

**The Relationship Between Yale's Law School
and the Central University in the Late Nineteenth Century**

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**ABSTRACT: The Relationship Between Yale's Law School
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This paper describes the Yale Law School in the late 1800s. For most of the period, the school's faculty struggled to gain the attention of an unresponsive university administration. At the same time, the faculty pushed for interdisciplinary study that would tie the Law School to the university's other academic departments.

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The Relationship Between Yale's Law School and the Central University in the Late Nineteenth Century

One afternoon in New Haven, a group of distinguished members of the Connecticut bar gathered on the town green. They were there to celebrate the fiftieth anniversary of the Yale Law School.¹ In attendance were the Chief Justice of the United States Supreme Court, the current and former governors of the state, Yale's current president and his predecessor, and the Law School faculty. Yale College at this time had been in existence for over 170 years and was a "living legend" of college education.² Nevertheless, the Chief Justice prophesized that soon the Law School would rival the College to become "one of the glories of Yale." Those involved with the Law School boasted of its recent progress and promise for the future. Theodore Dwight Woolsey, former president of Yale, used the occasion to describe his ideal law school. Students in this institution would study a broad curriculum. Some would practice law, but others

¹ There is little justification for setting 1824 as the date of the establishment of the Law School in the College. 1824 was the first year that Yale College listed Law School graduates in its college catalog. See FREDERICK C. HICKS, *YALE LAW SCHOOL: THE FOUNDERS AND THE FOUNDERS' COLLECTION* 20 (1935). But Yale College did not confer degrees on graduating law students until 1843. See *id.* at 24. In 1846, the Corporation of Yale College adopted a resolution officially recognizing the Law School as a department in the College "for special instruction in the science of law." *Id.* at 30. In later years, the Law School's supporters would try to push back the date of the first tenuous link between the school and the College even farther: "The Law Department of Yale College derives its remote origin from the famous law school established by Judge Tapping Reeve at Litchfield in 1784 ... The school was then transferred to or rather reproduced in New Haven with a nominal connection with Yale College" William C. Robinson, *Address Commemorative of the Life and Character of Francis Wayland Delivered Before the Law School of Yale University at Hendrie Hall* 20 (Apr. 22, 1904) (transcript available in the New Haven Historical Society Library).

² CHARLES WILSON PIERSON, *YALE COLLEGE: AN EDUCATIONAL HISTORY, 1871-1921*, at 3 (1952) (describing Yale College as the center of "a living legend" in the 1870s).

would use their liberal legal education to prepare themselves for public service. The school's influence would grow greater and greater until it became "a fountain of light through the whole land."³

Only five years before, Yale's central administration had considered abandoning the Law School. The school's lone instructor had passed away and Yale's managers did not know if sustaining the school would be worth the time and expense.⁴ The school was rescued by three men from the New Haven bar who agreed to step in and assume the school's teaching duties. Even then, the university did little to sustain the school, focusing on the undergraduate college and leaving the fledgling law faculty to its own devices. Eventually, the central administration would take a greater interest in Law School affairs, but only eventually. Woolsey, Yale's president from 1846 to 1871, largely ignored the Law School as it spiraled into decline in the 1850s and 1860s.⁵ Noah Porter, Woolsey's successor, neglected the Law School while quarantining the College from the educational innovations that were reshaping other academic institutions.⁶ The

³ FREDERICK C. HICKS, *YALE LAW SCHOOL: 1869-1894, INCLUDING THE COUNTY COURT HOUSE PERIOD 16-18* (1937).

⁴ "The death, in 1869, of the last of the professors of the Yale Law School left the school without a faculty, without means, and with but few students. The Yale Corporation, it is understood, was not in favor of a continuance of the school and desired that it be closed." George D. Watrous, Address before the New Haven County Bar Association, in *RECORDS & ADDRESSES IN MEMORY OF SIMEON E. BALDWIN, 1840-1927*, at 12-13 (1928) (on file with the New Haven Historical Society Library). See also FREDERICK H. JACKSON, *SIMEON EBEN BALDWIN* 64 (1955) ("Following Dutton's death in 1869 Yale considered discontinuing the Law School."); Robinson, *supra* note 1, at 21 (relating that in 1869 a "rumor went abroad that as a department of the College [the Law School] was about to be abandoned").

⁵ See BROOKS MATHER KELLEY, *YALE: A HISTORY* 201 (1974).

⁶ See LAURENCE R. VEYSEY, *THE EMERGENCE OF THE AMERICAN UNIVERSITY* 50 (1965).

evidence suggests that not until the presidency of Timothy Dwight in 1886 would Yale's administration take an active role in promoting the Law School. The Law School's development up to this point would be largely idiosyncratic, depending on the efforts of the three men from the local bar who agreed to take responsibility for the school in 1869.

On the other hand, the Law School could not help but be influenced by its larger surroundings despite the university administration's best efforts to look the other way. Yale would resist the trend towards graduate research and scientific instruction, favoring the discipline and moral virtue of a traditional liberal arts education. The Law School, in turn, would develop its own biases against specialization. The School created a plan for legal instruction that began with a narrow, fixed curriculum similar to today's first-year law school classes, but ended in a broad graduate curriculum that was much more expansive and interdisciplinary. A college law department, which began in 1801,⁷ was rekindled in the 1880s, providing a connection between the College and Law School. As the School became stronger, however, its leaders began to resent the university for blocking its move towards professionalization and restriction in legal education. Law School leaders criticized the university for its opposition to raising Law School admissions standards and its reluctance to allow College undergraduates to take Law School classes for credit.

This paper describes the interaction between the Law School and the larger university during a crucial period in the school's development: the last third of the nineteenth century. The paper is divided into three parts. Part I examines the university

⁷ See HICKS, *supra* note 1, at 3 (1936); KELLEY, *supra* note 5, at 131.

administration's attitude towards the Law School. Part II assesses the university's influence on the Law School. Even though Yale's administrators rarely stepped in to influence the Law School's affairs, some of the university's guiding principles were mirrored in the actions of the law faculty. Finally, Part III looks at issues of conflict between the university and the Law School, especially as the Law School began to gain prestige and stability at the end of the century.

I. THE ADMINISTRATION'S ATTITUDE TOWARDS THE LAW SCHOOL

A. *Quarantining the College*

All of Yale's professional schools took a backseat to the College or Academic Department, as it was referred to in the 1800s. In the mid-nineteenth century, Yale was a religiously oriented liberal arts college that had added a few small and struggling professional schools.⁸ Yale exemplified the "old-time college," a place geared to building its students' piety and strength of character.⁹ In the late seventeenth century, the Connecticut Puritans had believed that the formation of a new college was especially urgent because Harvard College had been straying from traditional Congregationalist principles. They created Yale in the early 1700s to educate ministers and preserve their faith.¹⁰ These religious underpinnings continued to influence Yale's development even as Yale became a liberal arts college and its role as a training ground for Connecticut

⁸ See JACKSON, *supra* note 4, at 36.

⁹ VEYSEY, *supra* note 6, at 9.

¹⁰ See KELLEY, *supra* note 5, at 3. Princeton College may have been created forty years later in reaction to Yale's orthodoxy. See *id.* at 53.

ministers lessened. Students attended daily mandatory chapel services into the 1890s.¹¹ Hard work in abstract subjects led to a mental and moral discipline that Yale's presidents believed was more important than acquiring knowledge.¹²

As Yale's administrators emphasized the College's moral mission, they tried to segregate the spiritual development of college undergraduates from new influences. The creation of the divinity school in 1823 marked the beginning of a policy of budgetary separation of new schools from the College.¹³ In the middle of the century, Yale's curriculum was expanded to include more work in the natural sciences and to provide opportunities for graduate research, but the administration was also careful to promote these changes in a way that did not harm the College.¹⁴ In 1847, a special committee of the Yale Corporation advised creating a graduate school separate from the Academical Department. The committee believed that a graduate school attached to the College would interfere with training the minds of the College's students.¹⁵ Moreover, the graduate school was to have its own faculty; there could be no instruction by professors who already taught in the professional schools or Academical Department.¹⁶ In 1854, a separate department called the Sheffield Scientific School was formed to instruct

¹¹ See PIERSON, *supra* note 2, at 12.

¹² See VEYSEY, *supra* note 6, at 23-24.

¹³ See KELLEY, *supra* note 5, at 146.

¹⁴ See RICHARD J. STORR, THE BEGINNINGS OF GRADUATE EDUCATION IN AMERICA 54-55 (1969) (discussing curricular expansion in the natural sciences under President Woolsey).

¹⁵ See KELLEY, *supra* note 5, at 182.

¹⁶ See STORR, *supra* note 14, at 55.

undergraduates in science and engineering.¹⁷ The separate school allowed the administration to test out new curricular ideas for undergraduates, like a freer elective system, without disrupting the College's course of study.¹⁸ As Yale's first president in the twentieth century would remark, aside from the occasional lecture on constitutional law from a member of the law faculty or a talk on hygiene from a medical school professor, the College and the other schools affiliated with Yale had "practically nothing to do with each other."¹⁹ According to one Yale historian, the administration's efforts to quarantine the College from the rest of Yale led to an "out of sight, out of mind" policy and years of weakness for the graduate and professional schools.²⁰

Other institutions of higher learning would not be so successful at inoculating their undergraduate colleges from change. At these schools, positions of authority were being claimed by a discontented group of future academic leaders, Charles Eliot of MIT, and later Harvard, chief among them. Eliot and the others believed that education should give men practice making free choices and thereby encourage the development of new areas of knowledge.²¹ Eliot's reforms reflected the influence of the German university. American academics had been returning from Germany touting the praises of that country's system of higher education. The Germans emphasized research and the

¹⁷ See PIERSON, *supra* note at 2, at 50.

¹⁸ See KELLEY, *supra* note 5, at 183; VEYSEY, *supra* note 6, at 49.

¹⁹ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 9 (1904) (on file with the Yale University Library, Department of Manuscripts and Archives).

²⁰ See KELLEY, *supra* note 5, at 146.

²¹ See VEYSEY, *supra* note 6, at 88-89.

production of new scholarship over the transmission of known wisdom. This new emphasis in education clashed with the traditions of the old-time college. Research meant an increasing specialization of knowledge as each professor was encouraged to develop his own personal contribution.²² Assuming that each professor has a finite amount of time to devote to his occupation, the higher premium placed on scholarship meant that there was less time left for classroom pedagogy. In the German classroom, paternal activities such as taking attendance or investigating student conduct off school grounds were considered unworthy distractions from the pursuit of knowledge.²³ Professors were seekers of truth, not babysitters.

Admittedly, the influence of German educational ideals on American colleges can be overemphasized, especially in the decade after the Civil War. Intense devotion to research was usually confined to a small pocket of faculty and graduate students.²⁴ Most administrations were slow to accept research as the university's dominant goal, and research did not become a central concern in university thinking until the 1870s.²⁵

Nevertheless, the German influence continued to build as the years wore on and would eventually dominate the thinking of most American colleges by the twentieth century.²⁶ Yale's especially strong reaction against the German method distinguishes it from other schools. Early on, Yale decided not to remake itself along German university

²² *See id.* at 142.

²³ *See id.* at 138.

²⁴ *See id.* at 158.

²⁵ *See id.* at 174.

²⁶ *See id.* at 48-49.

lines. Yale added its graduate school during President Woolsey's administration, which lasted from 1846-1871. Unlike Harvard and German universities, however, Yale kept its graduate school and College faculties separate.²⁷ President Woolsey did not approve of Germany's system for higher education. Woolsey studied in Germany as a young man, but came back largely unimpressed. In a letter, he explained, "For my own part I prefer the American system with a slight portion of the German grafted upon it. . . . [In the German schools,] only philologists are formed and the moral being and much of the knowledge necessary in life is neglected."²⁸ Woolsey made the College his first priority during his presidency. In 1871, Yale remained a college "with incidental appendages which made out the best they could."²⁹

Woolsey's successor, Noah Porter, was even more hostile to the Germanization of American education. Porter served as Yale's president from 1871 to 1886. He appreciated the communal experience, historical standards, and most importantly, the shared moral values of the College.³⁰ In contrast to Harvard's Eliot, Porter thought that the school should make choices for its students. Students needed to study Latin and

²⁷ See STORR, *supra* note 14, at 30-31. "In the intellectual sphere Harvard College had been changed from a small college on the restricted, disciplinary model into a swarming university-style college, whose students could specialize in all sorts of new subjects or shift as they saw fit between departments and levels of study. Thus the achievement of Harvard University had involved the transformation of Harvard College." PIERSON, *supra* note 2, at 48.

²⁸ Letter from Theodore Dwight Woolsey (Apr. 21, 1828), in WOOLSEY FAMILY PAPERS, Series III, Box 47, Folder 27 (on file with Yale University Library, Department of Manuscripts and Archives).

