Body of the People are Civilians, well instructed in their Laws, Rights and Liberties." The disciplined training of lawyers and of public leaders, Stiles continued, "is catching; it propagates to all around and transfuses itself thro' the public. . . . How Happy a Community abounding with men well instructed in the Knowledge of their Rights and Liberties." Referring to the unbounded future of America, he prophesied that "[w]e are enlarging into still greater Systems in which we may transplant the Wisdom of all Countries and Ages. It is in this view chiefly, and principally as subservient to this great End, that the several States may perhaps see the Expediency of establishing and endowing Professorships of Law in the american universities."⁷² Stiles envisioned a course of legal instruction at Yale consisting of four major "topics": (1) Roman law, and how it affected the English law of succession as well as the maritime law; (2) the common law of England, including English statutes, whether or not they had been abolished or adopted by the several states of the

⁷² The original copy of President Stiles's program for a law professorship at Yale is kept in the Yale University Library. It is reprinted in Warren, *History of the American Bar* Appendix, 563ff. (1911).

Union; (3) the "codes" of the thirteen states—presumably Stiles had in mind the statutes-at-large of the several states as far as they were available—with special emphasis on Connecticut law; and (4) lectures on the various forms and principles of government, including studies in "comparative government," the law of nations, and "political science."⁷³ When his ambitious proposal met with temporary failure, he himself delivered a single lecture on law and jurisprudence on July 13, 1781;⁷⁴ and on March 12, 1789, he introduced Montesquieu's *Spirit of the Laws* as required reading for all Yale seniors.

In 1801, Yale once more took up the subject of academic legal education and accordingly voted "to furnish lectures on the leading principles of the Law of Nature and Nations, on the general principles of civil government . . . on the Constitution of the United States and of the State of Connecticut . . . and on the various obligations and duties resulting from the social relations."⁷⁵ The same year Elizur Goodrich, a practicing lawyer who had graduated from Yale in 1779, was appointed professor of law. Although the new law school program required him to offer a course of only thirty-six lectures to be completed in a two-year cycle, he apparently found his position unsatisfactory and resigned in 1810. After that time no regular law lectures were offered at Yale until 1826, when Judge David Daggett, a Yale graduate of 1783, was appointed to the vacant professorship at the Yale Law School (as the school was called from then on). Since the year 1824, Daggett had been connected with a small but flourishing private law school in New Haven, Connecticut, founded by Seth P. Staples and Samuel J. Hitchcock.⁷⁶

Daggett not only brought with him thirteen pupils whom he transferred from his own law school to Yale, but he also transplanted some of the methods of instruction which had been used

⁷³ *Ibid.*

⁷⁴ On March 8, 1792, Stiles delivered a second lecture on law, dealing with (1) the "law of nature and of nations;" (2) the Roman law; (3) the English common law; and (4) the laws of the United States.

⁷⁵ Warren, *History of the American Bar* 354 (1911).

⁷⁶ When Seth P. Staples removed to New York in 1824, he turned his law school over to his former preceptor, David Daggett. See also the text corresponding to note 188, Chapter IV, below.

with great success at his own institution. Hence, it is not surprising that, beginning with the year 1826, Yale should offer a full-scale "practitioners' course," requiring two years' attendance for its completion, including practice in drafting legal documents and doing "the most important duties of an attorney's clerk."⁷⁷ Thus, on account of its particular origin as well as its close relation to an already well-established private institution for the training of prospective lawyers, the Yale Law School in 1826 started out as a distinct "school of practitioners" rather than as a primarily academic institution. In spite of the fact that this law school was part of an old college, it resembled more closely the Litchfield Law School or perhaps the Northampton Law School than the first "Harvard experiment."⁷⁸ By stressing the immediate practical needs of future lawyers, it actually carried an alien element into the academic world of the time. This was probably also the reason why Yale conferred no academic degrees for work done at the law school, at least not until 1843. Nevertheless, student enrollment, measured by the standards of the time, was excellent from the very beginning: in 1827 and again in 1828 twenty students attended the new law school. In 1833, because of an endowment received from friends and admirers of Chancellor Kent, the law professorship at Yale was renamed the Kent Professorship of Law, and David Daggett became its first incumbent. When Daggett went to the Supreme Court of Connecticut—he resigned in 1848—the supervision of the Yale Law School devolved upon a young practitioner, Samuel J. Hitchcock,⁷⁹ who, on the suggestion of Daggett, had joined the school as a sort of "preceptor."⁸⁰

As early as 1785 or 1786, probably as a result of a bequest made to the College in 1781 by Isaac Royall to endow a law profes-

⁷⁷ *Yale Catalogue* (1828).

⁷⁸ See below.

⁷⁹ It has already been noted that since 1815, Hitchcock had been connected with the private law school of Seth P. Staples which was taken over by David Daggett in 1824. See note 76, Chapter IV, above.

⁸⁰ Hitchcock at first was not recognized as a "professor," but was called a "subsidiary teacher." His name does not appear in the official catalogue until 1830. For general information about the early Yale Law School, see, for instance, Hicks, *The Yale Law School: From the Founders to Dutton, 1845-1869* (1936); Daggett, "The Yale Law School," 1 *The Green Bag* 239 (1889); Wayland, "Law Department," *Yale College, A Sketch of Its History* (Kingsley ed., 1879).

sorship,⁸¹ Harvard considered the establishment of a permanent and separate professorship of law. Until 1815, however, nothing practical came of this plan. In that year, largely through the efforts of John Lowell, Jr., a prominent Boston lawyer and a graduate of Harvard, the college inaugurated a "law lectureship"—the Royall Professorship of Law—for college seniors and graduates; and Isaac Parker, since 1814 Chief Justice of the Massachusetts Supreme Judicial Court, became its first incumbent.⁸² Parker, who was solemnly inaugurated as the new professor of law on April 17, 1816, began his lectures on June 5 of the same year. He was expected to deliver a minimum of fifteen lectures a year, dealing with the Constitution and government of the United States, as well as of Massachusetts; the history of Massachusetts jurisprudence; the common law as it had been modified in America by usage, statutes, and judicial decisions; and some general legal topics which might be useful to people and turn them into enthusiastic supporters of a free government and of the rights and liberties of a citizen.⁸³

In his inaugural address Parker made a momentous suggestion, the first of its kind ever made officially at Harvard, namely, that the University should establish a separate and distinct law school of its own: "At some future time," he stated, "... a school for the instruction of resident graduates in jurisprudence may be usefully ingrafted on this professorship. . . . A respectable institution of this sort in a neighboring State⁸⁴ . . . has been found highly advantageous for the education of young gentlemen to the law. . . . [A] professional education . . . can in no better way be obtained, than by establishing a school here under the protection of the Uni-

⁸¹ The Royall Professorship of Law still exists today.

⁸² Joseph Story later described Parker as "a good-natured, lazy boy when at College, a good-natured, lazy lawyer, and a good-natured lazy judge." Quoted in Morison, *Three Centuries of Harvard, 1636-1936* 238 (1936). As such he was hardly the person to achieve lasting success at Harvard.

⁸³ It will be noted that Parker's program of instruction was to some extent fashioned after the ideas which Blackstone had expressed in the introduction to his *Commentaries*. Such a curriculum, it goes without saying, had little attraction for the aspiring practitioner.

⁸⁴ Parker alludes here to the Litchfield Law School which at that time had become a great success.

versity."⁸⁵ This school was to be a professional school, Parker continued, devoted to the training of lawyers; but it was to cover only part of the professional training, leaving the practical aspect of it to be acquired in the law offices of distinguished practitioners. It also was to be a local school designed to improve the Massachusetts bar;⁸⁶ and it was to be a graduate school, superimposed upon the College. On May 14, 1817, Parker submitted to the University in writing his detailed plan for a new professorship in law, and for the establishment of a separate law school.⁸⁷ He also stipulated that law students should have free access to the college library; that a special law library should be established as soon as possible; that after the successful completion of their studies the students should receive the degree of bachelor of laws; that the length of the regular law curriculum should be eighteen months (three years for students without a college degree); and that all law students should have free access to other lectures offered by the College.⁸⁸

In pursuance of Parker's proposal, such a law school was founded in 1817, and Asahel Stearns, who was also to assist Parker, became its "director."⁸⁹ For twelve years Parker and Stearns conducted this new school on the basis of the following general program of instruction: recitations and examinations in a number of important legal texts, designed to acquaint the students with the differences that existed between the common law of England and American or Massachusetts law, including the various reasons for these differences; lectures on those parts of American or Massachusetts law which differed from the law of England; moot court exercises adapted to the professional training and progress of the students;⁹⁰ debating clubs which included all the members of the

⁸⁵ 1 Warren, *History of the Harvard Law School* 302 (1908); Morison, *Development of Harvard University, 1869-1929* 472-73 (1930).

⁸⁶ The idea of making Harvard a "national law school" is of a later date. It originated with the establishment of the Dane Professorship of Law in 1829. See below.

⁸⁷ 1 Warren, *History of the Harvard Law School* 305-307 (1908).

⁸⁸ *Ibid.*

⁸⁹ Stearns's salary was to be paid out of student fees. The Harvard Corporation also made a special grant of five hundred dollars for the establishment of a law library.