²⁹ PIERSON, *supra* note 2, at 63.

³⁰ See *id.*

Greek because these subjects provided intellectual discipline.³¹ Developing this discipline was more important than acquiring new knowledge.³² Porter's conservatism isolated Yale in the 1870s, as the school "adopted a standoffish pose, refusing even to confer with such reformed institutions as Harvard."³³ When Eliot led inter-university conferences to standardize admissions requirements and examinations in higher education, Yale's Academical Department refused to even enter the discussions.³⁴

More than any particular antipathy to the German concept of the research university, it was Yale's sense of its particular moral mission that caused it to protect the College at the expense of its other schools. The educational trends associated with the German university clashed with Yale's desire to preserve its traditional role as a place for instilling spiritual values. Placing more emphasis on research meant de-emphasizing the pedagogical techniques designed to instill moral virtue into young students. There were only so many classes a student could take. Opening up the College curriculum to innovations in the natural and social sciences meant undermining the foundational classes that stressed discipline and training more than acquiring knowledge.³⁵ And, in the view

³¹ See KELLEY, *supra* note 5, at 240.

³² See VEYSEY, *supra* note 6, at 23-24.

³³ VEYSEY, *supra* note 6, at 50.

³⁴ See Letter from Academical Department Faculty to President Eliot, (Mar. 11, 1880), NOAH PORTER PAPERS, Box 1, Folder 2 (on file with Yale University Library, Department of Manuscripts and Archives) (stating that the College's professors "are not prepared to take any action upon the recommendations made by the conferences, which by Engagement with the Colleges of the Associations shall in any manner limit their own independence or the independence of the other Colleges.").

³⁵ See KELLEY, *supra* note 5, at 264-65.

of Yale's leaders, diverting attention to professional and graduate schools meant weakening the College. The College did change somewhat under Woolsey and Porter. A limited amount of electives were permitted³⁶ and College seniors chose to make political science and law a large part of their curriculum.³⁷ Overall, however, Yale made its changes in a slow, piecemeal fashion, years after other schools had fully reorganized to accept the German system's emphasis on research, specialization, and elective choice.³⁸

B. *Neglecting the Law School*

Yale's traditionalist stance against the research and specialization movements in higher education took a toll on its graduate and professional schools. The historical data indicates that as Yale's administrators tried to preserve the old-fashioned college, they neglected the Law School. The administration did not allow the Law School to die in 1869, but neither did it try to promote a quick recovery for its ills. Rather, the Law School in the 1870s was like a sick patient that received only the bare minimum of treatment to keep it alive but nothing more.

³⁶ See PIERSON, *supra* note 2, at 73-80.

³⁷ See KELLEY, *supra* note 5, at 174. A study of the number of hours of classroom work per week taken by the 1895-96 Senior class over their four years at Yale showed that Law and Political Science were two of the most popular areas of study. Students only spent more classroom hours studying foreign languages, history, and English. See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 30-31 (1896).

³⁸ See KELLEY, *supra* note 5, at 264-65 ("At a critical point in the history of American higher education, Yale was on the wrong side.").

In 1869, the Yale Corporation appointed a committee to recommend measures for the reorganization of the Law Department.³⁹ When Henry Dutton died that year, the school was left with no faculty and no endowment to pay for new professors.⁴⁰ President Woolsey was a member of the committee, but there is no evidence that the committee ever presented any recommendations to the Yale Corporation.⁴¹ Later that year, the Corporation agreed to let three members of the New Haven bar—Simeon E. Baldwin, Johnson T. Platt, and William C. Robinson—take charge of the Law School.⁴² Baldwin was the leading spirit in this undertaking.⁴³ He was a graduate of the College and had briefly attended both the Harvard and Yale law schools, but he was only twenty-nine when he began teaching and had only been practicing for six years. In 1871, Francis Wayland joined the three men and assumed the Law School's administrative duties.

There is little evidence that the Law School received significant financial assistance from the administration before or after this last-minute rescue by the local bar. The Yale Treasurer's Reports show that the university's contributions to the Law School

³⁹ See YALE COLLEGE IN 1869: ANNUAL STATEMENT OF THE SOCIETY OF ALUMNI 12 (on file with Yale University Library, Department of Manuscripts and Archives).

⁴⁰ See HICKS, *supra* note 3, at 1.

⁴¹ See JACKSON, *supra* note 4, at 63.

⁴² See Minutes of the Yale Corporation (July 1869) (on file with Yale University Library, Department of Manuscripts and Archives).

⁴³ See Charles E. Clark, *Foreword* to JACKSON, *supra* note 4, at vii, x (1955); Watrous, *supra* note 4, at 13.

totaled \$60 dollars in both 1869 and 1871.⁴⁴ One of Yale's historians, Brooks Mather Kelley, faults President Woolsey for his failure to support the Law School before the crisis in 1869. He reveals: "Woolsey's intelligence often enabled him to recognize a problem; somehow his character prevented him from moving to solve it."⁴⁵ Woolsey seems to have recognized the sorry condition of the school in 1867, but absolved himself of responsibility for its decline:

The college authorities have not been at fault in what they have done for the school, or rather what they have left undone. "The destruction of the poor is their poverty." We could have raised the school by funds and men, but to get the funds we must have the men, and to get the men we needed the funds. There was no leverage.⁴⁶

Kelley adds: "There is no sign he had really tried to do much about either men or funds, and the school had not stayed the same but actually declined."⁴⁷

The administration did begin to take a greater interest in raising funds for the Law School at the end of Woolsey's term.⁴⁸ In 1869, the Corporation authorized Woolsey to

⁴⁴ The money was paid for upkeep of the law library. See REPORT OF THE TREASURER OF YALE UNIVERSITY 1 (1871); REPORT OF THE TREASURER OF YALE UNIVERSITY 1 (1869).

⁴⁵ KELLEY, *supra* note 5, at 208.

⁴⁶ Letter from Woolsey to Luther Frederick Jones (June 11, 1867), *quoted in* FREDERICK C. HICKS, YALE LAW SCHOOL: FROM THE FOUNDERS TO DUTTON, 1845-1869, at 36 (1936).

⁴⁷ KELLEY, *supra* note 5, at 208.

appoint an agent to collect donations for the Law School.⁴⁹ The Corporation authorized another fundraising drive headed by Woolsey in 1871.⁵⁰ By 1873, gifts totaling \$30,000 (including one gift of \$10,000) had been received for the law library's upkeep,⁵¹ but Francis Wayland deserves credit for bringing in most of the library contributions.⁵² Whatever effort Woolsey made to raise monies for the Law School, no funds were received for an endowed professorship until 1887.⁵³

The Law School's new leaders continued to struggle for adequate funding during the 1870s. A member of the New Haven bar described the grim financial situation when

⁴⁸ The Yale Corporation did provide some funding to maintain the Law School before 1869. In 1846, the Corporation provided a loan of over \$2,000 to help purchase the law library of Samuel Hitchcock, one of the school's first instructors. *See* HICKS, *supra* note 1, at 35; HICKS, *supra* note 46, at 55-58. In 1856, the Corporation voted to stop charging interest on the Hitchcock library loan. *See* HICKS, *supra* note 46, at 34. On the other hand, the university continued to charge interest on other loans even when the Law School was faced with economic collapse. The Treasurer's Report for 1869 charges the Law School with \$1,394.83 in interest from loans to pay for books and bookcases since 1847. *See* REPORT OF THE TREASURER OF YALE UNIVERSITY 6 (1869).

⁴⁹ *See* Minutes of the Yale Corporation (July 1869).

⁵⁰ *See* Minutes of the Yale Corporation (July 1871).

⁵¹ *See* HICKS, *supra* note 46, at 43; Robinson, *supra* note 1, at 24. These monies allowed the Law School to erase the debt it owed to the university for the Hitchcock library loan. *See* HICKS, *supra* note 46, at 43.

⁵² *See* HICKS, *supra* note 3, at 51. Even Woolsey admitted that Wayland deserved the credit for raising the necessary funds for the library. *See* Theodore Dwight Woolsey, Historical Discourse 14 (June 24, 1874) (transcript available in the Yale Law School Library).

⁵³ In 1880, Lafayette S. Foster willed \$60,000 to the school for a professorship of English Common Law. *See* HICKS, *supra* note 3, at 37. The funds from the Foster bequest, however, did not become available to the school until 1903. The first endowment received by the Law School was the 1887 contribution of Junius S. Morgan for a professorship of contracts and commercial law later named the Edward J. Phelps chair. *See id.* at 38.

Baldwin, Robinson, and Platt took over: "The school at that time, and for some time to come, was a proprietary institution; receiving no support from the College, and relying on tuition fees for its expenses. This was indeed a venture upon which the three men entered!"⁵⁴ The Corporation did agree to pay "the whole or part of the rent of the Room now used for the Library and Lecture room of the Law School" in 1869.⁵⁵ Aside from the rental payments, the Corporation limited its economic aid to periodic payments to preserve the school's library.⁵⁶ Even with these payments, an 1871 assessment of the Law School revealed that no books had been added to the library since 1852.⁵⁷ The assessment, probably written by Simeon Baldwin,⁵⁸ explained that the school's core problem was its lack of financial support: "At the present time, the Law Department is, as

⁵⁴ Watrous, *supra* note 4, at 13.

⁵⁵ Minutes of the Yale Corporation (July 1869); HICKS, *supra* note 3, at 3.

⁵⁶ See Minutes of the Yale Corporation (Dec. 1872) (authorizing \$400 for a librarian's salary); Minutes of the Yale Corporation (July 1870) (appropriating \$25.00 for a bookcase); Minutes of the Yale Corporation (July 1869) (authorizing \$55.55 to pay a bill for care of the library). The law librarian was the first salaried position ever provided for the law school that did not rely on the income derived from tuition fees. See HICKS, *supra* note 3, at 57. In 1881, the Corporation appropriated \$300 from general university funds to buy new law library books. The Corporation agreed to pay \$300 every year for this purpose until 1894. See *id.* at 55.

⁵⁷ YALE COLLEGE: NEEDS OF THE UNIVERSITY SUGGESTED BY THE FACULTIES TO THE CORPORATION, THE GRADUATES, AND THE BENEFACTORS AND FRIENDS OF THE INSTITUTION 18 (1871) (on file with the Yale Law School Library) [hereinafter NEEDS OF THE UNIVERSITY].

⁵⁸ See HICKS, *supra* note 3, at 6.

it always has been, the only department of the University wholly destitute of any permanent funds.”⁵⁹

If the law faculty hoped for more from the university when Noah Porter replaced Woolsey in 1871, they were probably disappointed. Porter did mention the Law School in his opening address and pointed out the advantages to the university of its best college graduates remaining in New Haven to study law.⁶⁰ But Porter’s inaugural speech was the highlight of Law School-university relations during his fifteen-year term as president. Under Porter, the central administration continued to view the Law School and the other professional schools as second-class citizens. Students from the Law School, Medical School, and Sheffield School had to post a bond from one of their professors before they could borrow books from the College library.⁶¹ Since 1850, the Law School had been housed above a noisy saloon, and it desperately needed new quarters.⁶² The administration refused to put up badly needed funds to relocate the Law School to a new building. Instead, the school moved into the third floor of the newly-built New Haven county courthouse in 1873 with Porter’s administration only offering “funds to pay rent

⁵⁹ See NEEDS OF THE UNIVERSITY, *supra* note 57, at 20. One of Woolsey’s contemporaries, William C. Robinson, praised Woolsey for his efforts on behalf of the Law School. He said that Woolsey “remained the stanch friend of the school till the last moment of his life.” Robinson, *supra* note 1, at 24. Robinson’s assessment, however, may have reflected Woolsey’s work for the Law School after 1871 rather than his any initiatives Woolsey took while president. See *infra* notes 77-78 and accompanying text.

⁶⁰ See HICKS, *supra* note 3, at 8; JACKSON, *supra* note 4, at 92-93.

⁶¹ See Minutes of the Yale Corporation (Mar. 1872).

⁶² See HICKS, *supra* note 46, at 27.

for a lecture room, so far as it may be needed for the lectures of the Kent Professor of Law in the Academical Department."⁶³

Theodore S. Woolsey, the former president's son and Professor of International Law, recalled Porter's lack of attention to Law School affairs as he chronicled a long history of neglect at the hands of the administration. "Even in President Porter's time," he remarked, "that amiable gentleman scandalized the Law Department by minimizing its connection with the College, as I well remember."⁶⁴ Plans for reorganizing the university had been in existence since 1870. One in particular had been authored by Timothy Dwight, then a professor in the Divinity School. Dwight published his plan in a pamphlet entitled *Yale College: Some Thoughts Respecting its Future*.⁶⁵ He called for a centralized university structure and a communal pooling of funds for all of the schools associated with Yale. Porter rejected this proposal, once again stressing the preservation of the College at the expense of the professional and graduate schools.⁶⁶

From time to time, President Porter did pay attention to the Law School. In 1872, the annual Law School bulletin explained that Porter would give "a short course of

⁶³ Minutes of the Yale Corporation (July 1872).

⁶⁴ Theodore S. Woolsey, Historical Address (June 16, 1924), in CELEBRATION OF THE CENTENNIAL OF THE SCHOOL OF LAW 7 (1924) (on file with the Yale University Library, Department of Manuscripts and Archives, WOOLSEY FAMILY PAPERS, Series III, Box 47, Folder 31).

⁶⁵ TIMOTHY DWIGHT, YALE COLLEGE: SOME THOUGHTS RESPECTING ITS FUTURE (New Haven, Tuttle, Morehouse and Taylor 1871).

⁶⁶ See PIERSON, *supra* note 2, at 53-57.

lectures on Methods of Study, and Mental Discipline.”⁶⁷ Porter and Simeon Baldwin discussed the problem of Yale College graduates choosing Harvard over Yale for law school. At this time, the Law School still had no endowment. Porter told Baldwin that the absence of endowed professorships gave the Law School a proprietary look that detracted from its image.⁶⁸ Porter served on a committee with ex-president Woolsey to consider a plan for graduate study presented by the law faculty.⁶⁹ It should also be noted that Porter did not neglect all of the professional and graduate schools. During his tenure, the administration began to involve itself in the affairs the struggling medical school by appointing the university treasurer in charge of the school’s finances and purchasing and then leasing property to the school.⁷⁰ In 1872, the university added a professorship of Political and Social Science to the graduate school.⁷¹

⁶⁷ Yale Law School Bulletin, 1872-73 (on file with Zina Shaffer, Law School Registrar).

⁶⁸ See CHARLES C. GOETSCH, ESSAYS ON SIMEON E. BALDWIN 41 (1981) (relating an October 15, 1898 entry in Baldwin’s diary). Porter was probably right about this. In 1887, Junius S. Morgan (J.P. Morgan’s father) donated \$25,000 to the Law School for a professorship of Contracts and Commercial Law. See HICKS, *supra* note 3, at 38; Minutes of the Yale Corporation (Apr. 1887). Four years later, J.P. Morgan would donate another \$25,000 to the fund. See HICKS, *supra* note 3, at 38. Probably taking the Law School’s proprietary nature into account, the elder Morgan framed his donation so that the money could be used even if the Law School folded:

If it shall come to pass that instruction in the said Law Department shall be suspended, or if said Department shall fail to maintain the Professorship herein provided for, or if the same shall be allowed to remain vacant for more than one year at any one time, then the income of the said fund during such suspension or vacancy shall be applied by the said Corporation to the general purposes of instruction in Yale University.

Minutes of the Corporation (Apr. 1887).

⁶⁹ See Minutes of the Yale Corporation (June 1875).

⁷⁰ See KELLEY, *supra* note 5, at 255.

Still, Porter's fifteen years at Yale's helm seem to have meant more neglect and isolation for the Law School. In 1876, Simeon Baldwin wrote in his diary, "Yale doesn't care much for the Law School, and hardly regards it as hers"⁷² Porter retired from the Yale presidency in 1886. That same year the annual statement drawn up by the Yale College Alumni Association noted the rise in Law School enrollment over the last fifteen years, crediting the faculty who took over in 1869. Not only did the alumni fail to mention that Porter had any role in the Law School's resurgence, but they seem to have subtly criticized him by noting that the increased enrollment had forced the law faculty to double their work without receiving any additional compensation.⁷³

When Porter died in 1893, the new president, Timothy Dwight, was free to discuss Porter's failure to take an interest in the professional schools. Porter had continued to teach in the Academical Department while serving as president. Dwight criticized this practice: "The consequence of this fact was that his sphere of duty, as had been the case also with Dr. Woolsey and his predecessors in office, was mainly limited to the part of the institution to which his Professorship appertained. The relations of the Presidential office to the other Departments were much less immediate and intimate."⁷⁴ In an 1895 report to the Yale Corporation, President Dwight chronicled the university's

⁷¹ See Minutes of the Yale Corporation (July 1872).

⁷² Diary entry by Simeon E. Baldwin (July 18, 1876), BALDWIN FAMILY PAPERS (on file with the Yale University Library, Department of Manuscripts and Archives).

⁷³ See YALE COLLEGE IN 1886: ANNUAL STATEMENT OF THE SOCIETY OF ALUMNI 17 (1886).

⁷⁴ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 7 (1893).

inattention to the Law School in greater detail. He recognized that his predecessors had ignored the professional schools and speculated as to their reasoning:

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

. . . .
The professional schools were thus left mainly to themselves.⁷⁵

As one of Yale's historians has put it, at the end of Porter's tenure, there was still a wide "gap between the College and the half-private little Law School."⁷⁶

C. Ideas for the Ultimate Law School

Although Woolsey did little to ensure the continuance of the Law School during his presidency, his enthusiasm for the school increased in later years. In 1871, he began to deliver lectures on international law in the Law School.⁷⁷ He also became something of an authority on legal education. One law professor from Michigan solicited his opinion on the proper courses of study for law students.⁷⁸

⁷⁵ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 67-68 (1895).

⁷⁶ PIERSON, *supra* note 2, at 212.

⁷⁷ See Yale Law School Bulletin, 1871-72; HICKS, *supra* note 3, at 9.

⁷⁸ See Letter from William P. Wells, Professor of Law at the University of Michigan, to Theodore D. Woolsey (July 16, 1877), WOOLSEY FAMILY PAPERS, Series I, Box 27, Folder 59.

Woolsey described his conception of the ideal law school in his speech at the Law School's fiftieth anniversary celebration in 1874. First, he singled out the school's auxiliary lectures, which "enlarge and broaden the system of law training."⁷⁹ During the school year, practicing lawyers spoke on topics ranging from Insurance to Roman law.⁸⁰ According to Woolsey, these lectures gave Yale a special character that distinguished it from other law schools:

I say that nowhere in the United States are these handmaids to a finished legal education brought more effectively into the service of legal studies and made more useful than in Yale Law School, in the latest stage of development. And by carrying out this plan, it is made apparent how much more comprehensive and finished a legal education ought to be, when it is pursued as a department of a university, than when it stands alone.⁸¹

Whether or not these auxiliary lectures truly enriched a Yale law student's education is debatable. There is no information on the students' attendance at these lectures. Most of the lecturers lived outside of New Haven and thus their lectures must have taken place infrequently at best. An 1889 article listed ten special lecturers and the towns they practiced in. The article explained that only two, Edward Phelps and Mark Bailey, who taught elocution, were "otherwise connected with the Faculty of the University" and lived

⁷⁹ Woolsey, Historical Discourse, *supra* note 52, at 11.

⁸⁰ See HICKS, *supra* note 3, at 9-10. Another plan for a system of supplementary lectures had been proposed in 1868, but there is no evidence that the lectures ever took place. See HICKS, *supra* note 46, at 35.

⁸¹ Woolsey, Historical Discourse, *supra* note 52, at 12.

in New Haven.⁸² The other lecturers came from outlying cities such as Hartford, New York City, and even Baltimore.⁸³ Moreover, for all of Woolsey's praise, the Corporation did not provide any money for the lectures—the lecturers spoke for free.⁸⁴

But even if the auxiliary lectures were more valuable for public relations than for actually enriching a law student's life, they fit in well with Woolsey's call for enlarging the scope of legal education. Woolsey argued that the Law School should go beyond the lectures to use the broad educational resources of the entire university. The School should do more than train men for practice; it should instruct its students in the wide array of related subjects necessary for success in public life:

Let the school, then, be regarded no longer as simply the place for training men to plead causes, to give advice to clients, to defend criminals; but let it be regarded as the place of instruction in all sound learning relating to the foundations of justice, the history of law, the doctrine of government, to all those branches of knowledge which the most finished statesman and legislator ought to know.⁸⁵

To further this effort at broad legal training, the law library should be expanded to include "the best books on all branches and topics connected with law, legislation and government."⁸⁶

⁸² Leonard M. Daggett, *The Yale Law School*, THE GREEN BAG, June 1889, at 239, 242-43.

⁸³ *See id.*

⁸⁴ *See HICKS*, *supra* note 3, at 10.

⁸⁵ Woolsey, *Historical Discourse*, *supra* note 52, at 23.

⁸⁶ *Id.* at 23-24.

This expansive plan seems especially ambitious coming from a man who did little to help the Law School when it was threatened with collapse. Woolsey admitted that his ideal law school could not be self-supporting.⁸⁷ The final section of his speech may reveal why the Law School had assumed a higher prominence in his thinking in 1874 and why he was now willing to at least discuss subtracting from the central treasury to finance legal education. Woolsey asked whether a law school could survive in New Haven, away from the major metropolitan legal markets of New York and Boston. He answered in the affirmative, especially because the school could take advantage of Yale's other assets. "[A] connection with a seat of learning, where the whole circle of sciences is taught," he explained, "is the best place for such an institution."⁸⁸ Woolsey thought that law students could profit from instruction in related disciplines such as history and government. Future political leaders would benefit from a broad legal education that did more than instruct them on the narrow requirements for practice.

There may be a deeper reason why Woolsey supported a broader concept of legal education. The revolution in the natural sciences disconcerted Woolsey, as it would many other American educational leaders of the late 1880s. The new concern with uncovering new knowledge through scientific observation promised to cater to secular, not spiritual, desires.⁸⁹ The old course of study in the College emphasized hard work in abstract subjects that taught moral discipline; the new course of study called for simple

⁸⁷ *See id.* at 24

⁸⁸ *Id.* at 21.

⁸⁹ *See VEYSEY, supra* note 6, at 2.

observations to test scientific principles.⁹⁰ For Woolsey, the natural sciences threatened to overtake the moral instruction that was at the core of a Yale College education. “There is a danger, therefore, that the balance between body and spirit, the natural and the moral world, will be disturbed, which would be a state of things fraught with danger to the best interests of man,” he explained. Legal science, however, with its “foundation of right and justice,” could bridge the gap between the moral discipline of an education in the humanities and the detached observations of natural science.⁹¹ Unlike scientific study, law was rooted in basic, time-honored principles designed for moral uplift. Woolsey may have been doing his part to insure that law remained true to those moral principles. In one speech, he wrote that “a law of Christ in the New Testament” trumps other laws.⁹²

Woolsey may have only seen this vision of the ideal law school after he had given up the power to put his vision into place. On the other hand, additions to the Law School and College curricula in the 1870s complemented Woolsey’s concept of legal education. In 1873, the Law School began to offer a course of lectures on Ecclesiastical Law.⁹³ The course of study also embraced Roman Law, the Law of Nations, and Comparative Jurisprudence.⁹⁴ President Porter taught Ethics in the Law School in 1876.⁹⁵ Meanwhile,

⁹⁰ *See id.* at 23-24.

⁹¹ Woolsey, *Historical Discourse*, *supra* note 52, at 24.

⁹² Handwritten lecture notes from 1881, page 2, WOOLSEY FAMILY PAPERS, Series II, Box 33, Folder 25.

⁹³ *See YALE COLLEGE IN 1873: ANNUAL STATEMENT OF THE SOCIETY OF ALUMNI* 2 (1873).

⁹⁴ *See YALE COLLEGE IN 1875: ANNUAL STATEMENT OF THE SOCIETY OF ALUMNI* 1 (1875).

the College's senior-year curriculum for 1875 included lectures on political science featuring Woolsey's text, *International Law*, and lectures from Simeon Baldwin on jurisprudence and American constitutional law.⁹⁶

In 1875, the law faculty submitted a plan for a graduate program.⁹⁷ Both Woolsey and President Porter served on a committee with the law faculty to consider the plan.⁹⁸ The Corporation approved and the Law School Bulletin for the 1876-77 school year described the new program, boasting that "greater advantages are now offered at Yale College for following the study of public law, Roman law, comparative jurisprudence, style and oratory and compositions, constitutional history, and political science, than have ever been afforded before at an American law school."⁹⁹ In addition to the law faculty, instructors from the College and graduate school were listed as professors for the new graduate law courses.

⁹⁵ See YALE COLLEGE IN 1876: ANNUAL STATEMENT OF THE SOCIETY OF ALUMNI 12 (1876).

⁹⁶ See PIERSON, *supra* note 2, at 71.

⁹⁷ See HICKS, *supra* note 3, at 24. While Yale faculty and administrators would often refer to this as the first legal graduate program in the United States, it was partially born out the need to compete with other law schools. In making their pitch for the graduate program, the faculty noted that other New England law schools, including Harvard and Boston University, allowed law students to study for another year and receive their Master's degree. See Letter from Wayland, Robinson, Baldwin, and Platt to the President and Fellows of Yale College (June 15, 1875), YALE CORPORATION RECORDS, 1714-1899, Box 2 (on file with the Yale University Library, Department of Manuscripts and Archives).