⁹⁰ See Henderson, "Moot Courts in the Early Days," 10 *Harvard Law School Bulletin* no. 5, pp. 8-9 (1959).

law school, to meet once a week for the purpose of improving extemporaneous elocution through a friendly discussion; and written dissertations composed by the students and dealing with some special branch or topic of the law.⁹¹ Stearns delivered thirty-eight law lectures in 1825-26,⁹² held sixty-seven reviews of one hour each,⁹³ and gave frequent examinations on the lectures and assigned readings. These examinations lasted about two hours and consisted of twenty to thirty questions put to each student. Professor Parker gave eighteen lectures. In addition, each student was required to write thirty "dissertations."⁹⁴ Thirty-six moots were held,⁹⁵ lasting from two to three hours each, as well as thirty-six exercises in disputation⁹⁶ on Saturdays, lasting from two to three hours each. The degree of bachelor of laws also was instituted to be conferred upon students who, after having attended the school for at least eighteen months, had met all requirements. On August 28, 1820, the Harvard Corporation voted to confer the first LL.B. degrees upon Charles F. Gore, Wyllis Lyman, John W. Porter, Samuel Edmund Sewall, William R. P. Washburn, and Joseph Willard.⁹⁷

The first attempt at establishing a law school at Harvard certainly was not what might be called a rousing success: the school, which was located in the Farrar House,⁹⁸ started with six students⁹⁹

⁹¹ Subjects assigned for these dissertations in the academic year 1820 were: "(1) The Rules of Descent and Distribution of Real and Personal Property by the Civil Law, the Law of England and the Law of Massachusetts. (2) The several injuries to which the Heir is liable in relation to his right of succession to Real Property, and the several remedies by Entry or Action which are furnished by the Laws of England and of Massachusetts." 1 Warren, *History of the Harvard Law School* 339 (1908).

⁹² Thirty-nine lectures in 1826-27; thirty-seven in 1827-28; and fifteen in 1828-29.

⁹³ Sixty-nine reviews in 1826-27; sixty-seven in 1827-28; and forty-six in 1828-29.

⁹⁴ Twenty-nine dissertations in 1826-27.

⁹⁵ Thirty-five court exercises in 1826-27; twenty-five in 1827-28; and three in 1828-29.

⁹⁶ Thirty-four such disputations in 1826-27, and thirty-one in 1827-28.

⁹⁷ It is interesting to note that with but one exception (Gore, who went to Dartmouth) all were graduates of Yale. In 1821 the Law School conferred its first honorary LL.D. degree on Joseph Story.

⁹⁸ Two rooms in the Farrar House were set aside for the Law School, one classroom and one room for the professor (Stearns) and the library. In 1825, Stearns tried in vain to secure a new building for the Law School.

and reached a total of seventeen students in 1819 and nineteen in 1820, the highest number it ever attained.¹⁰⁰ But after that time the enrollment fell off sharply: there were thirteen students in 1821-22, ten in 1822-23, eight in 1823-24, four in 1828-29,¹⁰¹ and one in 1829.¹⁰² The causes for the obvious failure of the school were many. First of all, the expenses of attending the law school were simply prohibitive¹⁰³ in a time of widespread economic distress.¹⁰⁴ Second, in an era where means of communication and transportation were extremely poor, Harvard was difficult to reach, not only from other states, but also from some parts of the state of Massachusetts itself. Third, Harvard was a hotbed of Uni-

⁹⁹ When the school opened its doors for the first time on the first Wednesday of October, 1817, one lone student—Charles Moody Duston—registered. Five more students were admitted during the school year of 1817-18.

¹⁰⁰ This increase in the enrollment was probably due to the fact that Joseph Story, in his review of David Hoffman's *Course of Legal Study* (Story, *Miscellaneous Writings* 243 [1835]) had highly recommended the Harvard Law School. On the initiative of Parker and Stearns, the University in 1820 offered a law professorship to Story, who declined, however. The offer was repeated in 1828, but Story again declined.

¹⁰¹ Toward the end of the academic term 1828-29 a fifth student enrolled. For a partially accurate list of students enrolled in the law school, see Fessenden, "The Rebirth of the Harvard Law School," 33 *Harvard Law Review* 493, 514n. (1920).

¹⁰² Fessenden, *ibid.*, 514-15, gives the following number of students: 1817-18: 6; 1818-19: 8; 1819-20: 11; 1820-21: 13; 1821-22: 13; 1822-23: 10; 1823-24: 8; 1824-25: 12; 1825-26: 13; 1826-27: 8; 1827-28: 8; 1828-29: 6; 1829-30: 24. The discrepancies between Fessenden's figures and the figures cited in the text above may be accounted for partially by the fact that F. Fessenden does not make it clear whether his particular figures refer to the number of students present at the beginning of the academic year, at the end of the academic year, or perhaps the total enrollment during the course of the academic year. Since students, as a rule, enrolled or left the school whenever they saw fit (see text, below), the total number of students was constantly in flux. Thus it might happen that at the opening of the school year fifteen students were in attendance. During the year five students dropped out and two new students enrolled, leaving twelve students at the end of the year. Depending on the method of computation, the total enrollment figures for that particular year could be listed as seventeen, fifteen, or twelve. See also note 116, Chapter IV, below.

¹⁰³ It is estimated that the average law student at Harvard spent between \$250 and \$500 a year—a formidable sum of money at the time.

¹⁰⁴ Stearns, in a letter dated May 27, 1827, stressed this particular point. He also warned that unless expenses were substantially reduced, the enrollment would continue to decline. See Warren, *History of the Harvard Law School* 357 (1908).

tarianism, while the majority of merchants, planters, and lawyers outside of Boston considered Unitarianism an "infidel belief" and, hence, were hesitant to send their sons to Harvard. Fourth, the emergence of other law schools which were more conveniently located and probably more efficiently run, as well as the fact that the majority of young men still preferred the apprenticeship method to academic instruction,¹⁰⁵ probably deprived Harvard of many potential law students. Fifth, Stearns, especially after the resignation of Parker in 1827, could not possibly handle with any degree of efficiency all the duties incumbent to his professorship.¹⁰⁶ As early as 1820 the Corporation, aware of the need for additional teaching personnel, had requested the President of Harvard College—John T. Kirkland—to consider the expediency of adding another professor to the Law School. But nothing came of this suggestion. And, finally, the lack of proper and adequate housing facilities practically doomed the whole enterprise from its very beginning.¹⁰⁷ Also, students as a rule were admitted whenever they chose to register. This practice not only created additional work for the professor but caused much difficulty in maintaining a regular sequence of courses of instruction and in establishing accurate classifications of the students who picked up courses wherever they found them. When Professor Parker resigned in 1827,¹⁰⁸ the

¹⁰⁵ The expenses of clerking in a law office were considerably less than the "tuition fees" at Harvard. In addition, some practicing lawyers, realizing the advantages of having law students in their offices (these students did much of the routine work connected with a law office, including the serving of processes), gave gratuitous instruction.

¹⁰⁶ In 1826, Stearns justifiably complained of the pressure of work on the lone law professor, but again he met with no response.

¹⁰⁷ See Stearns's letter of resignation dated April 7, 1829. This letter is reprinted in 1 Warren, *History of the Harvard Law School* 366ff. (1908). As early as 1825, Stearns had tried to get a more adequate building assigned to the Law School. See note 98, Chapter IV, above.

¹⁰⁸ Daniel Webster would have been offered the Royall Professorship of Law vacated by Parker's resignation had he at the time not been involved in the indictment of Theodore Lyman for criminal libel. Lyman had published an article in the *Jackson Republican* in which he charged that Webster, Samuel Dexter, Jr., Josiah Quincy (who became president of Harvard in 1829), William Prescott, and Henry G. Otis had conspired in 1807-1808 to break up the Union and reannex New England to the British crown. This case aroused bitter partisan feelings and made Webster, on whose instigation the indictment had been brought,

situation at the school became truly desperate because of the steady decrease in the student enrollment: in the spring of 1829 but one student registered. With the resignation of Professor Stearns in April, 1829, and with no substitute being appointed, the school simply closed its doors. The first epoch in the history of the Harvard Law School thus ended in complete failure.

Despite its failure, the first Harvard Law School under the direction of Asahel Stearns constituted a startling innovation in the field of Anglo-American legal education. Combining the English idea of the Inns of Court and of apprenticeship training with the Continental idea of academic law teaching (which also was at the basis of the Vinerian lectureship at Oxford), it established the first university school of law in any common law country. It supplemented the Litchfield method by adding a moot court as well as lectures by a university professor. In this sense it became an academic professional school, as contrasted with the purely academic law schools of Continental Europe and the purely professional legal education prevailing in England. In sum, it established a distinctly American type of legal education.¹⁰⁹

In 1829, Nathan Dane, the author of the *General Abridgment and Digest of American Law* and coauthor of the *Northwest Ordinance of 1787*, offered Harvard an endowment of ten thousand dollars¹¹⁰ to establish a professorship of law to be known as the Dane Professorship of Law, on the condition that Joseph Story, then an Associate Justice of the Supreme Court of the United States, be its first incumbent. This action has been described as the turning point in American law and American legal education. Story expressed his willingness "to take general superintendance of the [Harvard] Law School, that is, to visit it and examine the students occasionally, and to direct their studies, and to lecture to them orally on the topics connected with the Dane Professorship

for the time a very unpopular man in Boston and Cambridge circles. It has already been stated that in 1828 the vacant Royall Professorship was offered to Joseph Story, who declined it.

¹⁰⁹ For additional information, see *The Centennial History of the Harvard Law School, 1817-1917* (1918), *passim*.