⁹⁸ See Minutes of the Corporation (June 1875).

⁹⁹ Law School Bulletin 1876-77, *quoted in* HICKS, *supra* note 3, at 25.

The graduate program in law seems overambitious, especially for a school that had just been on the brink of collapse. It is not clear what actual role professors from outside the Law School had in teaching graduate law classes. The Law School did make some effort to inform its students of relevant classes in the College and graduate school. Even before the announcement of the graduate program, Francis Wayland, Dean of the Law School, was routing students to Political Science Professor William Graham Sumner.¹⁰⁰ And once the graduate program had begun, Wayland asked the non-law faculty for information on how legal graduate students could attend their lectures.¹⁰¹ On the other hand, only a few students enrolled in the graduate program each year. For example, in the 1882-83 school year, only two students were enrolled in the graduate course.¹⁰² The graduate students only accounted for a fraction of the tuition fees that kept the school afloat. In the fall of 1889, \$3045 was received in fees from undergraduate students while only \$281.60 was collected from the school's three graduate students.¹⁰³ Nevertheless, the aspirations for the graduate program fit in well with Woolsey's concept

¹⁰⁰ Wayland wrote a note for an attorney at law from the Washington Territory who was in his second year at the Law School. The note explained that the attorney wanted to attend Sumner's lectures and asked: "Will you kindly give him such information as he needs." Letter from Francis Wayland to William Graham Sumner (Nov. 7, 1869), WILLIAM GRAHAM SUMNER PAPERS, Series I, Box 29, Folder 809 (on file with the Yale University Library, Department of Manuscripts and Archives).

¹⁰¹ See Letter from Francis Wayland to William Graham Sumner (June 9, 1890), WILLIAM GRAHAM SUMNER PAPERS, Series I, Box 29, Folder 809 ("Will you kindly let me know at your early convenience on what day, hours & subjects your postgraduate lectures will be given and where.")

¹⁰² See Yale Law School Bulletin, 1882-83.

¹⁰³ See Account Book of Simeon Baldwin, entry for October 7, 1889, YALE LAW SCHOOL RECORDS, 1874-1910 (on file with Yale University Library, Department of Manuscripts and Archives).

of a law school that supplemented specific teachings on the law with studies in history and government. The sources do not reveal whether Woolsey's influence on the Law School in the 1870s caused the law faculty to add these classes to the curriculum or if the faculty's plan for graduate work just happened to agree with Woolsey's vision of a humanistic legal education.

D. *Reorganizing the University*

After Timothy Dwight became president of Yale in 1886, the relationship between the College and the rest of the university began to change. Dwight's 1871 work, *Yale College: Some Thoughts Respecting Its Future*, sets out a blueprint for a new type of presidential administration at Yale. Dwight began his book by arguing that Yale had entered a new era. Yale started out as a high school for young students. At this time, "[m]en had not come as yet to take the widest views of education."¹⁰⁴ As a result, only the College was emphasized and the development of the university's other parts had been uneven. But in 1871, he urged, "[t]he age of mere colleges in this country, in a certain sense, is past."¹⁰⁵ Instead, the "outside" schools are crucial to Yale's future success. "They are, even, *the essential thing*."¹⁰⁶ In marked contrast to Woolsey and Porter, Dwight criticized Yale's neglect of the graduate school as a failure to fully implement

¹⁰⁴ DWIGHT, *supra* note 65, at 4.

¹⁰⁵ *Id.* at 6.

¹⁰⁶ *Id.* at 6.

the German model of higher education.¹⁰⁷ He regretted the hierarchy that placed the professional schools below the College: “The student in theology or law is pursuing a no less noble branch of learning than the student of pure mathematics or of the ancient languages.”¹⁰⁸ He exhorted the Corporation to “keep in mind the idea of the unity and unification of the whole University, in all their actions and plans.”¹⁰⁹

Dwight then moved on to the specific problems faced by the graduate and professional schools. Yale had made the mistake of leaving the schools too dependent on the reputation of one or two men: “No institution is strong which depends on the life of a single man,” he explained.¹¹⁰ Dwight also criticized past administrations for not aiding the professional schools in time of crisis. He said that past presidents made “an unfortunate error” by not “at the very first moment when they perceived that any of these departments began to decline in strength, make the most strenuous efforts to repair the original error.”¹¹¹ “They should have increased the funds—the essential means of success—as soon as they perceived the first manifestations of weakness arising from want of funds.”¹¹² Dwight did not get any more specific in his accusations, but his criticism does seem to fit Woolsey’s handling of the Law School’s crisis in 1869.

¹⁰⁷ *See id.* at 28.

¹⁰⁸ *Id.* at 21.

¹⁰⁹ *Id.* at 102.

¹¹⁰ *Id.* at 46-47.

¹¹¹ *Id.* at 49.

¹¹² *Id.* at 49.

Dwight recognized just how close the Law School was to going out of existence in 1871:

The Law and Medical schools are nearly destitute of funds. They are dependent, almost entirely, on the fees derived from the students connected with them. The resources of the former are not sufficient to command the services of eminent men, of large and long-continued experience in the profession, as occupants of the principal chairs of instruction How can institutions, which remain in such a condition in these days, hope to grow?¹¹³

As a solution, Dwight called for immediate and sustained fundraising. The central administration, especially the president, had to be directly involved; it could not place the Law School on a "firm pecuniary foundation" by appointing a fundraising agent as it had in the past.¹¹⁴ And the Law School should receive monies not only from its own fundraising drive, but also from solicitations made on behalf of the entire university.¹¹⁵

Dwight was passed over in favor of Noah Porter in 1871, but when he became Yale's president in 1886, he moved to implement his fifteen-year-old plan for unifying the university. The new president immediately urged the Corporation to change the institution's name from "College" to "University."¹¹⁶ Within a year, the Connecticut legislature gave Yale this legal title.¹¹⁷ In his first report to the Corporation, Dwight pledged his attention to all of the schools associated with Yale, not just the College.¹¹⁸

¹¹³ *Id.* at 54.

¹¹⁴ *Id.* at 55.

¹¹⁵ *See id.* at 57.

¹¹⁶ *See* REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 4-5 (1887).

¹¹⁷ *See* PIERSON, *supra* note 2, at 65.

¹¹⁸ *See* REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 8-9 (1887).

Breaking with tradition, he would not teach in the College; this would allow him to have an "equal interest in the work and life of every branch of the University."¹¹⁹ Dwight believed that a successful university needed all of its component parts to grow with the encouragement of the central administration. When Dwight assessed the Law School's performance during his first year as president, he attached special significance to the use of faculty from the Academical Department and graduate school to instruct students in the Law School's graduate program. William Graham Sumner instructed the legal graduate students in Political and Social Science; Albert Wheeler taught them Roman Law; and Arthur Twining Hadley, future president of Yale, lectured on Railway Management and the Economies of Transportation.¹²⁰ This is significant since Dwight's report did not mention the names of the Law School faculty. Dwight may have seen the legal graduate program as a vehicle for interaction between the Law School and the College and graduate school. He chose to emphasize the program even though there were only six students enrolled in 1887.¹²¹

Dwight repeatedly emphasized the need to support the graduate and professional schools. He criticized the old view of the non-College departments: "They were welcome to receive a place beside the college, and to live near it, if they could by their own power sustain their life. But they must not demand of the central authorities what

¹¹⁹ *Id.* at 8.

¹²⁰ *See id.* at 32.

¹²¹ *Id.*

belonged to the central part of the institution.”¹²² Instead, he told the Corporation that all parts of the university benefited when the graduate and professional schools were strengthened.¹²³ The professional schools’ true potential could only be realized when they were no longer dependent on student tuition for their survival: “Yale University can never be a great university if its higher schools are suffered to decline or die away.”¹²⁴ Within a decade, he began to claim success: “[Yale] is no longer a central school with outside sections more or less loosely attached to it, but a University composed of coordinate departments, each having its own sphere but all united as equals in the one great institution.”¹²⁵

Dwight gave the Law School more than rhetoric. While he was president, the Corporation approved the purchase of a site for a law building, allowing the School to move from its shared quarters in the New Haven County Courthouse into its own building.¹²⁶ Dwight stressed the need for a substantial Law School endowment in his

¹²² REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 68 (1895).

¹²³ *See id.* at 4-5 (1887); REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 56-57 (1893).

¹²⁴ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 72 (1895).

¹²⁵ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 30 (1894).

¹²⁶ FREDERICK C. HICKS, YALE LAW SCHOOL: 1895-1915, TWENTY YEARS OF HENDRIE HALL 3-4 (1938). Dwight, however, could not convince the Corporation to appropriate the \$35,000 necessary to complete the law building on the site. The Corporation only agreed to loan the required funds after the law faculty raised additional money in subscriptions and pledged to be personally responsible for the remaining sum of \$12,000. This loan was only approved in 1899, eight years after the site’s purchase. *See id.* at 9.

reports to the Corporation.¹²⁷ At the beginning of his term as president, the Law School's endowment stood at \$11,600; by the time he retired in 1899, the endowment had reached \$82,813.77.¹²⁸ It is unclear what role, if any, Dwight had in soliciting these funds for the Law School. Dwight's emphasis on a university of "equals" may have given donors more confidence in the staying power of the troubled law school, but it is difficult to tell. It is clear, however, that Dwight also backed up his talk with his own dollars. In 1899, he donated \$1000 for "general purposes" to the School of Law.¹²⁹

In his reports to the Corporation, Dwight singled out the Law School for special recognition, especially when he could point to its interaction with the rest of the

¹²⁷ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 56-57 (1893) ("Could the want here indicated be supplied, the Department, and the University as a whole in its relation to this Department, would be greatly benefited."); REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 71-72 (1895) ("The insufficiency of such an endowment for two vigorous schools [Medical School and Law School] is so apparent, that it is unnecessary to press it upon the attention of any intelligent person."); REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 77 (1899) (stressing the law department's need for endowed professorships).

¹²⁸ See REPORT OF THE TREASURER OF YALE UNIVERSITY 54 (1899); REPORT OF THE TREASURER OF YALE UNIVERSITY 26 (1886). The \$71,000 increase came from several sources. Simeon Baldwin anonymously donated \$12,600 to the school in 1896. See Indenture Book, entry for Simeon E. Baldwin Fund (on file with Stephen Yandle, Associate Dean). The Phelps fund was worth \$50,000 by 1891 and had probably gained some interest since then. See *id.*, entry for Morgan Fund. In 1899, Joseph Parker donated \$3,000 for a prize on the best thesis on Roman law. See *id.*, entry for Joseph Parker Prize. Also in 1899, Eliza and Mary Robinson donated \$5,000 for annual lectures to serve as a memorial to their uncle William L. Storrs. See *id.*, entry for William L. Storrs Memorial Fund. A donation by an 1873 graduate of the Law School provided \$10,000 as a permanent endowment for maintenance of the school's library. Search of "Alice" Database, Yale Law School (Oct. 19, 1999) (search for records containing in "English" in the DONOR field).

¹²⁹ See Indenture Book, entry for Timothy Dwight fund. Dwight made an identical donation to the Medical School. See REPORT OF THE TREASURER OF YALE UNIVERSITY 30 (1900).

university. In 1891, perhaps in an effort to encourage donations, he explained, "This school has had a long and honorable history, and its future is assured."¹³⁰ That same year he highlighted the efforts of the law faculty in the College, specifically Professors William C. Robinson and Edward J. Phelps who alternated teaching Elementary Law to college seniors.¹³¹ Two years later, he commented, "The close relation of the Law Department to the University gives it some special advantages, which cannot fail to be recognized by intelligent students and the intelligent public."¹³² These advantages were not limited to the Law School: "The possibilities of wide education which a great University affords must be helpful, in many ways, to the members of each and every school within its limits The presence of a large body of young men engaged in studies of various sorts cannot but be quickening to each individual mind."¹³³ The full integration of the law and medical schools into the university would take time,¹³⁴ but the days of ignoring the needs of the professional schools were over.

¹³⁰ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 47 (1891).

¹³¹ "The closer relation which has existed, in the most recent years, with the Academical Department by reason of the consecutive work in the latter department of Professors Robinson and Phelps is, and will hereafter be, of advantage to the Law School." *Id.*

¹³² REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 57 (1893).

¹³³ *Id.*

¹³⁴ See KELLEY, *supra* note 5, at 292 ("Despite Dwight's interest in seeing the whole university develop, Yale College remained preeminent.")