¹¹⁰ Subsequently Dane raised this amount to fifteen thousand dollars. Much of the money given to Harvard by Dane came from sales of his famous *Abridgment*.

from time to time."¹¹¹ But he attached to his acceptance the condition that he would be permitted to retain his judicial office in Washington, and that "at least one permanent University Professor [would] . . . be appointed with a constant residence at Cambridge, whose duty it should be to perform, throughout the year, the common duties of Professor and Instructor."¹¹² Accordingly, John Hooker Ashmun, who had previously assisted Samuel Howe and Elijah H. Mills in running their private law school at Northampton, Massachusetts, was appointed to the Royall Professorship of Law. On September 24, 1832, the law school, which was then called Dane Law College, moved into its new building, Dane Hall, which had been erected by the further munificence of Nathan Dane.¹¹³ A small group of students had come to Cambridge with Ashmun; and together with the sole survivor of the Parker-Stearns era of the Harvard Law School, the total enrollment during the first year (1829-30) was 24 students.¹¹⁴ This number increased every year,¹¹⁵ until in 1839 it reached 86, and in 1844, shortly before Story's death, 163.¹¹⁶

During the first year of the Story-Ashmun regime the method of instruction¹¹⁷ did not greatly differ from the method employed by Stearns or Parker. It consisted of lectures given by

¹¹¹ Letter of Story to the Harvard Corporation, dated May 19, 1829, reprinted in 1 Warren, *History of the Harvard Law School* 417ff., 419n. (1908).

¹¹² *Ibid.*, 419.

¹¹³ For the dedication address by President Josiah Quincy, see note 201, Chapter IV, below.

¹¹⁴ According to another report, twenty-seven. Fessenden, "Harvard Law School," *loc. cit.*, 514-15, also lists twenty-four students.

¹¹⁵ Except in 1834, when after the death of Ashmun the enrollment dropped to 31. Fessenden, *ibid.*, 514-15, lists 32 students.

¹¹⁶ The figures quoted represent the number of students present at the beginning of the academic year. There was always a "floating population" in the Law School. Thus in 1838-39, the school opened with 78 students; 73 additional students enrolled during the academic year, while 65 dropped out during the same period, leaving a total of 86 students at the end of the year. This fact also accounts for the conflicting reports concerning student attendance quoted in 1 Warren, *History of the Harvard Law School* 433ff. (1908). See also note 102, Chapter IV, above.

¹¹⁷ The students were divided into two "classes" according to the extent and degree of their preparation and background. See *Catalogue of 1835*. The majority of the students still entered the school after one year or more of apprenticeship in some law office.

Story¹¹⁸ and recitations or "reviews" supervised and conducted by Ashmun. Story's lectures were rather informal.¹¹⁹ Sometimes they were written out beforehand, but more often they were extemporaneous.

Judge Story was always ready and profuse in his instructions, anxiously seeking out all the difficulties which perplexed the student and anticipating his wants, leaving no stone unturned by which the rugged paths of the law might be made smoother. . . .

¹¹⁸ In 1843, Story gave two lectures on the "legal profession," probably the first of their kind ever offered in an American law school.

¹¹⁹ On August 25, 1829, on the occasion of his inauguration as Dane Professor of Law, Story delivered an oration, in the course of which he stated: "I know not, if among human sciences there is any one, which requires such various qualifications and extensive attainments, as the law. While it demands the first order of talents, genius alone never did, and never can, win its highest elevations. . . . [T]he law is a science, in which there is no substitute for diligence and labor. . . . [T]his truth is nowhere more forcibly manifested than in the law. The student . . . should, at first entrance upon the study, weigh well the difficulties of his task. . . . [The law] is a jealous mistress, and requires a long and constant courtship. . . . Many causes combine to make the study of the common law . . . a laborious undertaking. . . . More than two centuries ago, Sir Henry Spelman depicted his own distress on entering upon such studies, when at the very vestibule he was met by a foreign language, a barbarous dialect, and inelegant method, and a mass of learning, which could be borne only upon the shoulders of Atlas; and frankly admitted, that his heart sunk within him at the prospect. . . . In truth, the Common Law . . . must be for ever in progress. . . . To say, therefore, that the Common Law is never learned, is almost to utter a truism. . . . It is its true glory, that it is flexible, and constantly expanding with the exigencies of society; that it daily presents new motives for new and loftier efforts; that it holds out for ever an unapproached degree of excellence. . . . But . . . [t]here are other studies, which demand . . . [the student's] attention. He should addict himself to the study of philosophy, of rhetoric, of history, and of human nature. . . . The perfect lawyer . . . must accomplish himself for his duties by familiarity with every study. . . . [All this] insists upon the importance of a full possession of the general literature of ancient and modern times. It is the classical learning alone, which can impart a solid and lasting polish to the mind. . . . The eloquence of the bar is far more various and difficult than that, which is required in the pulpit, in the legislative hall, or in popular assemblies. . . . In its general character it may be said to be grave, deliberate, and earnest. . . . It is plain, direct, and authoritative. . . . Its power is in the thought. . . . [T]he path is arduous, and requires the vigor of a long and active life. . . . He will learn, that there is a generous rivalry at the bar; and that every one there has his proper station and fame assigned to him; and that, though one star differeth from another in glory, the light of each may yet be distinctly traced, as it moves on." Story, *Discourse Pronounced upon the Inauguration of the Author, as Dane Professor of Law in Harvard University, August 25th, 1829* (1829), reprinted in Miller, *Legal Mind* 177-89 (1962), especially at 182-87, 189.

Professor Ashmun . . . left the student more to himself, throwing out hints which might excite his attention . . . but which, nevertheless, did not supersede labor on his part. Whoever would prepare himself to make an inquiry of Professor Ashmun, must always have applied his mind so strongly to the subject-matter as to have obtained a good conception of it; in short, he must have understood where the difficulty was. These opposite styles of instruction may be linked . . . the one to the open palm and the other to the clenched fist.¹²⁰

Rutherford B. Hayes, in his Diary which he kept while a law student at Harvard, had this to say about the teaching method of Story:

Judge Story . . . is very general in his questions, so that persons well skilled in nods, affirmative and negative shaking of the head, never need more than glance at the text to be able to answer his interrogatories. He is very fond of digressions to introduce amusing anecdotes, high-wrought eulogies of the sages of the law, and fragments of his own experience. . . . He is generally very interesting, and often quite eloquent. . . . In short, as a lecturer he is a very different man from what you would expect of an old and eminent judge; not but that he is great, but he is so interesting. . . . His amount of knowledge is prodigious.¹²¹

Students were also referred to a number of leading cases in English and American reports, as well as to some parallel outside readings. Weekly moot court sessions were held before both professors, and reviews and examinations on the assigned texts or cases were conducted four times a week, lasting from one to two hours each. The whole program of instruction was designed to be completed in three years, but after 1832-33, a two-year course was adopted, with extra readings assigned for an additional third year. No previous examinations were required for admission to the school.¹²² Students could enter the school at any stage of their

¹²⁰ Greenleaf, "Sketch of the Law School of Cambridge," 13 *American Jurist* 107, 114-15 (1835).

¹²¹ Williams, *The Life of Rutherford Birchard Hayes* 32 (1928). Examples of Story's "digressions" are cited *ibid.*, 33-34, 35ff., 41 ff., and 46.

¹²² See the *Catalogues of the Harvard Law School* for the years 1829, 1835, and 1840.

professional training, and they were admitted at any time during the academic year.

Nathan Dane, in his proposal to the Corporation, had expressly stipulated that Story's law lectures should subsequently be published. This stipulation became the origin and basis of the Harvard tradition of scholarly publications as one of the main objectives of the Law School. Story's famous series of treatises on selected branches of the American law, published between 1832 and 1845, were the first tangible result of this policy.¹²³ In addition, Dane, who, as an old-school Massachusetts Federalist, was opposed to the doctrine of excessive States' rights, had also insisted that the professor shall "prepare and deliver, and . . . revise for publication, a course of lectures" on law "equally in force in all parts of our Federal Republic," and "select the state branches, the most important and the most national, that is, as much as may be branches of the same in other States of the Union as in this; making lectures on this state law useful in more states than one, law clearly distinguished from that state law which is in force, and of use, in a single state only."¹²⁴ This is the origin and the beginning of the traditional Harvard Law School objective of teaching "national law" as distinguished from the "law of the particular jurisdiction."¹²⁵

Ashmun died prematurely in 1833, and his place was taken by

¹²³ *Commentaries on the Law of Bailment* (1832), *Commentaries on the Constitution of the United States* (1833), *Commentaries on the Conflict of Laws* (1834), *Commentaries on Equity Jurisprudence* (1835-36), *Equity Pleadings* (1838), *Law of Agency* (1839), *Law of Partnership* (1841), *Law of Bills of Exchange* (1843), and *Law of Promissory Notes* (1845). The last three titles were intended to be part of a projected five- or six-volume work entitled *Commentaries on Commercial and Maritime Law*. Story's *Commentaries on the Conflict of Laws* was almost immediately reprinted in England, France, and Germany; and it received the honor of being one of the first American lawbooks to be cited as authority in English courts. Tindal, Chief Justice of the Court of Common Pleas, in *Huber v. Steiner*, 2 Bing. New Cases 211, stated: "It would be unjust to mention it without at the same time paying tribute to the learning, acuteness and sagacity of its author." And Daniel Webster, in his argument, compared it to the work of Grotius and to the *Institutes of Justinian*. New Jersey Steam Navigation Company v. Merchants Bank, 47 U.S. (6 How.) 361 (1848).

¹²⁴ Warren, *History of the Harvard Law School* 418ff. (1908).

¹²⁵ The Harvard Catalogue of 1841 also contains the following statement: "No public instruction is given in the local or peculiar municipal jurisprudence of any particular state."

Simon Greenleaf, a prominent lawyer from Portland, Maine, who assumed the Royall Professorship of Law and started teaching in the fall of 1834.¹²⁶ While altogether unlike Story, Greenleaf added greatly to the Law School during this early period. Where Story was quick, brilliant, and inspiring, Greenleaf was thorough, and extremely successful in awakening in his students a deep desire for learning and knowledge. Hayes observed that "Mr. Greenleaf is very searching and logical in examination. It is impossible for one who has not faithfully studied the text to escape exposing his ignorance; he keeps the subject constantly in view, never stepping out of his way for the purpose of introducing his own experience."¹²⁷ It has been said that "Story prepared the soil and Greenleaf sowed the seed."¹²⁸ Greenleaf, who was one of the truly great law teachers of all times, also made his presence felt in the field of legal writing. James C. Alvord, one of the most promising young lawyers in Massachusetts, was appointed temporary "part-time" instructor to relieve Story of some of his teaching duties during the period from April to August, 1833. At the request of Story, Charles Follen joined the law faculty in 1834 to teach Roman law for one term. The reputation of Greenleaf attracted to Harvard a steadily increasing number of law students,¹²⁹ with the result that a further appointment to the law faculty became necessary. The choice fell on Charles Sumner, an 1834 graduate of the Law School and the "acting law librarian" for some time. He became a "part-time instructor" in 1834, and held this position until 1846. Story died on

¹²⁶ During his tenure as a law professor Greenleaf continued to practice law with great success.

¹²⁷ Williams, *Rutherford Birchard Hayes* 32 (1928).

¹²⁸ Parsons, *Law Reporter* 414 (1853).

¹²⁹ In 1835-36, 21 students came from Massachusetts; 11 from Maine; 3 each from Connecticut and New Hampshire; 2 each from Rhode Island, Virginia, South Carolina, and Ohio; and 1 each from Vermont, Kentucky, Georgia, Alabama, and Indiana. Fessenden, "Harvard Law School," *loc. cit.*, 515, lists 52 students. It seems that by this time the Harvard Law School, or "Dane Law School" as it was called in some quarters, had become a truly "national law school." Of 128 (Fessenden, *ibid.*, lists 127) entering students in the fall of 1843, only 40 were from Massachusetts, while the rest came from 28 different states. Also, the caliber of the student body improved conspicuously. On August 11, 1838, Story wrote to Charles Sumner: "... our law students ... began already to be wide awake to the dignity of the law and its morals." 2 Story, *Life and Letters of Joseph Story* 299 (1851).

September 11, 1845, at the age of sixty-six, and with his death the Harvard Law School entered upon a new phase.¹³⁰

In 1812 a charter was secured for the University of Maryland¹³¹ which, following the established Continental tradition, was to have four faculties, including a faculty of law. A law faculty of six members, among them David Hoffman,¹³² was promptly appointed. Hoffman started at once to organize a most ambitious curriculum, the preparation of which took him four years. In 1817 he published his proposed program for an all-inclusive law curriculum under the title *A Course of Legal Study*.¹³³ This plan profoundly impressed the discerning Joseph Story,¹³⁴ although Story himself entertained grave doubts as to whether it could efficiently be taught in less than seven years. Hoffman's views on legal education were far in advance of his time. His disparaged dependence upon memory and emphasized an analytical approach to the general principles of the law:

The tendency of science . . . is to methodize and arrange. . . .

¹³⁰ His successor in the Dane Professorship of Law was Simon Greenleaf, while William Kent, the son of Chancellor Kent, was appointed to the Royall Professorship of Law. See Kent, *Memoirs and Letters* 271 (1898). Nevertheless, for a while all did not seem to be well at the Harvard Law School. A critic of the school, whose observations probably applied to other "college-connected" law schools as well, insisted that "[f]or a long time the conditions of the Harvard Law School has been almost a disgrace to the Commonwealth of Massachusetts. . . . [U]ndoubtedly, some of its courses of lectures have been good. . . . Still, a school which undertook to confer degrees without any preliminary examination to whatever was doing something every year to injure the profession . . . and to discourage real students. So long as the possession of a degree signified nothing except a residence for a certain period in Cambridge or Boston, it was without value. The lapse of time insured its acquisition. Just as a certain number of months entitled a man in England to a call to the bar, so a certain number of months in Cambridge entitled him to the degree of Bachelor of Laws. So long as this state of things continued, it was evident that the school was not properly performing its function." Anonymous, "Summary of Events," 5 *American Law Review* 177 (1870).

¹³¹ See, in general, Cordell, *Historical Sketch of the University of Maryland* (1891); Cordell, *University of Maryland, 1807-1907* 2 vols. (1907).

¹³² Hoffman was officially appointed in 1816.

¹³³ The full title of this work is *A Course of Legal Study Respectfully Submitted to the Students of Law in the United States* (1817).

¹³⁴ See Story, *Miscellaneous Writings* 223ff. (1835). See also Anonymous, "Hoffman's Course of Legal Studies," 15 *American Jurist* 321 (1836), and the high praise which this anonymous author bestowed upon Hoffman's work.

[I]f . . . *memory* were burdened . . . *judgment* would be relieved and anticipated. Such, however, are the revolutions of human opinion . . . that scarcely any thing which has been written can be thrown entirely aside, as . . . unfit for the purpose of instruction. . . . [This] is manifestly more so in such [sciences] as are positive and arbitrary. In them, as in municipal law . . . it is not sufficient to establish only general principles. . . . As these principles are continually compared with the emergencies of life, as their seeming collision, in particular cases, is explained and reconciled, and as it is important to know distinctly their operation on our interests and conduct, cases decided on analogous principles are carefully sought; the records of expository jurisprudence are perpetually swelled. . . . Hence the voluminous books of reports, from which the inquirer is to seek his principles, his maxims, his precedents. . . . Hence too the importance, nay, necessity, as adjudicated cases multiply, of arranging them in classes. . . . This method . . . gives the student a comprehensive view of the subject; and collects under his eye the cases from which it has been extracted, to which he may, and often should refer for confirmation or correction. . . . The Common Law . . . in many cases . . . has retained its *form*, while it has altered its *spirit*. . . . To the lawyer the ready perception of distinctions, the scrupulous and determined definition of terms, the analytical powers, and the habit of sifting the combinations established in the fancy, and the casual associations, which warp *common* understandings, are of utility every day, and must be made *habits* of the mind, because their exercise is for the most part extemporary.¹³⁵

Hoffman not only appreciated Bentham's views about the codification of English law, but he also stressed the careful study of statutes. In addition, he had a wide acquaintance with foreign legal literature.¹³⁶ Since the University of Maryland lacked the

¹³⁵ Hoffman, *A Lecture, Introductory to a Course of Lectures, Now Delivered at the University of Maryland* (1823), reprinted in part in Miller, *Legal Mind* 84-91 (1962), especially at 87-90.

¹³⁶ Deeply interested in the ethics of his profession, Hoffman wrote the *Resolutions in Regard to Professional Department*, a work which anticipated most of the present-day canons of professional ethics. He also insisted that "Metaphysics, ethicks, and politicks . . . are the appropriate studies of the jurispudent—on these repose, as solid foundations, all sound legislative enactments." Hoffman, *A Lecture* (1823), reprinted in Miller, *Legal Mind* 91 (1962). He proclaimed that there exists a "close connection between Ethicks and Natural Law . . . [and] that

means of putting Hoffman's program into immediate effect, Hoffman, who also faced the keen competition of Judge Walter Dorsey's flourishing private law school in Baltimore,¹³⁷ had to wait another four years. In the meantime he modified his original curriculum¹³⁸ so that it could be completed in two years and ten months. Although instructions were to start in the fall of 1821, due to the lack of students he was forced to postpone his first law lecture for another two years.¹³⁹ The breadth of the envisioned course of instruction, however, still proved too much to be covered adequately within the proposed period of time.¹⁴⁰ To supplement his lectures,¹⁴¹ Hoffman established a "Maryland Law Institute"—an elaborate system of moot courts—and a "Rota" or legal debating society. Lacking any University¹⁴² support, and being continually plagued by inadequate attendance on the part of the

ethical and political considerations are nearly akin to the proper studies of the accomplished lawyer." *Ibid.*, 90.

¹³⁷ See below.

¹³⁸ Hoffman added "legal ethics" and "legal bibliography," but omitted "political economy" as well as the laws and constitutions of the different states of the Union.

¹³⁹ Judge Walter Dorsey died in 1823, with the result that his private law school closed. Many of his students went to the "University of Maryland Law School."

¹⁴⁰ In his "Introductory Lecture," delivered in 1823, Hoffman addressed the students as follows: "You have . . . every motive for exerting the utmost assiduity in your studies, and the most sacred honour in the practice of your profession. Respect and influence in society, professional reputation, the highest stations of honour and profit, in a great and enlightened republic, and all the goods of intellectual and worldly wealth are proffered to you. . . . [The lawyer] is one, whom early education has imbued with the principles of probity, and habituated to labour and research, in that which enlarges, and refines the mind. . . . The fountains of liberal science and polite letters he has tasted of . . . and has thus protected himself from pedantry and narrow views. . . . History is his field, as he learns in it the rudiments and revolutions of his science. Rhetoric and logic are the weapons by which he imparts to his oratory warmth and grace, force and clearness. From his knowledge of man he learns truth, and he cultivates rectitude for the more useful exercise of his powers. Destitute of these, he is either unprofitable, or mischievous to society, and embued with them, he is one of its *chiefest ornaments and firmest safeguards*." Hoffman, *A Lecture* (1823), reprinted in Miller, *Legal Mind* 84-91 (1962), especially at 86-87.