E. *Moving to a Full-Time Faculty*

Even with an administration more sympathetic to its progress, the Law School moved very slowly to hire professors who could devote themselves exclusively to education. Other schools, Harvard in particular, would move much more quickly to hire permanent professors.¹³⁵ As early as 1871, Dwight had urged that the school's faculty be made up of full-time teachers.¹³⁶ He explained that the school "has suffered in no inconsiderate degree from the fact that its instructors have been too busily engaged in the practice of their profession."¹³⁷ "A teacher needs to be wholly a teacher—not half given up to the work of a laborious profession and only half to his own employment," he proclaimed.¹³⁸ Dwight recognized that most of this problem stemmed from a lack of

¹³⁵ See THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL: 1817-1917, at 31 (1918) (explaining that the Harvard Law School abandoned its system of hiring temporary lecturers who were also practicing lawyers in 1875); Yale Law School Bulletin, 1999-2000, at 21 ("Perhaps what distinguished Yale most from the leading schools [in 1890] was that, with the exception of the dean, there were no full-time faculty.").

¹³⁶ See HICKS, *supra* note 126, at 46.

¹³⁷ DWIGHT, *supra* note 65, at 59.

¹³⁸ *Id.* at 60.

endowed professorships, but he also faulted the law faculty for not making an effort to spend more time in the classroom.¹³⁹

The school's new faculty also stressed the need for an endowment to hire full-time professors. Baldwin wrote of the need for at least four full-time professors shortly after he started teaching at Yale.¹⁴⁰ William Robinson also urged that the School appoint non-practitioning professors.¹⁴¹ But the school's limited funds could not support a full-time staff. A contemporary described the faculty of the 1870s as "busy men" "immersed in practice."¹⁴² Robinson is a perfect example, at least during his first years as a teacher. His journal from 1869-70 shows that in his first year as a professor he spent little time at the Law School, squeezing in an hour each day from 11:00 a.m. to noon. He spent his

¹³⁹ Dwight explained:

If professors should be appointed who should give their time and energies as entirely to the work of instruction, as those do who are in the Academical and Scientific departments, the prospects of the school would at once be brightened. In our judgment, the former professors fell into an error in this respect. Not indeed that they could entirely have escaped the necessity to which we have alluded, but if they had broken away from it as much as possible, they would have strengthened the school so far that the necessity itself—which was one arising from insufficient funds—would gradually have diminished in force.

Id. at 60.

¹⁴⁰ "A law school worthy of the University should have in its service at least four professors, wholly devoted to its interests, each of whom should continue to instruct through the entire year." NEEDS OF THE UNIVERSITY, *supra* note 57, at 18.

¹⁴¹ See JACKSON, *supra* note 4, at 127.

¹⁴² Woolsey, Historical Address, *supra* note 64, at 10-11.

mornings appearing in court and his afternoons and evenings working on cases.¹⁴³

Francis Wayland was the first person to accept a Yale law professorship with the intention of devoting himself wholly to it. But Wayland did little teaching—he was mainly an administrator—and his full devotion to the School remained unique for many years.¹⁴⁴

During Dwight's term as president (1886-1899), the school began to achieve greater success and a higher enrollment, but still lacked the funding to hire full-time professors. In 1886, there were 62 students in the Law School. By 1899, that number had more than tripled to 194.¹⁴⁵ The school responded by hiring several part-time instructors,¹⁴⁶ but Baldwin, Robinson, and Platt continued to perform the lion's share of the undergraduate law teaching.¹⁴⁷ A new faculty member hired in 1881, William K. Townsend, was also responsible for a large part of the undergraduate teaching load.¹⁴⁸ But Townsend, like the others, could not devote himself fully to teaching as he

¹⁴³ See Journal of William Robinson, WILLIAM C. ROBINSON PAPERS, Box 1, Folder 1 (on file with the Yale University Library, Department of Manuscripts and Archives).

¹⁴⁴ See KELLEY, *supra* note 5, at 256-57.

¹⁴⁵ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 152-53 (1904) (listing enrollment figures from 1824 to 1904).

¹⁴⁶ See HICKS, *supra* note 126, at 25 (chart of additions to the faculty).

¹⁴⁷ See Daggett, *supra* note 82, at 249.

¹⁴⁸ See *id.*

maintained a law practice until 1892 and then became a federal judge.¹⁴⁹ Even as late as 1903, of the School's fifteen faculty members only the dean was full-time.¹⁵⁰

By the end of Dwight's tenure, however, the Law School could at least aspire to a full-time faculty.¹⁵¹ Theodore S. Woolsey, acting as dean in 1902, wrote that "it is the policy of the school to rely for instruction more and more upon its permanent staff."¹⁵² Confidence in a rising endowment may have given the law faculty the courage to press for full-time teachers. Although the School's endowment totaled less than \$100,000 in 1894,¹⁵³ the faculty knew that more money was on the way. In 1880, Lafayette Foster left by his will \$60,000 for a Professorship in English Common Law but specified that the money would not become available until his wife had died. Foster's wife passed away in 1903.¹⁵⁴ The school immediately appointed three full-time teachers, Arthur Corbin, George Zahm, and John Edgerton, signaling a new commitment to hiring

¹⁴⁹ See HICKS, *supra* note 126, at 30-31.

¹⁵⁰ See KELLEY, *supra* note 5, at 340. Other sources indicate that Theodore S. Woolsey did not split his time between the Law School and another vocation. See HICKS, *supra* note 126, at 46. On the other hand, the sources do not indicate that Woolsey taught many of the undergraduate staples like procedure or torts. In the early 1890s, William Robinson left his law practice and devoted himself exclusively to teaching. See *id.*; Daggett, *supra* note 82, at 244.

¹⁵¹ See KELLEY, *supra* note 5, at 341.

¹⁵² REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 114-18 (1902)

¹⁵³ See REPORT OF THE TREASURER OF YALE UNIVERSITY 41 (1894).

¹⁵⁴ See YALE ENDOWMENTS: A DESCRIPTION OF THE VARIOUS GIFTS AND BEQUESTS ESTABLISHING PERMANENT UNIVERSITY FUNDS 28 (1917); Indenture Book, entry for Lafayette S. Foster Fund.

instructors willing to give themselves solely to teaching and scholarship.¹⁵⁵ By 1910, full-time teachers had become the norm rather than the exception at the Law School.¹⁵⁶

II. THE INFLUENCE OF THE COLLEGE ON THE LAW SCHOOL

The Law School faculty resented the university's lack of interest in their affairs under Woolsey and Porter. Worst of all was the College faculty's disdain. "[T]he College looked askance at [the Law School] . . . the College faculty was reluctant to admit that our work had cultural value," recalled one law professor.¹⁵⁷ Referring to both the Law School and the Sheffield Scientific School during the 1870s and 1880s, he remarked: "We were both pariahs in the eyes of the academic professor."¹⁵⁸ Yet despite their second-class status, the Yale law faculty's approach to legal education may have been shaped by the philosophy of the larger institution. The school sought a national reputation to parallel the national reputation of the College. In keeping with the

¹⁵⁵ See HICKS, *supra* note 126, at 46.

¹⁵⁶ See Woolsey, Historical Address, *supra* note 64, at 16. By 1910, the School had \$180,000 in endowed funds for professorships thanks in part to the 1908 bequest of Augustus E. Lines. See REPORT OF THE TREASURER OF YALE UNIVERSITY 88 (1910). Moreover, the School's total endowment had surged to \$358,000. See *id.* In later years, when its financial foundation became even more secure, Yale would move to limit enrollment. In the 1926-27 school year, Yale announced that entering classes were to be limited to 100 students. See ROBERT STEVENS, LAW SCHOOL 160 (1982). The move to limit enrollment was designed not only to improve the quality of the student body but also to distinguish Yale from Harvard and Columbia. See LAURA KALMAN, LEGAL REALISM AT YALE, 1927-1960 at 104 (1986); John Henry Schlegel, *American Legal Realism and Empirical Social Science: From the Yale Experience*, 28 BUFFALO L. REV. 459, 472 (1980).

¹⁵⁷ Woolsey, Historical Address, *supra* note 64, at 14.

¹⁵⁸ *Id.*

educational beliefs of presidents Woolsey and Dwight, the law faculty broadened their school's curriculum to include the contributions of history and the social sciences. The Law School also maintained a presence in the College by offering non-professional classes on the law to College seniors. By offering these College classes, the law faculty met two goals: creating informed citizens and facilitating contact with professors outside of the Law School.

A. Targeting a National Audience

Being part of a national institution encouraged the Law School to aim for a national audience. Despite their youth and inexperience, the members of the bar who took control of the school in 1869 solicited a national student body. The 1879 statement of the Alumni Association described the Law School's change in scope:

Prior to the reorganization of this department in 1869, the scheme of studies had particular reference to the laws and practice of Connecticut, and the attendance had become almost wholly confined to Connecticut students. The instruction since given has been of a general character, designed to lay the foundation of a good legal education, and equally adapted to the requirements of the profession in every State, and among the results have been, not merely the large increase in the number of students, but that they represent all parts of the country.¹⁵⁹

¹⁵⁹ YALE COLLEGE IN 1879: ANNUAL STATEMENT OF THE SOCIETY OF ALUMNI 11 (1879). Even as it became more prestigious and financially secure in later years, the Law School continued to fear that it would revert to its old status as an institution only attended by Connecticut residents. In 1919, when Columbia threatened to steal professor Walter Cook away from Yale with a larger salary, Law School dean Thomas Swan told the Corporation that this could lead to the Law School regressing into a regional institution:

Students recognize that Cook is our best teacher and possesses a stronger personality than any other member of the faculty. Should we lose him at this juncture the current of Yale graduates would be almost certain to swing back to Harvard or Columbia. In that event we cannot hope to get strong men from other colleges and we shall become merely a local school training almost exclusively for the Connecticut bar, not a national school.

Simeon Baldwin was the school's strongest force, and he brought a national vision to the Law School. Instead of emphasizing local practice, Baldwin argued that all lawyers should be acquainted with foreign legal systems and taught a class on comparative law.¹⁶⁰ His desire for a set of uniform standards for entering the profession led him to be among the founders the American Bar Association.¹⁶¹ Baldwin also argued for more rigorous standards for admission and completion of the degree. In 1877, he asked that Yale's course of study for a bachelor's degree in law be extended to three years even though the school still remained on shaky financial ground.¹⁶² Even though the administration did not give the Law School the same respect as the College, Baldwin pushed for the same educational reforms—higher requirements for admission, a three-year course of study—as the more respected law schools at Harvard and Columbia. The Law School's decision to push for these reforms is all the more impressive since the faculty's financial remuneration was directly dependent on the number of students enrolled. In 1894, library fees and tuition accounted for \$17, 450 of the \$22,314 spent on

Letter from Thomas Swan to Corporation Committee on Educational Policy (March 18, 1919), ARTHUR TWINING HADLEY PRESIDENTIAL RECORDS, Series I, Box 84, Folder 1641 (on file with the Yale University Library, Department of Manuscripts and Archives).

¹⁶⁰ See JACKSON, *supra* note 4, at 106.

¹⁶¹ See JACKSON, *supra* note 4, at 80, 212. Baldwin was president of the ABA in 1890. See George Beers, *Yale Law School*, THE INTERCOLLEGIATE LAW J., Feb. 1893, at 71, 74.

¹⁶² See JACKSON, *supra* note 4, at 94-95. The Law School's governing board chose to table Baldwin's idea until 1894. See *id.* The Harvard Law School began requiring three years to complete their course of law study in 1878. See Robert Stevens, *Two Cheers for 1870: The American Law School*, in LAW IN AMERICAN HISTORY 405, 430 (Donald Fleming & Bernard Bailyn eds., 1971).

instructors' salaries.¹⁶³ Since student payments were what kept the Law School running, reforms that drove away too many students would threaten the school's continued existence.

B. *Straining for Breadth in the Law School*

Like presidents Woolsey and Porter, Yale's law faculty conceived of legal education in broad terms. Simeon Baldwin wanted the course of study to be extended to three years so that more classes could be added to the curriculum.¹⁶⁴ It was his idea to make Yale the first law school in the nation with a graduate program.¹⁶⁵ Charles Clark later remarked that Baldwin's graduate course, which "stress[ed] a broader education than one purely professional, encompassing history, the political and social sciences, and other disciplines which should be allied to law, distinguished Yale from all other law schools and placed Baldwin fifty years ahead of his time."¹⁶⁶ When Baldwin wrote on legal education, he stressed citizenship. He believed that the "educated man" must take an interest in politics so he can interpret proposed legislation for the public and give an informed perspective to public opinion.¹⁶⁷ He worried about the effect of specialization on the educated man's suitability to lead public affairs. The university errs when it "looks on high scholarship in a particular field, as entitled to more respect than high

¹⁶³ See REPORT OF THE TREASURER OF YALE UNIVERSITY 42 (1894).

¹⁶⁴ See JACKSON, *supra* note 4, at 94-95.

¹⁶⁵ William C. Robinson called Baldwin "the projector and progenitor of the entire system of graduate law instruction in the United States. Robinson, *supra* note 1, at 28.

¹⁶⁶ Charles E. Clark, *Foreword* to JACKSON, *supra* note 4, at vii, ix.

¹⁶⁷ SIMEON E. BALDWIN, THE RELATIONS OF EDUCATION TO CITIZENSHIP 117 (1912).

attainments in general knowledge" because the world looks for its leaders in "all-round men," not in masters of "a particular science."¹⁶⁸

The Law School's unusual emphasis on breadth in legal education was also evident in the outside interests of its faculty. Baldwin's commitment to learned societies in history, political science, and various other fields in the arts and sciences was extraordinary. He served as president of the American Social Science Association, the American Historical Association, and the Political Science Association.¹⁶⁹ Like Baldwin, Dean Francis Wayland was an "ardent student of the social sciences."¹⁷⁰ He also served as president of the American Social Science Association¹⁷¹ and spoke on several issues of public law, criminology and prison reform in particular.¹⁷² William Robinson's

¹⁶⁸ *Id.* at 143. Yale's traditionalist stance and the faith of presidents Woolsey and Porter in the old-time college curriculum may have influenced Baldwin's views. Even though he strove for breadth in the law curriculum, Baldwin opposed an elective system that gave college students too much choice. "The old-fashioned college education, before the system of elective studies received any great extension, was distinctly a training for the general calling of man and citizen," he wrote. "[N]o inconsiderable part of the vagaries of the past forty years may be traced to a one-sided education in special topics of political economy, sociology, or government administration." *Id.* at 29. Like Woolsey and Porter, Baldwin believed that all students should be forced to take difficult and unpleasant subjects like Latin and Greek because such study developed mental discipline. *See id.* at 31. But it may have been Baldwin's natural conservatism, rather than any influence from Woolsey or Porter, that allied him with the administration when it came to college education. As one of his contemporaries said, Baldwin had an opinion on every subject, and "it was generally a conservative one." Henry H. Townsend, Address before the New Haven County Bar Association, in *RECORDS & ADDRESSES IN MEMORY OF SIMEON E. BALDWIN, 1840-1927*, *supra* note 4, at 20.

¹⁶⁹ *See Simeon Eben Baldwin*, *DICTIONARY OF AMERICAN BIOGRAPHY* 544, 545 (1932).

¹⁷⁰ *See Hicks*, *supra* note 126, at 18.

¹⁷¹ *See Francis Wayland*, *DICTIONARY OF AMERICAN BIOGRAPHY* 560, 561 (1932).

¹⁷² *See, e.g., Francis Wayland*, Report of the Criminal Law Reform Committee of the

pedagogical techniques sound extremely simple by today's standards and maybe even by the standards of his own time. His method was to read his lectures so slowly that students could copy down his words verbatim, and then require the students to commit his lectures to memory.¹⁷³ Nevertheless, he seems to have sympathized with the interdisciplinary approach of his fellow professors. In 1895, he left Yale to help start a school of Social Science at Catholic University. The school's curriculum was made up of an interlocking set of courses in Sociology, Economics, Political Science, and Law.¹⁷⁴

The Law School's curriculum also reflected the faculty's concern with breadth, even at a time when the rest of the legal teaching profession was moving to narrow the scope of legal study.¹⁷⁵ In 1891, Yale offered fifty-five courses while Harvard offered

Nation Prison Association (1891) (transcript available at the New Haven Historical Society Library); Francis Wayland, Opening Address Before the American Social Science Association on Capital Punishment (Sept. 3, 1883) (transcript available at the New Haven Historical Society Library).

¹⁷³ See HICKS, *supra* note 3, at 44.

¹⁷⁴ See *id.* at 47-48; William Callyhan Robinson, *DICTIONARY OF AMERICAN BIOGRAPHY* 56, 57 (1932).

¹⁷⁵ See John Henry Schlegel, *Between the Harvard Founders and the American Legal Realists: The Professionalization of the American Law Professor*, in 2 *THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENATRIES AND PRIMARY SOURCES* 955, 961 (Steve Sheppard ed., 1999). Dean Langdell of the Harvard Law School actually presided over a time of curricular expansion in terms of course subjects. For example, Harvard offered a class on Torts for the first time in 1870. See *CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL, 1817-1917*, *supra* note 135, at 29. Nevertheless, by removing public law from the curriculum, Langdell set the stage for a general contraction of the curriculum that prevented the school from training students in government, international law, or business principles. See Robert W. Gordon, *Legal Thought and Legal Practice in the Age of American Enterprise: 1870-1920*, in *PROFESSIONS AND PROFESSIONAL IDEOLOGIES IN AMERICA* 75 (Gerald L. Geison ed., 1983).

only twenty-two.¹⁷⁶ While some of these classes were cross-listings of graduate school courses, most, like Professor Robinson's lectures on the "Early History of Real Property," were unique to the Law School.¹⁷⁷ Baldwin added Roman Law and comparative law to the list of classes required for a degree.¹⁷⁸ An 1875 alumni statement trumpeted the expansive Law School catalog: "Its course of study, also, in embracing General and Comparative Jurisprudence, Forensic Composition and Elocution, Roman Law, the Law of Nations, &c., is more comprehensive than could be successfully attempted except in connection with a large university."¹⁷⁹ A professorship of International Law was created in 1877.¹⁸⁰ The expansive plan for study in the graduate course has already been discussed. The following Academical Department and Graduate School classes were still being offered to fulfill the graduate course's requirements in 1912: Colonization and Immigration; American Constitutional History; English Constitutional History; Diplomatic Intercourse with Asiatic Nations; The Science of Society; Self-Maintenance of Society; Social Politics; Mediaeval Institutions; and Physical and Commercial Geography.¹⁸¹ And throughout this period, the Law School continued to import outside lecturers on both public and private law topics.¹⁸²

¹⁷⁶ See Stevens, *supra* note 162, at 434.

¹⁷⁷ See CATALOGUE OF YALE UNIVERSITY, 1891-92 (1891).

¹⁷⁸ See HICKS, *supra* note 126, at 73.

¹⁷⁹ YALE COLLEGE IN 1875: ANNUAL STATEMENT OF THE SOCIETY OF ALUMNI (1875).

¹⁸⁰ See Minutes of the Yale Corporation (Dec. 1877).

¹⁸¹ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 211 (1913). Descriptions of the courses can be found in the sections of the university catalogue for the Academical Department and the Graduate School. See CATALOGUE OF YALE

Some of this emphasis on breadth may have been sheer marketing. Yale could not compete with the law schools at Harvard and Columbia when it came to having a large city legal market to inform classroom teaching and recruit students. So Yale emphasized what it could offer: legal training in the midst of a large, respected university. By advertising an unusually expansive curriculum, Yale could make itself stand out from other law schools.¹⁸³

The long list of courses and continuing commitment to the struggling graduate program suggest something more, however. While impossible to tell for sure, it seems that the Yale faculty of the late nineteenth century did believe in an unconventionally expansive legal education for two reasons. First, as discussed earlier, the faculty believed that schooling in a wide array of topics produced better citizens. Second, breadth in legal

UNIVERSITY, 1912-1913 (1912). Later in 1912, the graduate course was reorganized and all non-legal subjects were dropped. Law School dean Henry Wade Rogers explained:

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

REPORT OF THE PRESIDENT, *supra*.

¹⁸² Lectures were given on Legislation, Parliamentary Law, the Interstate Commerce Act, Questions of Modern Government, and others. See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 75-76 (1899); REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE COLLEGE 32 (1887).

¹⁸³ Cf. WILLIAM C. CHASE, THE AMERICAN LAW SCHOOL AND THE RISE OF ADMINISTRATIVE GOVERNMENT 20 (1982) (explaining that a narrow view of legal education that excluded the contributions of non-judicial authorities characterized American law schools by 1900).

education gave students the training they needed to become professors. Theodore S. Woolsey argued that “[a] graduate school trains the teachers as well as the taught.”¹⁸⁴ He went on to explain that a graduate program could be a cost saving measure: “You may draft your own graduates into your service at moderate cost, or you may call teachers of repute from the outside at high pay.”¹⁸⁵ An 1889 account of the Law School noted that four former graduate students had become law professors.¹⁸⁶ A few years later, one professor complained that his successor “was not appointed from our Yale D.C.L. graduates, the best qualified men in America to teach Roman law.”¹⁸⁷

Wherever this desire for a broadening of legal education came from, it remained one of the Yale Law School’s distinguishing characteristics. Morton J. Horwitz has asserted that “[d]espite almost fifty years of teaching at the Yale Law School, with unrivalled power to shape its direction during much of that period, Baldwin appears never to have had an interesting idea . . . about the nature of pedagogy in law, or of the role of a law school in a university.”¹⁸⁸ But Baldwin’s interest in public law did affect the school, pushing it in a direction different from the other law schools of the time. Yale’s cross-disciplinary links to nonlaw fields of study and its emphasis on training future law

¹⁸⁴ See Woolsey, Historical Address, *supra* note 64, at 13

¹⁸⁵ *Id.* at 14. Laura Kalman suggests that the administration’s failure to appropriate more money for the Law School in the 1920s and 1930s led the School to hire its recent graduates instead of more experienced and more costly professors from other schools. See KALMAN, *supra* note 156, at 106.

¹⁸⁶ See Daggett, *supra* note 82, at 248.

¹⁸⁷ Letter from Charles P. Sherman to Arthur Twining Hadley (Feb. 26, 1917), Series I, Box 78, Folder 1548, HADLEY PRESIDENTIAL RECORDS.

¹⁸⁸ Morton J. Horwitz, *Introduction* to GOETSCH, *supra* note 68, at xvii, xxiii.

teachers made it unique. What Baldwin and Yale contributed was a more academic and less strictly professional conception of university legal education. In addition, the willingness of Baldwin and the rest of the law faculty to embrace outside disciplines, particularly in the social sciences, may have helped pave the way for the Law School's unique approach to legal education some forty years later. In the 1930s and 1940s, the Law School would become the center of the Legal Realism movement. Realism's contributions, built on the work of previous legal theorists,¹⁸⁹ proved to be important in shaping legal education's future¹⁹⁰ and promoting the use of academic legal thinking in government.¹⁹¹

C. *Teaching Law in the College*

The Law School faculty also worked towards a broader concept of legal education by teaching in the College. A tradition of offering classes on law to college seniors provided a slim line of communication to the College that some other law schools lacked.¹⁹² For some time, Yale's presidents had believed that young students needed

¹⁸⁹ See KALMAN, *supra* note 156, at 17 (attributing legal realist ideas to Oliver Wendell Holmes 50 years before the start of the movement).

¹⁹⁰ See *id.* at 52 (arguing that the realist movement made legal education more clinical); Clark Byse, *Fifty Years of Legal Education*, 71 IOWA L. REV. 1063, 1067, 1072-75 (1986) (describing changes in teaching materials and pedagogical focus due to the realist movement).

¹⁹¹ See KALMAN, *supra* note 156, at 136 (describing the outpouring of Yale professors who left to work for the Roosevelt administration).

¹⁹² See, e.g., JULIUS GOEBEL, JR., A HISTORY OF THE SCHOOL OF LAW: COLUMBIA UNIVERSITY 85-89 (1955) (describing the rift between Columbia's Law School and Political Science departments); see also Stevens, *supra* note 162, at 415 (explaining that

some instruction in law to become good leaders and citizens.¹⁹³ From 1801 to 1810, Elizur Goodrich delivered lectures on the law of nature, the Constitution, and the jurisprudence of Connecticut. The law professorship in the College was revived in 1826, renamed the Kent Professorship of Law,¹⁹⁴ and continued for almost every year until 1869. From 1869 to 1881, no one was appointed as professor of law to the College, but during this period Simeon Baldwin gave lectures to Academic Department seniors in constitutional law.¹⁹⁵ In 1881, Edward J. Phelps was appointed to the Kent Professorship. Originally, Phelps had no intention of also teaching in the Law School, but Baldwin convinced him to serve as a special lecturer in the school for a number of years, thereby giving the Law School an ally among the College faculty.¹⁹⁶ Although it could be used to get a leg up on Law School requirements, Phelps's course was intended for undergraduate amateurs who wanted some law to round out their education.¹⁹⁷ The course dealt with jurisprudence and the history and philosophy of international and

"efforts by the colleges to develop law as a scholarly study were not a success.")

¹⁹³ See HICKS, *supra* note 1, at 39; KELLEY, *supra* note 5, at 131.

¹⁹⁴ See HICKS, *supra* note 1, at 39-42; Indenture Book, entry for Chancellor James Kent Professor of Law Fund. The Yale Corporation minutes recognized the change: "Resolved, that the Name, Style, and Title of the Law Department in this Institution shall be, The Kent Professor [sic] of Law in Yale College." Search of "Alice" Database, Yale Law School (Oct. 19, 1999) (search for records containing "Kent" in the DONOR field). In 1832, a graduate of the College, Israel Muson, had donated \$5,000 for "paying the cost of law instruction to students in Yale College." Indenture Book, *supra*.