¹⁴¹ Hoffman planned to lecture 301 hours a year.

¹⁴² In 1824 the state of Maryland seized the University's property and ousted the faculties from the control of the University. Although Hoffman accepted employment from the new Trustees, he soon ran into serious difficulties

students,¹⁴³ the whole enterprise, which was really an overambitious attempt to reform the whole of legal education single-handedly, came to an end in 1832.

David Howell, a distinguished practitioner in Rhode Island, was professor of law¹⁴⁴ at Brown University from 1790 to 1824, the year he died. Although in 1788, and again in 1815, the University requested him to prepare and deliver a course of legal lectures, it is doubtful whether he ever did so. Hence it must be assumed that Howell's law professorship was purely nominal. A senior course in "natural law and political law" rather than in "moral and political philosophy" was introduced at Dartmouth in 1796; and in 1808 the Board of Trustees, which contained a number of prominent lawyers, decided to establish a professorship of law at Dartmouth, and to appoint a suitable person to the office. This position was not filled until 1822, when the chair was renamed Professorship for American Constitutional Law.

In 1806, Middlebury College in Vermont likewise established a law professorship. Its first incumbent was Daniel Chipman, who in 1816 was succeeded by his brother, Nathaniel Chipman, on the latter's retirement from the Chief-Justiceship of Vermont. Nathaniel Chipman held this professorship until his death in 1834. It is safe to assume that the law lectures of Nathaniel Chipman to a large extent were subordinate to his chief interest, namely, the completion of his famous *Reports and Dissertations*. In his introductory lectures he outlined his ideas of an academic legal education:

Let the student not content himself with merely learning to recollect or repeat the arguments or reasons . . . of others; but let him endeavor so to penetrate, understand and appropriate them that they may appear to his mind to be exclusively his own. The former is mere memory; the latter is knowledge. . . . The next step proper to be taken by the students is to proceed analytically. . . . In his course of reading it is indispensable for him if he wishes to

with the University on account of his failure to deliver his private library which he had previously sold to the University.

¹⁴³ The total enrollment, probably on account of the high tuition fees (\$120), was extremely small.

¹⁴⁴ He was also professor of mathematics and natural philosophy at Brown University.

make proficiency to turn to all the cases and authorities and to examine them for himself.¹⁴⁵

In 1811, Royall Tyler, a graduate of Harvard (1776) who had studied law with Francis Dana in Boston, Massachusetts, was appointed professor of jurisprudence at the University of Vermont in Burlington, Vermont. But it is not known whether he ever taught law there, although it appears that he delivered some law lectures at irregular intervals.¹⁴⁶

A law school also existed at the University of Indiana from 1842 to 1877;¹⁴⁷ at the University of Louisville in Kentucky (beginning with the year 1846), incidentally the first American "municipal law school"; at Tulane University, in New Orleans, Louisiana (from 1847 to 1862);¹⁴⁸ and at Cumberland University in Lebanon, Tennessee (from 1847 to 1861).¹⁴⁹ The Cumberland Law School, which for a while had a larger student enrollment than the Harvard Law School,¹⁵⁰ for a long period of time made its influence felt, particularly throughout the South and the West. It began officially in 1847 when Judge Abraham Caruthers met seven students in the law office of his brother, Robert L. Caruthers, in Lebanon. During the first term the number of students increased to thirteen. Judge Caruthers did not adopt the lecture system, but relied on "readings" from authoritative textbooks and moot court arguments. In 1852 he was joined by Judge Nathan Green of the Supreme Court of Tennessee, and Bromfield L. Ridley, chancellor

¹⁴⁵ Warren, *History of the American Bar* 357 (1911).

¹⁴⁶ See 5 Hemenway (ed.), *Vermont Historical Gazetteer* 86 (1891).

¹⁴⁷ The Law School was reorganized in 1889.

¹⁴⁸ The school was recognized in 1865. Originally, Tulane University, situated in New Orleans, was called "University of Louisiana," and was operated as a state-supported institution for thirty-seven years, until 1884, when it became Tulane University. The first law professors in 1847 were Judge Henry Adams Bullard (Civil Law), who also became the first dean; Judge Theodore Howard McCaleb (Admiralty and International Law); Randall Hunt (Constitutional Law, Commercial Law, and Evidence); and Richard Henry Wilde (Common Law and Equity), who upon his premature death was replaced by Judge Thomas Bell Monroe. Also a number of practicing lawyers lectured there on a variety of subjects. See Brosman, "The First Hundred Years," 22 *Tulane Law Review* 543-45 (1948).

¹⁴⁹ The school was reorganized in 1866.

¹⁵⁰ The Cumberland Law School had 188 students in 1858 and 180 in 1859; Harvard had 146 and 159, respectively.

of the Lebanon Division.¹⁵¹ The first law school west of the Mississippi and the first Catholic law school in the United States was founded in 1842 by the Jesuit Order in St. Louis, Missouri.¹⁵² This school, which closed in 1847, was reopened in 1908.¹⁵³ The University of Alabama in Tuscaloosa established a professorship of law in 1831, and Henry W. Hillard, who held this position until 1834, became its first incumbent.

As early as 1812, President Smith of Princeton College proposed a college course which was to include "those principles . . . of jurisprudence, politics, and public law or the law of nature and nations with which every man . . . in a free country ought to be acquainted."¹⁵⁴ But nothing apparently came of this proposal. In 1825 and again in 1835 new attempts were made to launch a distinct law school at Princeton. Once more these efforts came to nothing, and after the law school finally opened in 1846, it graduated only six students during the six years of its lingering existence. A similar abortive attempt was made in 1835 at Hamilton College in New York state. In 1842, Theodore William Dwight (Hamilton, 1840) was appointed tutor there and initiated an informal course on law; and in 1846 he was nominated to the newly established Maynard Professorship of Law, History, Civil Polity, and Political Economy. Dwight's law teaching at Hamilton, on the whole, was perfunctory, although he managed to systematize his law course to such an extent that in 1853 it was recognized as a regular and independent "Law Department." His principle in teaching law was "to store the mind of the student with fundamental principles of the law," and this method of teaching was based primarily on the use of textbooks, while cases were used as illustrations of legal principles. In 1855 the Hamilton Law School was incorporated, and Dwight became its head or "Dean" as well as its sole professor. When in 1858 he was called to the Law School

¹⁵¹ See, in general, Green, "The Law School of Cumberland University," 2 *The Green Bag* 63-75 (1890).

¹⁵² St. Louis University.

¹⁵³ The oldest continuous Catholic law school was founded at the University of Notre Dame in Indiana, in 1869.

¹⁵⁴ Colby, "The Collegiate Study of Law," 19 *Report of the American Bar Association* 525 (1896).

of Columbia College in the City of New York,¹⁵⁵ the Hamilton Law School was permanently discontinued.

In New York City, Attorney General Benjamin F. Butler, in 1838 opened the New York University Law School which, however, closed after only one year of operation because of poor attendance. The Columbia College in Washington, D. C., now the George Washington University, founded a law school in 1826 under the direction of Judge William Cranch and W. T. Carroll. Owing to financial difficulties, this school likewise closed the following year. From 1827 to 1860, William Wolcott Ellsworth, a prominent lawyer practicing in Hartford, Connecticut, was professor of law at Trinity College in Hartford. This would indicate that Trinity for some time had a "law school" or, at least, offered regular instruction in law. The University of North Carolina in Chapel Hill envisioned the establishment of a law professorship as early as 1824,¹⁵⁶ and beginning with the year 1837 offered a course in "national and constitutional law" to seniors in the college, taught by David L. Swain. After 1845, the year Judge William H. Battle's private law school became connected with the University of North Carolina, a two-year course of legal education was inaugurated under the direction of Battle, and the degree of Bachelor of Laws conferred on students who had successfully completed this course.¹⁵⁷ Although this new law school attracted students not only from North Carolina but also from Virginia, Mississippi, Alabama, California, Tennessee, Texas, and Kentucky, for some time the over-all enrollment remained small: eleven students in 1847-48 and twelve students in 1854-55.¹⁵⁸

¹⁵⁵ See the text corresponding to note 60, Chapter IV, above.

¹⁵⁶ Battle, *The History of the University of North Carolina* 296 (1907).

¹⁵⁷ The *Catalogue of the University of North Carolina* for the year 1845 contained the following announcement: "A department for the study of municipal law has been recently established and placed under the charge of the Professor of Law. This department contains two Classes, of which, the first, called the Independent Class, will consist of such Students of Law as have no connexion with any of the College Classes; and the second, called the College Class, will consist of such irregular members of the College as, with the permission of the Faculty, may be desirous of joining it." The complete course for the "Independent Class" was two years, and that of the "College Class," two and one-half years. *Ibid.*

¹⁵⁸ *Catalogue of the University of North Carolina* for 1847-48, and for 1854-55.