¹⁹⁵ See PIERSON, *supra* note 2, at 71.

¹⁹⁶ See HICKS, *supra* note 126, at 28-29.

¹⁹⁷ See PIERSON, *supra* note 2, at 212 n.8.

constitutional law, "the aim being to educate Yale Seniors to their civic rights and responsibilities as citizens and servants of the nation."¹⁹⁸

Under Dwight, the College senior year curriculum was expanded to include more instruction in law and political science.¹⁹⁹ Dwight also greatly increased the number of electives available in the College. In 1885, the College offered 61 elective classes to juniors and seniors; in 1895, it offered 130.²⁰⁰ A study of the senior class for the 1895-96 school year showed that over their four years, more hours were spent learning "Political Science and Law" than "Mental and Moral Science," "Natural and Physical Science," and Mathematics.²⁰¹

It is not completely clear why the law faculty in the 1880s and 1890s chose to spend so much time teaching in the College.²⁰² Unlike the professional classes that Academic Department seniors could take at the Law School for Law School credit, the non-technical course taught by Phelps does not seem to have been a strong recruiting

¹⁹⁸ *Id.*

¹⁹⁹ See KELLEY, *supra* note 5, at 174.

²⁰⁰ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 21 (1895).

²⁰¹ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 30-31(1896).

²⁰² The sources I have examined do not reveal what compensation, if any, the College paid law professors who lectured in the College. As part of a \$100,000 College fundraising drive in 1833, a sum of \$6,600 was set aside to support the Kent Professorship of Law in the College. See HICKS, *supra* note 1, at 40-42. In 1848, David Daggett received \$390 (the full interest from the \$6,600) for fulfilling his Kent professorship teaching duties. See HICKS, *supra* note 46, at 25. The Kent Professor received the same \$390 salary in 1871. See REPORT OF THE TREASURER OF YALE UNIVERSITY 1 (1871).

tool.²⁰³ Baldwin, Robinson, and Wayland were all involved in the social sciences, but, as I will argue below, they were also concerned with raising their own status as professionals by staking out unique areas of intellectual turf.

There was no strictly academic legal profession before 1865; most law professors were practicing or retired judges or lawyers.²⁰⁴ But in the 1870s, a small group of legal scholars moved to create a new academic discipline in a pattern analogous to the efforts of professors in political science, sociology, and anthropology to carve out their own areas of intellectual expertise.²⁰⁵ As John Henry Schlegel has explained, professionalization is an attempt by one segment of the middle class to improve its social and economic status through a strategy of market control.²⁰⁶ The control is obtained by excluding others from production, i.e., weeding out the competition. In the university, the professionals seek control over the production of knowledge. They also seek to

²⁰³ Recruitment was such a problem that the Law School's governing board asked Professor Townsend and Dean Wayland to speak with the College faculty "with reference to the increasing annual exodus of Yale graduates to Harvard Law School." HICKS, *supra* note 126, at 40. There is little evidence that the College acted to help the Law School with this problem until 1901 when Academical Department seniors were first allowed to take Law School classes to count towards their B.A. degree. *See id.* at 41; PIERSON, *supra* note 2, at 286.

²⁰⁴ *See* BURTON J. BLEDSTEIN, *THE CULTURE OF PROFESSIONALISM* 282 (1976); Schlegel, *supra* note 175, at 957.

²⁰⁵ *See* Schlegel, *supra* note 175, at 956; *see also* BLEDSTEIN, *supra* note 204, at 126 (explaining that the middle class set up a dichotomy between professional studies and practical ones).

²⁰⁶ *See* Schlegel, *supra* note 175, at 959 (applying the work of Magali Larson to nineteenth century academics); *see also* BLEDSTEIN, *supra* note 204, at 269 (describing "a rising level of consciousness among academics, and a concern with their status" after 1850).

standardize their product within their small circle of producers so their product is easily differentiated from rival manufactures.²⁰⁷

The law professors of the late 1800s did this in a variety of ways. First, the case method of instruction gave professors sole possession of a unique way to teach. Now professors could illustrate principles of law inductively through primary sources (collections of reports of actual cases) instead of lecturing at their students.²⁰⁸ The case method was easily replicated across law faculties to create a standardized way to provide knowledge that contrasted with instruction in other disciplines.²⁰⁹ Second, by raising admissions requirements, it can be argued that law schools tried to make their product more "respectable" by excluding the foreign born and restricting legal opportunities to those who already had an academic background.²¹⁰ The increased admissions requirements also had the effect, when sanctioned by the state bars, of eliminating a rival to university legal education: the part-time, night law school.²¹¹ Third, by removing public law from their curricula, university law schools further moved to corner the legal education market by preventing competition with another group of emerging academic

²⁰⁷ Schlegel, *supra* note 175, at 959.

²⁰⁸ See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 531 (1973).

²⁰⁹ See KALMAN, *supra* note 156, at 12.

²¹⁰ See JEROLD AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 94-95 (1976).

²¹¹ See Schlegel, *supra* note 175, at 960; see also Michael Rustad & Thomas Koenig, *The Impact of History on Contemporary Prestige Images of Boston's Law Schools*, 24 SUFFOLK UNIV. L. REV. 621, 622-23 (1990) (referring to the conflicts that took place between full-time day law schools and part-time evening law schools in the early twentieth century and the resulting "professional caste system").

professionals: the social scientists.²¹² Harvard stripped public law from its curriculum in the 1880s and 1890s. The result was a product (legal education) that bore little resemblance to other disciplines and was easily recognized by the academic consumer.²¹³

From this perspective, it would have made more sense for Yale's law faculty to avoid teaching college amateurs than to risk blurring their professional skills with those of the college professor. The faculty did believe in defending law and, in particular, law teaching as professions that required a rare set of intellectual skills. According to Robert Stevens, "[William C.] Robinson wanted no part of a system of legal education which seemed to return to the concept of law as a trade."²¹⁴ Robinson argued that while law had once been regarded as a trade, the recognition of law as a science was changing that.²¹⁵ Similarly, Simeon Baldwin wrote: "Law Schools are not for the many, but for the few; not so much for those who are content to follow the law merely as a money-getting trade, as for those who seek it as a liberal and liberalizing profession."²¹⁶ Baldwin helped found the ABA to improve public opinion of the legal profession; the ABA would raise standards and combat what he saw as "the baseness of everyday law practice."²¹⁷ Yet while the law faculty ardently supported other ways of professionalizing legal teaching

²¹² See Schlegel, *supra* note 175, at 961.

²¹³ See *id.* at 961.

²¹⁴ STEVENS, *supra* note 156, at 87 n.34.

²¹⁵ See *id.*

²¹⁶ Simeon Baldwin, *Graduate Courses at Law Schools*, 11 J. SOC. SCI. 123, 130-32 (1880).

²¹⁷ GOETSCH, *supra* note 68, at 23.

like increasing admissions requirements, they continued to push for opportunities to teach in the College.

One explanation for the law faculty's efforts to promote legal study in the Academical Department is that the administration's neglect allowed the Law School to develop according to the law faculty's own idiosyncrasies,²¹⁸ and these idiosyncrasies just happened to mesh with those of the administration on this issue. The available sources suggest that the law faculty truly believed in a two-pronged approach to legal education that provided both professional training and broad instruction in the law for civic leaders. As soon as Baldwin, Platt, and Robinson took over the school they began to advertise another academic program in addition to the standard program for training lawyers. The school bulletin did not offer any specifics on the program, just explaining that "[a] course of study is also provided for those who do not intend to engage in the practice of the Law, but wish to obtain a knowledge of its principles to complete their education, or with reference to engage in mercantile pursuits."²¹⁹ Throughout the 1880s and 1890s, the Law School's annual bulletins advertised a special two-year course "for persons not intending any active business or professional career, but desiring to acquire an enlarged acquaintance with our political and legal systems and the rules by which they

²¹⁸ Cf. KELLEY, *supra* note 5, at 180 (making the same point for the innovations in Yale's graduate school during Woolsey's tenure). The Law School was also extremely slow to adopt the case method of instruction, and this may have contributed its independent development. See Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547, 614 (1997) (arguing that the development of national standards for legal education was premised on the acceptance of the case method).

²¹⁹ Yale Law School Bulletin, 1870-71.

rules by which they are governed.”²²⁰ There is little evidence in the available sources that many took advantage of the special course, but it still seems significant that the faculty chose to include a description of this course in its annual bulletin for several years.

In their writings, the faculty proselytized for an interdisciplinary education that did more than just train future lawyers. William Robinson co-taught the “amateur law” class with Edward Phelps. When Robinson wrote about his vision of the ideal law school in 1895, he sounded like Woolsey or Dwight. In Robinson’s law school, the instruction would adapt to the needs of the individual student whether he were “studying law to fit himself for citizenship” or training himself to serve as a lawyer.²²¹ Baldwin also believed in teaching more than just how to practice law, arguing that “[b]readth of view is the great gift of education.”²²² Baldwin believed that the case method gave students a myopic vision of the law, the very thing his emphasis on a broad legal education was designed to counteract. Speaking of a Harvard Law School graduate’s defense of a legal point based solely on the cases he had read, Baldwin said: “This kind of clinging to authority and decided cases, makes a man after a while almost incapable of reasoning with his eyes open to the actual work about him.”²²³

It is also possible that the law faculty saw their efforts for the Senior class as a way to build relationships with the College faculty and develop a multidisciplinary

²²⁰ See, e.g., Yale Law School Bulletin, 1889-90.

²²¹ HICKS, *supra* note 3, at 48-49 (paraphrasing Robinson’s *Study of Legal Education*).

²²² BALDWIN, *supra* note 167, at 8.

²²³ Letter from Simeon E. Baldwin to Charles C. Soule (Nov. 9, 1903), BALDWIN FAMILY PAPERS.

approach to the law that was more important than making the law professor a professional elite. For the most part, the College's professors eschewed this contact as they kept their distance from the law faculty.²²⁴ The Academical Department first allowed its undergraduates to take five hours of Law School classes in 1901. Recognizing that this meant more work for the law faculty (and less work for the college faculty), the Academical Department paid \$1500 out of its budget to the Law School.²²⁵ When seniors were allowed to take an additional hour of class in the Law School in 1903, however, the Academical Department faculty refused to transfer any additional funds to help pay the Law School for its increased burden.²²⁶

Nevertheless, the Law School's inroads into the College curriculum may have increased the interaction between the two faculties. In 1900, Yale's president hoped that the College law program would serve as "a basis for closer relations between these two departments, and perhaps a model for such relations between other departments of the University as a whole."²²⁷ When Political Science professor William Graham Sumner read a book written by a professorial candidate, he conferred with a law professor on the book's merits. He wrote to President Porter: "I hav [sic] fortified my opinion by that of one of the men at our law school. He agrees with my criticism on the book only he goes

²²⁴ See *supra* notes 157-58 and accompanying text.

²²⁵ See REPORT OF THE TREASURER OF YALE UNIVERSITY 76 (1901).

²²⁶ See JACKSON, *supra* note 4, at 129; PIERSON, *supra* note 2, at 219.

²²⁷ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 10 (1900).

farther. . . . This opinion only satisfies me of the justice of my own."²²⁸ After 1887, the graduate school listed among its "other instructors" a group of professors from the Law School.²²⁹ Albert S. Wheeler taught German in the College for twenty-five years, but then switched to teaching Roman Law for the Law School in 1896.²³⁰ Wheeler taught in the Law School for ten years and donated both his personal library and stock worth \$17,858 to the school upon his death.²³¹ Whether these interactions between the law faculties and the faculties of other departments were sparked by the College law program is impossible to say. It should be recognized, however, that the interaction increased during Dwight's presidency as opportunities for College students to take legal electives expanded.

III. POINTS OF CONFLICT BETWEEN THE LAW SCHOOL AND THE COLLEGE

The Law School is the only part of Yale that began its existence completely separate from the university.²³² Most of the school's early history shows weakness when compared with the College and a willingness to take whatever crumbs Yale's

²²⁸ Letter from William Graham Sumner to President Porter (Nov. 23, 1885), NOAH PORTER PAPERS, Box 1, Folder 2.

²²⁹ PIERSON, *supra* note 2, at 212-13.

²³⁰ See HISTORICAL REGISTER OF YALE UNIVERSITY, 1701-1937 at 539 (1939).

²³¹ See Indenture Book, entry for Albert S. Wheeler Fund.

²³² The school started in the home and office of New Haven attorney Seth Staples. See KELLEY, *supra* note 5, at 200.

administration was willing to dole out.²³³ As the school's position within Yale became assured, however, the law faculty increasingly voiced their objections to university policies. On two issues, allowing Academical Department seniors to take Law School classes for credit and requiring a college degree for Law School admission, the faculty expressed its opposition in particularly sharp terms.