Independently of the early "college-connected" law schools, law professorships, or law courses, a goodly number of private local law schools grew up soon after the Revolution. They first developed in New England and were later imitated throughout the nation. These private local law schools, which stressed the practical side of legal training, in essence were nothing more than systematized "extensions" or "enlargements" of the old and time-honored apprenticeship method, available to a much larger group of students than the traditional "private law office" training could possibly accommodate. This fact became particularly evident in the case of the "private" law school at New Haven, Connecticut, directed by Seth P. Staples, Samuel J. Hitchcock, and David Daggett.¹⁵⁹ In 1800, Staples acquired an unusually good law library, a fact which attracted many students to his law office. Hence, his law school, which opened around the year 1800, was really nothing other than an offshoot of a practicing law firm especially well equipped for the training of "apprentices." The undisputed initial success of these private local law schools, and the great popularity which they enjoyed in their time, were due to the fact that in a way they continued the firmly rooted apprenticeship system. In the end many of them did not simply dissolve or close down, but were absorbed by university law schools, which, after some abortive "academic" beginnings, frequently molded their new and more successful law curricula after these private schools.

After the Revolution, and far into the nineteenth century, undoubtedly the most important law school in America was the private school at Litchfield, Connecticut,¹⁶⁰ known by the name of Litchfield Law School.¹⁶¹ It was founded by Judge Tapping Reeve¹⁶² in 1784.¹⁶³ In 1798, when Tapping Reeve was appointed

¹⁵⁹ See note 76, Chapter IV, above, and the text corresponding to note 188, Chapter IV, below.

¹⁶⁰ After the Revolution, Connecticut had a disproportionately large population, and it was geographically accessible to students from other parts of the United States.

¹⁶¹ See, in general, Boardman, *Sketches of the Early Lights of the Litchfield Bar* (1860), reprinted in Kilbourn, *The Bench and Bar of Litchfield County, Connecticut, 1709-1909* (1909); Fisher, *Litchfield Law School, 1774-1833* (1933).

¹⁶² Tapping Reeve was graduated from Princeton in 1763 and studied law with Jesse Root in Hartford, Connecticut. He was admitted to practice in 1772, and became Judge of the Superior Court in 1798 and Chief Justice of the Supreme

to the Superior Court of Connecticut, James Gould¹⁶⁴ joined the "law faculty"¹⁶⁵ of the Litchfield Law School; and in 1820, when Reeve finally retired from the school, Gould assumed full control until the whole enterprise was abandoned in 1833. Gould was an eminent teacher, learned in the law and possessed of the art of imparting his legal knowledge to his students in simple and unambiguous language. It is said that as both a teacher and a school administrator he far surpassed Reeve.¹⁶⁶ The school offered systematic courses consisting of daily lectures.¹⁶⁷ While teaching alone, Reeve delivered in 1794 a total of 139 lectures arranged under different headings. Each lecture lasted from an hour and a quarter to an hour and a half, and the sequence of lectures was continued for a period of fourteen months. The whole course of instruction, omitting Connecticut practice, could be covered in about one year. Of the five notebooks, representing a year's class-work of a Litchfield student in 1813, one contained notes on real property; one, notes on forms of action, pleading, and procedure; about three-fourths of one, notes on commercial law, including bills and notes as well as insurance; and about one-third of one, notes on contracts. The remainder of these notebooks was made up of a variety of briefer notes on a number of legal subjects, such as municipal law, master and servant, agency, bailments, and eq-

Court of Errors in 1814. In his enterprise at Litchfield, Reeve was undoubtedly helped by the fact that his father-in-law was Aaron Burr, the president of Princeton. His brother-in-law, the famous Aaron Burr, was himself a law student at Litchfield.

¹⁶³ The claim that Litchfield was founded in 1782 rests on spurious authority. It should be noted that prior to the opening of his school, Reeve had been giving systematic law instruction in his office, beginning in the year 1774. It would not be amiss to speculate that Dr. Bellamy's very successful school of theology, situated in neighboring Bethlehem, Connecticut, suggested to Reeve the possibility of establishing a similar institution for law students.

¹⁶⁴ Gould was graduated from Yale in 1791, entered Litchfield Law School in 1795 (from which he graduated in 1798), and was admitted to the Connecticut bar in 1798.

¹⁶⁵ Gould also continued to practice law while teaching at Litchfield.

¹⁶⁶ In 1820, after the retirement of Reeve, Jabez W. Huntington, a graduate of Yale and an alumnus of Litchfield of 1808, also became associated with the school.

¹⁶⁷ Unlike those of Kent, St. George Tucker, or Story, these law lectures were never published.

uity.¹⁶⁸ All in all, the school endeavored to cover the whole field of law under forty-eight distinct headings. It goes without saying that some legal subjects could receive only a most cursory treatment.

An "Advertisement for the Litchfield Law School," dated January 1, 1829, that is, at a time when the school had begun to decline, informed the reader as follows:

... [a]ccording to the plan pursued by Judge Gould, the law [as taught at the school] is divided into forty-eight Titles, which embrace all its important branches, and of which he treats in systematic detail. These Titles are the result of thirty years severe and close application. They comprehend the whole of his legal reading during that period, and continue to be enlarged and improved by modern adjudications. The Lectures, which are delivered every day, and which usually occupy an hour and a half, embrace every principle and rule falling under the several divisions and the different Titles. These principles and rules are supported by numerous authorities, and generally accompanied with familiar illustrations. Whenever the opinions upon any point are contradictory, the authorities in support of either doctrine are cited, and the arguments, advanced by either side, are presented in a clear and concise manner, together with the lecturer's own views of the question. In fact, every ancient and modern opinion, whether over-ruled, doubted, or in any way qualified, is here systematically digested. These lectures, thus classified, are taken down in full by the students, and after being compared with each other, are generally transcribed in a more neat and legible hand. The remainder of the day is occupied in examining the authorities cited in support of the several rules, and in reading the most approved authors upon those branches of the Law, which are at the time the subject of the lectures. These notes, thus written out, are, when complete, comprised in five large volumes, which constitute books of reference, the great advantages of which must be apparent to every one of the slightest acquaintance with the comprehensive and abstruse science of the Law. The examinations, which are held every Saturday, upon the lectures of the preceding week, consist of a thorough investigation of the principles of each rule, and not merely of such questions as can be answered from memory without any exercise

¹⁶⁸ See Hurst, *The Growth of American Law* 5, 258 (1950).

of the judgment. These examinations are held by Jabez W. Huntington, Esq., a distinguished gentleman of the bar, whose practice enables him to introduce frequent and familiar illustrations, which create an interest, and serve to impress more strongly upon the mind the knowledge acquired during the week. There is also connected with this institution, a Moot Court for the argument of law questions, at which Judge Gould presides. The questions that are discussed, are prepared by him in the forms in which they generally arise. These courts are held once at least in each week, two students acting as Counsellors, one on each side, and the arguments that are advanced, together with the opinion of the Judge, are carefully recorded in a book kept for that purpose. For the preparation of these questions, access may at all times be had to an extensive library. Besides these courts, there are societies established for improvement in forensic exercises, which are entirely under the control of the students. The whole course is completed in fourteen months, including two vacations of four weeks each, one in the spring, the other in the autumn. No student can enter for a shorter period than three months. The terms of instruction are \$100 for the first year, and \$60 for the second, payable either in advance or at the end of the year.¹⁶⁹

From its founding in 1784 to 1798, the year James Gould joined the school, Litchfield is estimated to have taught about 210 students, or an annual average of about 14 students; and from 1798 to 1833, the year it closed its doors forever, students numbered in all 805. Hence, a total in excess of 1,000 law graduates were sent out by Litchfield during the fifty years of its existence. Especially after 1809 student attendance rose significantly: in 1809 there were 33 students; in 1813, the year of Litchfield's greatest prosperity, 55 students;¹⁷⁰ and in 1823, 44 students. Until 1826 the

¹⁶⁹ *The Litchfield Law School, 1783-1833* 4-5 (1900). The "Advertisement" also stated that the school "has enjoyed a patronage, which distinguished talent combined with great legal attainment justly merited. It has been composed of young men from every section of the Union, many of whom have since been eminently conspicuous, both as Jurists and as Statesmen. And indeed even now, notwithstanding the numerous legal seminaries which have been established throughout our county, this school maintains its proud pre-eminence. This, it is believed, is to be attributed to the advantages, which the mode of instruction here prescribed, possesses over the systems usually adopted in similar institutions." *Ibid.*

¹⁷⁰ This was a kind of "record" which stood until 1835, when the University of Virginia Law School had 67 law students, which in turn was surpassed in 1838 by the Harvard Law School with an enrollment of 78 law students.

school could boast a good attendance. After that date, probably due to rising competition,¹⁷¹ as well as to the general relaxation in educational requirements for the admission to legal practice brought on by "Jacksonian democracy," the Litchfield Law School gradually declined.

The truly "national" character of the Litchfield Law School is attested by the fact that its students hailed from every state of the Union: 275 came from Connecticut, 128 from New York, about 100 from Massachusetts, 70 from Georgia, 45 from South Carolina, 38 from Maryland, 20 each from New Hampshire, Vermont, and Delaware, a fair number from Rhode Island, Kentucky, Pennsylvania, New Jersey, North Carolina, Virginia, and Louisiana, as well as a scattered few from such faraway places as Alabama, Indiana, Ohio, Tennessee, Maine, Mississippi, and Missouri. Of its alumni, 2 became Vice-Presidents of the United States; 3 became Justices of the Supreme Court of the United States; 34 sat on the highest courts of their states, including 16 Chief Justices or Chancellors; 28 became United States Senators; 101 were elected to the House of Representatives; 14 became governors of their states; 6 served in the federal Cabinet; and 3 became college presidents.¹⁷² "Probably no law school has had—perhaps . . . never will have—so great a proportion of distinguished men on its catalogue."¹⁷³ Among the more prominent graduates from Litchfield who achieved distinction in widely separated parts of the country were John Calhoun of South Carolina, Horace Mann of Massachusetts, George Y. Mason of Virginia, and Levi Woodbury of New Hampshire. The general influence of this school upon the political and legal history of the United States, especially in the regions west of the Allegheny Mountains, is beyond all calculation.

There also existed a number of small private or "noncollegiate" law schools of mere local significance in Virginia. The

¹⁷¹ In 1826, Yale opened its new law school, which immediately attracted quite a few students, among them young men who might otherwise have attended Litchfield.

¹⁷² William T. Gould, Theron Metcalf, Samuel Howe, Amasa Parker, and Edward King, all graduates of Litchfield, attempted, with varying success, to transplant the "Litchfield tradition" to divers parts of the country by establishing law schools modeled after Litchfield.

¹⁷³ Warren, *History of the American Bar* 359 (1911).

most noted of these was the school of George Wythe in Richmond, which he founded in 1790 upon his retirement from the law professorship at William and Mary; and that of Judge Creed Taylor in Needham, which he started in 1821. Upon his retirement from the law professorship at the University of Virginia in 1830, John Taylor Lomax conducted a private school in Fredericksburg; and between 1824 and 1830, Henry St. George Tucker directed a law school at Winchester.

Judge John Reed, in 1834, established a law school at Carlisle, Pennsylvania, which subsequently became connected with Dickinson College. Judge Joseph H. Lumpkin opened a school at Athens, Georgia, in 1843, which at once became affiliated with the University of Georgia and thus managed to survive. The same year Judge William H. Battle started a law school at Chapel Hill, North Carolina, which in 1845 became connected with the University of North Carolina. Battle, together with James Iredell, had taught law in Raleigh, North Carolina as early as 1841. In 1845, John L. Bailey opened a law school in Hillsboro, North Carolina,¹⁷⁴ which he conducted together with Frederick Nash until 1859. In that year Bailey moved to Black Mountain, North Carolina, where he and his son, William H. Bailey, established a new law school which remained in operation until the outbreak of the Civil War. Frederick Nash, a justice of the Supreme Court of North Carolina, in collaboration with Hugh Waddell, as early as 1841 announced that he intended to set up a law school in Hillsboro, North Carolina, provided at least eight students would enroll in this school.¹⁷⁵ Apparently he failed to enlist the interest of a sufficient number of young men. Soon after his election as judge of the Superior Court of North Carolina in 1836, Richard M. Pearson started a law school in Mocksville, North Carolina. Within a few years he moved his school to Richmond Hill, near Asheville, North Carolina.¹⁷⁶ Pearson's law school lasted for about forty years and was attended by many students from North Carolina as well as from adjoining states. In 1829 and again in 1830, Richard T.

¹⁷⁴ *Raleigh Register*, May 30, 1845.

¹⁷⁵ *Raleigh Register*, November 9, 1841.

¹⁷⁶ 2 Henderson, *North Carolina: The Old North State and the New* 34 (1941); Coates, "A Century of Legal Education," 24 *North Carolina Law Review* 323 (1946).

Brumby advertised that he and his brother had decided to establish a law school in Lincoln County, North Carolina.¹⁷⁷

In 1833, Judge John C. Wright, Edward King¹⁷⁸ (of New York), and Timothy Walker¹⁷⁹ founded the Cincinnati Law School. The importance and influence of this law school, and especially the impact of Walker,¹⁸⁰ on the legal development of the Middle West and the West can hardly be exaggerated. The graduates of the Cincinnati Law School, like the graduates of the Litchfield Law School at an earlier period, to a large extent shaped the legal and political affairs of that section of the United States. In 1835 this school became affiliated with the Cincinnati College (founded in 1818), and in 1896 it was incorporated in the University of Cincinnati. From 1849 to 1861, Judge John W. Breckenridge conducted a law school in Lexington, Virginia,¹⁸¹ which in 1866 became connected with Washington College, now Washington and Lee University, and thus survives to this day. Judge Walter Dorsey of Maryland headed a large and flourishing law school in Baltimore, Maryland, which successfully competed with the law school of the University of Maryland.¹⁸² John Louis Taylor, Chief Justice of North Carolina from 1808 to 1829, in 1822 established a law school in Raleigh, North Carolina, incidentally, the first of its kind in that state.¹⁸³ He taught throughout the 1820's, pre-

¹⁷⁷ *Raleigh Register*, December 14, 1829, and February 22, 1830. Brumby announced that he would charge \$100 for one year's instruction. *Ibid.*

¹⁷⁸ Edward King had studied law at Litchfield.

¹⁷⁹ Timothy Walker had studied law at Harvard.

¹⁸⁰ Walker not only built a great law school, but he also was genuinely interested in legal reforms and improvements. Many of his ideas and suggestions were incorporated into the law of Ohio. Among his many scholarly works probably the most important is *An Introduction to American Law*, published in 1837. This work received almost immediate approval by the legal profession of the time. He also edited, with great distinction, *The Western Law Journal*.

¹⁸¹ This school was also called the Lexington Law School.

¹⁸² See notes 131-43, Chapter IV, above, and especially note 137 and the corresponding texts.

¹⁸³ On February 15, 1822, John Louis Taylor advertised in the *Raleigh Register* that he "is desirous of affording to the youth of the Country an opportunity of acquiring a scientific knowledge of their own Laws without the inconvenience and expense of seeking it in other States." See also Coon, *North Carolina Schools and Academies, 1790-1840* xliv (1915); Johnson, *Ante-Bellum North Carolina* 288 (1937).

sumably until his death in 1829.¹⁸⁴ During the 1820's Leonard Henderson conducted a law school near Williamsboro, North Carolina.¹⁸⁵ Among his pupils were William H. Battle and Richard M. Pearson, both of whom became law teachers themselves. Archibald D. Murphey, who retired from the bench in 1820, gave notice in 1831 that he intended to open a law school in Hillsboro, North Carolina.¹⁸⁶ Since Murphey died about two months later, this school never materialized. William T. Gould,¹⁸⁷ in 1833, started a law school in Augusta, Georgia, which seems to have flourished for some time. Seth R. Staples and Samuel J. Hitchcock ran a thriving law school in New Haven, Connecticut, from about 1800 to 1824. In 1824, Judge David Daggett took over this school and administered it until 1826, when he was appointed to the vacant professorship of law at Yale (previously held by Elizur Goodrich from 1801 to 1810).¹⁸⁸ This private institution, which was one of the most important early law schools, in a way is connected with the beginnings of the Yale Law School.

Between 1786 and 1826 (or 1830), Peter Van Schaack conducted a law school at Kinderhook, New York, which is said to have been fairly successful;¹⁸⁹ between 1810 and 1816, Sylvester Gilbert had a law school at Hebron, Connecticut, which was attended by a total of fifty-six students; and shortly before his death in 1823, Judge Zephaniah Swift founded a law school at Windham, Connecticut. Elijah Hunt Mills, together with Judge Samuel

¹⁸⁴ Among his more renowned pupils was David L. Swain. See Vance, "The Life and Character of Hon. David L. Swain," 1 *North Carolina University Magazine* 76 (May, 1878).

¹⁸⁵ Henderson inserted a notice in the *Raleigh Register* of March 3, 1826, that he would conduct a law school for a small group of students, charging \$225 per year for instruction and board. He repeated this announcement in the *Raleigh Register* of March 2, 1827, and of March 4 and June 10, 1828.

¹⁸⁶ *Star and North Carolina Gazette* (Raleigh), December 16, 1831. Murphey died in February, 1832.

¹⁸⁷ He was the son and pupil of James Gould of the Litchfield Law School, where he had studied law.

¹⁸⁸ See the text corresponding to note 76, Chapter IV, above.

¹⁸⁹ He is said to have instructed about one hundred young gentlemen, among them the sons of James Kent, Ambrose Spencer, Theodore Sedgwick, Rufus King, and William Van Ness. For a more detailed account, see, Van Schaack, *Life* (1842), *passim*, especially at 443-44. See also note 21, Chapter I, above.

Howe,¹⁹⁰ founded a law school in 1823 at Northampton, Massachusetts. In 1827, John Hooker Ashmun joined Mills and Howe in this enterprise, and the school seemed to be well on its way to success. The number of students in attendance was probably from ten to fifteen each year. In 1829, on the reorganization of the Harvard Law School, Ashmun went to Harvard in order to "assist" Joseph Story.¹⁹¹ Judge Howe died about the same time and, as a consequence, the school closed permanently in 1830. David Hoffman, after having failed to establish an effective law school at the University of Maryland,¹⁹² conducted a private law school in Philadelphia between 1844 and 1847, which became known as the Philadelphia Law Institution. In 1846, Washington McCartney founded a law school at Easton, Pennsylvania, which in 1854 was incorporated under the name of Union Law School.¹⁹³ It appears that this Union Law School, which lasted until 1856, was meant to be a competitor rather than a continuation or extension of a slightly older law school affiliated with Lafayette College.¹⁹⁴

As early as 1837, Randall Hunt, a prominent lawyer in the city of New Orleans who in 1847 joined the law faculty of the newly established Law School of Tulane University or, as it was then called, the University of Louisiana,¹⁹⁵ delivered regular law lectures to a few students in New Orleans; and in 1844 the Louisiana Law School, directed by a Mr. Schmidt and including Christian Roselius among its lecturers, began to give systematic legal instruction to small classes of law students. Both these ventures, however, were short-lived. The Louisiana Law School survived until 1847, the year the Louisiana University (Tulane) Law School opened.¹⁹⁶ Samuel Powel, a member of the Pennsylvania bar who in the year 1800 had migrated to Tennessee where he was at once admitted to practice, is said to have organized and taught the first

¹⁹⁰ Howe was a student at the Litchfield Law School in 1805.

¹⁹¹ See note 112, Chapter IV, above, and the corresponding text.

¹⁹² See notes 131-43, Chapter IV, above, and the corresponding text.

¹⁹³ McCartney was professor of "mental philosophy" at Lafayette College.

¹⁹⁴ The law department of Lafayette College existed since the year 1841. It closed in 1852, was reopened in 1875, and expired permanently in 1884.

¹⁹⁵ See note 148, Chapter IV, above, and the corresponding text.

¹⁹⁶ See Brosman, "The First Hundred Years," 22 *Tulane Law Review* 543, 544n. (1948).

law classes in Blountville, Tennessee, in order to occupy his leisure time and to attract clients.¹⁹⁷ After 1807, John Haywood, who had moved from North Carolina to Tennessee, established a small "law school" about eight miles south of Nashville, Tennessee, intended to provide a more systematic legal training for persons wishing to become members of the bar. Bates Turner, a graduate of the Litchfield Law School who had removed to Vermont in 1796, around 1806 opened a law school in Fairfield, Vermont. Turner was reputed to have the faculty of preparing his students for admission and practice in much less time than was ordinarily spent in preparatory studies. Hence, many young men resorted to him in order to be proficiently fitted for the practice of law in a shorter time than the rules of the Vermont Supreme Court required. Nearly 175 students went through his "short course," a number exceeding by far that of any law office, as well as that of many private law schools of the period. In 1812, Turner removed to Middlebury, Vermont, with the purpose of establishing a law school there. But, failing in this new venture, he soon returned to Fairfield and reopened his old school.¹⁹⁸

Finally, mention should also be made of the Law Academy of Philadelphia, Pennsylvania, founded by Peter S. du Ponceau in 1821¹⁹⁹ for the purpose of affording to students, law apprentices, or practicing lawyers an opportunity to attend law lectures and discussions by eminent members of the Philadelphia bar. A similar aim was also at the basis of the New York Law Institute, founded in 1826, formally organized in 1828, and chartered in 1830, with Chancellor James Kent as its president.²⁰⁰ A law school which apparently never succeeded, however, was founded in Dedham, Massachusetts, by Theron Metcalf, subsequently reporter of the Massachusetts Supreme Court. In 1829, Samuel F. Dickinson

¹⁹⁷ Green, *Lives of the Judges of the Supreme Court of Tennessee, 1796-*

1947 54 (1947).

¹⁹⁸ See 2 Hemenway (ed.), *Vermont Historical Gazetteer* 812 (1871); Stillwell, "Migration from Vermont," 5 *Proceedings of the Vermont Historical Society* 149n. (1937).

¹⁹⁹ As early as 1784, Du Ponceau had been a member of a "Law Society" composed of law students and young practitioners in Philadelphia who had joined together for the purpose of studying law and improving their legal knowledge. See note 115, Chapter III, above.

²⁰⁰ See notes 105-11, Chapter III, above, and the corresponding text.

started a law school in Amherst, Massachusetts, but it is uncertain whether he had any students at all.

Undoubtedly, at one time or another during the first half of the nineteenth century there existed throughout the country a great many "private" law schools, that is, law schools which in no ways were connected with any of the existing colleges or universities. In some instances their names or the names of their founders are hardly known. They might have existed for a short while, only to be disbanded without leaving much of a trace. Any lawyer who had a permanent office and perhaps a handful of lawbooks could, if he wished to do so, establish a law school of his own, advertise this fact in a local newspaper, and admit whatever students would care to show up. After a while, if he got tired of the whole venture, or if he was disappointed in the financial returns, or if no more students enrolled, he simply discontinued his school, which in many instances differed from the traditional "office apprenticeship" only in that he chose to call it by the honorific name of "law school."

The main reason for the failure of the earliest attempts to introduce academic instruction in the law, aside from particular local circumstances or specific weaknesses of the program of instruction, was that the apprenticeship method was still too solidly entrenched at the time. The active legal profession, which had been trained by the time-honored apprenticeship method, was not altogether enthusiastic over this "academic" innovation. Hence, it did not lend its full support or encouragement. Some of the "college-connected" law schools or law courses, it will be noticed, were established not primarily in order to turn special students into practicing lawyers, but rather in order to introduce the general student body to those principles of law and politics with which every educated man in a free society should be acquainted—to make them better citizens by instructing them concerning their particular position in the American body politic. Conversely, some of the private local law schools, which sprang up independently of any established college or university, had great initial success. Emphasizing the practical or technical side of the law rather than its academic aspects, they were more or less "systematized and concentrated extensions" of the traditional apprenticeship method. It is not alto-

gether surprising, therefore, that, aside from enjoying a reasonably large student enrollment, on the whole they enjoyed the active support as well as the sympathetic understanding of the practicing profession.

The undeniable advantages of an academic legal education over the traditional apprenticeship system, however, were soon recognized. In his address delivered on October 23, 1832, at the dedication of the Dane Law College in Harvard University, Josiah Quincy, president of Harvard (1829-45) and himself a member of the bar, made it amply clear that:

... [s]o long as it [*scil.*, the common law] was "disincorporated from general knowledge," and pursued exclusively under the guidance of professional men, in the Inns of Court, or in offices of practitioners, its outline was obscure, its aspects forbidding and mysterious; no one dared to pretend to master it, except the regularly initiated; and to some of these, its reason was a closed book, which they had not the strength or patience to open. No sooner, however, was the Common Law introduced among the branches of University education, than it became liberalized and refined. ... [Legal education in the offices of practitioners was of an inferior kind.] Books were recommended as they were asked for, without any inquiry concerning the knowledge attained from the books previously recommended and read. Regular instruction there was none; examination as to progress in acquaintance with the law,—none; occasional lectures,—none; oversight as to general attention and conduct,—none. The student was left to find his way by the light of his own mind. ... Was it the student's fortune to be placed in an office where there was little business ... his reading might be more, but his chances for external aid were not therefore with certainty increased. ... Was it the student's lot to be placed in the office of one of the greater lights of the bar. ... What copying of contracts! What filling of writs! What preparing of pleas! How could the mind concentrate itself on principles amid the perpetual rotation of this machinery. ... It is said that improvements have been made [in the apprenticeship system];—that a more systematic intercourse between instructors and students is growing into use;—that in some places moot courts are held, at which eminent professional men preside. ... It is even said, that, in some offices, lectures are being read. ... [I]t will be found that all these improvements have kept pace with the establishment of law-

schools in the vicinity where they occurred, and have been the direct consequence of the example those schools have set, or of the spirit they have diffused. How inferior, after all, are these advantages, to those which may be attained in a law-school connected with this University, or with any similarly endowed seminary. [The advantages of a college-connected law school are many:] First, a great body of intelligent young men are here brought together, of about the same age and general attainments; all of them inspired with a love of study, and ambitious of professional eminence. . . . From such minds, thus brought into contact, result honorable collision, concurrent inquiries, public discussions, comparison of themselves with each other;—all powerful stimulants of intellectual progress. Next, a systematic course of prescribed study, selected with great deliberation by men of the highest rank in the profession; rising in just gradation from the simple to the complex . . . ; leading the young mind, by orderly induction, and by a progress secured at every step, to all the elevated points of professional attainment. . . . Lastly, a regular succession of daily examinations in study . . . by one of the Professors; and, in concurrence with these, public lectures. . . . To these are added appropriate exercises, having reference to practical skill in technical learning; and moot courts, superintended by men of great experience both at the bar and on the bench. . . . When to all these advantages are added free access to a law library . . . and to the general library of the University . . . ; and also the genius of the place, naturally inviting the student occasionally to seek refuge . . . in the pursuits of general literature, from the severe and sometimes irksome toils of legal research . . . —there is no room for question, that here unite all happy coincidences to excite, instruct and animate the law student . . . and to bring him within the influence of the highest motives and best models of professional merit and distinction. . . . How important is it that a class of men, called to act in spheres so various, on objects so numerous, and on interests so general, should have their early education consorted with their destinies! How intensely desirable is it, that their minds should not be narrowed down to the rank of mere drudges in office. . . . Of what incalculable consequence is it, that, from the earliest pursuit of this profession, the minds of its students should be liberalized. . . . And where can the foundation of a solid and lofty structure of intellectual and moral action be laid, with better hope of success, than under the auspices of the greatest seats of

learning? . . . It is no questionable or dubious good, to escape, in the early stages of the study of the law, from the annoyance and interruption of the labors of clerkship. On the contrary, it is a high and unequivocal privilege to be first introduced to the knowledge of what is formal, fictitious, and technical, not by the desultory, haphazard way of official business, but by an orderly succession of general principles. . . . Above all, the opportunity of being examined upon his studies proffers to the faithful and ingenious student the most precious of all information,—a knowledge of his own intellectual powers and defects; teaching him what to correct and how to improve.”²⁰¹

²⁰¹ Quincy, *An Address Delivered at the Dedication of the Dane Law College in Harvard University, October 23, 1832*, reprinted in Miller, *Legal Mind* 203-18 (1962), especially at 208, 210-15, 217-18. Josiah Quincy, it will be noted, had studied law in a law office (he was admitted to the Massachusetts bar in 1793) and, hence, knew what he was talking about.