A. *Giving Credit to College Seniors*

Once the Law School's permanence became assured, the faculty continued to ask the central administration to take a more active role in facilitating contact between the Law School and the College, but their tone became less plaintive. In 1899, Dwight's last year as president, the annual reports of the president to the Corporation began to include

²³³ For example, when Samuel Hitchcock died in 1845, the school was left with two other professors, both of whom could afford to devote little time to the school because of their professional duties. See KELLEY, *supra* note 5, at 201; Daggett, *supra* note 82, at 242. Issac Townsend and William Storrs took over some of Hitchcock's responsibilities, but they also urged the college to take a greater role in Law School affairs. More specifically, they begged the college to finance a law library and offered complete control of the Law School in the bargain:

Having obtained a Library, the College, will have the means itself of continuing the Law School in the manner which is considered the most judicious.

The particular manner in which the School should be regulated is left entirely for the decision of the College Authorities, who are fully competent to devise the best plan for conducting the Law Department.

Letter from Issac H. Townsend & William L. Storrs to the Prudential Committee of Yale College (Dec. 23, 1845), YALE CORPORATION RECORDS 1714-1899, Box 2 (on file with the Yale University Library, Department of Manuscripts and Archives).

smaller reports from the deans of the various schools.²³⁴ Judging from the Law School deans' reports, one of the school's most pressing issues was Academical Department enrollment in Law School classes. Beginning in the 1900-01 school year, college seniors were allowed to take five hours of credit in the Law School.²³⁵ The law faculty was not satisfied with this beginning; rather, they criticized the university administration for not allowing more. The Law School dean scolded the administration for its "tardy innovation," explaining "[i]n our opinion, there is no good reason why Academic Seniors should not be allowed to take the full curriculum of Law Juniors."²³⁶ In later years, the Law School deans' reports would become more strident on this issue. In 1902, interim dean Theodore S. Woolsey used the report to argue that the five-credit limit was not enough.²³⁷ In 1904, the Dean Henry Wade Rogers said that the current limit on College seniors enrolling in the Law School was "not at all satisfactory to the Law Faculty."²³⁸ Even after the credit limit was extended, Rogers reiterated the Law School faculty's dissatisfaction in his 1912 report. He remarked that if several other schools including

²³⁴ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 67 (1900). The Law School deans' reports do not exist as an independent source apart from the quotes in the presidents' reports.

²³⁵ See *id.* In 1906, a class in Mining Law was offered to students in the Sheffield School. See Yale Law School Bulletin, 1906-07.

²³⁶ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 92 (1901).

²³⁷ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 114-18 (1902).

²³⁸ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 154 (1904).

Columbia, Cornell, and Michigan allowed their college seniors to take an entire first-year law course and have it count towards their bachelor's degree, then Yale should as well.²³⁹

The law faculty had good reason to be concerned about this issue. Unlike the "amateur" law class taught by Phelps and Robinson in the Academical Department, encouraging Yale College students to take classes in the Law School seems to have been an important recruiting device. Decisions to lengthen the law course to three years and to require a college degree for admission produced immediate drops in enrollment.²⁴⁰ And, naturally, fewer students meant less money to keep the Law School running.²⁴¹ Thus, it became even more important to try to convince college undergraduates to remain at Yale for their legal education.²⁴² Moreover, for some this was more than just a recruiting issue. Baldwin wanted College students to be able to take Law School classes for credit in both departments because he "deplored that boys had to spend so much time in preparation for their careers that they were thirty or older before they could marry."²⁴³

²³⁹ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 225-26 (1912).

²⁴⁰ See HICKS, *supra* note 126, at 42; KELLEY, *supra* note 5, at 286.

²⁴¹ See REPORT OF THE TREASURER OF YALE UNIVERSITY 6 (1911) ("[D]ue to increased requirements for admission . . . [t]he class entering the Law School in September is certain to be much smaller in numbers than that which graduated in June, and the financial showing the department for next year will therefore undoubtedly be worse than for 1910-11.").

²⁴² See JACKSON, *supra* note 4, at 129 ("Impetus was given to the movement for closer relations between the Law School and the college by the annual exodus of graduates of Yale to Harvard Law School."); KELLEY, *supra* note 5, at 286 ("Since Yale College graduates tended to go to New York, Columbia, and Harvard for their law training, the Law School asked the college in 1898 to help find ways to keep them at Yale.").

²⁴³ See JACKSON, *supra* note 4, at 128-29.

B. *Requiring a College Degree*

An even bigger dispute arose as the Law School moved towards requiring a college degree for admission. Higher admissions requirements were part of the move towards professionalizing university legal instruction.²⁴⁴ In one sense, elite law faculties were doing what was in the interest of their class: By cutting amateurs out of the profession, they solidified their own distinctiveness and made legal learning an exclusive commodity.²⁴⁵ The move to restrict the availability of legal education coincided with a dramatic increase in the percentage of lawyers who were foreign-born or had foreign-born parents.²⁴⁶ By cutting out these newcomers and limiting access to the profession to those with traditional Protestant backgrounds, legal professionals may have been trying to make their profession more "respectable." As one Columbia faculty member remarked, the immigrants were less versed in "American family life" and thus could hardly be taught the ethics of the legal profession.²⁴⁷ Once the admissions restrictions received national sanction from the American Bar Association and state bars, competing legal education institutions, like the part-time night school found it hard to survive. The law

²⁴⁴ See *supra* notes 210-211 and accompanying text.

²⁴⁵ See Schlegel, *supra* note 175, at 956-58; cf. AUSTIN SARAT & WILLIAM L. F. FELSTINER, *DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS* 106 (1995) (describing how divorce lawyers emphasize their insider status to exclude others from the profession and convince clients that they can achieve desired outcomes).

²⁴⁶ See AUERBACH, *supra* note 209, at 95; Stevens, *supra* note 162, at 463.

²⁴⁷ See AUERBACH, *supra* note 209, at 100.

professor's status as an occupational elite became secure.²⁴⁸ Langdell at Harvard led the admissions standards race. In 1878, Harvard required three years to complete the course of law study.²⁴⁹ By 1896, Harvard required a college degree for admittance.²⁵⁰

Although the Yale administration took note of the Harvard Law School's success and its requirement of a college degree,²⁵¹ Dwight's successor as president, Arthur Twining Hadley, adamantly opposed adopting such a requirement at Yale. "I believe that we should strive to widen rather than narrow the range of those whom we can reach by our professional schools," he said.²⁵² In a 1902 report to the Corporation, Hadley explained that a degree requirement would make "the professions of law and medicine places for the sons of rich men only."²⁵³ Overly restrictive admissions standards threatened to create a "caste system" between the learned and unlearned professions. Yale should not use "artificial restrictions," he implored, to "single out one group of professions as the peculiar property of those who had enjoyed inherited wealth and college education."²⁵⁴ Hadley admitted that the degree requirement could be used to

²⁴⁸ See Schlegel, *supra* note 175, at 960; see also Stevens, *supra* note 162, at 454-60 (tracing the ABA's role in the movement to make law school education compulsory for aspiring lawyers).

²⁴⁹ See Stevens, *supra* note 162, at 430.

²⁵⁰ See *id.* at 431.

²⁵¹ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 14 (1902) (acknowledging Harvard's "brilliant success" under its admissions policy).

²⁵² *Id.* at 29.

²⁵³ *Id.* at 15-16.

²⁵⁴ *Id.* at 16-17.

screen out some unfit men from the profession, but it would also screen out “new blood” and men who can appreciate “public needs.” If John Marshall and Abraham Lincoln would have been denied admission under such a system, then the system had no place at Yale.²⁵⁵

Hadley also believed that a degree requirement for the Law School and the Medical School would harm the College course, which, despite the addition of more electives, still centered around core, classical subjects designed to instill moral virtue and discipline in students. If all Law School applicants had to go through the College, the College curriculum would have to be made broad enough to account for the wishes of the different men who wished to go on to professional school. This would weaken the College’s goal of “hard and disinterested work.”²⁵⁶ Hadley conceded that the traditional classical curriculum was not necessary for legal training, but if too many people in the College did not take the traditional curriculum, Yale’s community spirit would be destroyed. Hadley also drew a line in the sand against the further encroachment of professional work into the old-time college by intimating that the introduction of professional studies into the College curriculum had been a failure.²⁵⁷ Ultimately, Hadley said that it did not matter if “Yale will lose caste as a university,” by failing to do “what Harvard, Columbia and Johns Hopkins are doing [i.e., instituting a degree requirement for law or medical school admission].” “A university maintains its rank by doing public

²⁵⁵ *See id.* at 17.

²⁵⁶ *Id.* 18-19.

²⁵⁷ *See id.* at 22.

service,” “[a]nd if there is any college in the land which ought to be guided by considerations of public service, and set aside all questions of caste, it is Yale.”²⁵⁸

The Law School embraced increased admissions standards, and the consequent move in the legal teaching profession to elite status. The law faculty vigorously opposed Hadley’s efforts to protect Yale from the professional influences that had overtaken Harvard and other schools. Theodore S. Woolsey, interim dean of the Law School from 1901 to 1903, emphasized in his report to the Corporation that Harvard already required a college degree, and soon Columbia and the new University of Chicago law school would as well.²⁵⁹ Henry Wade Rogers, who became dean of the Law School in 1903, was the first permanent chairman of the ABA’s section on Legal Education.²⁶⁰ Dean Rogers implied that the Corporation’s refusal to require a college degree for Law School admission tarnished Yale’s image: “A university law school must determine whether it is willing to confer professional degrees on persons of limited general culture, and whether it can do so without prejudice to its prestige as a university.”²⁶¹ Rogers scoffed at concerns that raising admissions standards would force out those who did not have the means to sacrifice six years for post-secondary education: “The fact that the adoption of a higher standard of admission to law schools may force some individuals to obtain their legal education in offices or in non-university schools does not seem to be in itself a very

²⁵⁸ *Id.* at 24.

²⁵⁹ *See id.* at 115. The University of Chicago Law School was founded in 1902. *See* FRANK L. ELLSWORTH, *LAW ON THE MIDWAY* 118 (1977).

²⁶⁰ *See* HICKS, *supra* note 126, at 59.

²⁶¹ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 151 (1906).

valid reason why advanced requirements should not be established.”²⁶² Obviously, Yale’s new dean was not concerned about dividing the legal profession into elite and non-elite status.²⁶³

Although he did not believe the time was right for the Law School to impose a degree requirement, Simeon Baldwin’s professional relationships testified to his general sympathy for raising the barriers to entry into the legal profession. One scholar argues that Baldwin’s career is emblematic of “a legal culture that increasingly celebrated the virtues of narrow professionalism.”²⁶⁴ In addition to being one of the founders of the American Bar Association, Baldwin was the prime mover of the ABA’s section on Legal Education.²⁶⁵ He also served as president of the Association of American Law Schools in 1902.²⁶⁶ Both organizations tried to increase the standards both for admission to law schools and for membership in the state bars.²⁶⁷

²⁶² *Id.* at 151.

²⁶³ In later years, Yale’s faculty would be more explicit about their desire to keep certain groups out of the law school via higher admissions requirements. In a 1915 article, William Howard Taft, a Yale Law School alumnus and a professor at the school, noted that stringent admissions requirements would help keep out “radical” elements. See AUERBACH, *supra* note 209, at 100 (quoting William Howard Taft, *The Social Importance of Proper Standards for Admission to the Bar*, ALSR, 3 (Fall 1913), 326, 333). In 1923, Law School Dean Thomas Swan argued against using grades to limit enrollment because such an admissions standard would admit students of “foreign” rather than “old American parentage,” and Yale would become a school with an “inferior student body ethnically and socially.” Schlegel, *supra* note 156, at 472 n.69 (1980) (quoting from Yale Law School Minutes, Dec. 20, 1923).

²⁶⁴ See *Introduction* to GOETSCH, *supra* note 68, at xvii, xxii. Although Baldwin did not support requiring a college degree for admission, he did support other admissions restrictions. In his diary, he discussed his support for a new Law School admissions standard, and also revealed his own anti-immigrant biases: “We now require Latin for admission, and I fear it will shut out more Micks. It will, however, give us a better set of men, and it is in my judgment a necessary step in the advancement of legal education.” *Id.* at 40 (quoting Baldwin’s June 26, 1898 diary entry).

The law faculty could afford to challenge the central administration on this issue. More and more law schools were joining Harvard in requiring a college degree for admission. In addition, the Law School's increasing financial success improved its bargaining position with the university. In the decade beginning with the 1888-89 school year, the School ran at a meager surplus of \$378.²⁶⁵ But in the years between 1898 and 1910, that surplus mushroomed by almost \$58,000.²⁶⁶ As Dean Rogers pointed out to the Corporation, "since 1900 the Law School has made a profit above operating expenses of about \$90,000, of which the University has had the benefit."²⁶⁷ And the Law School's overhead ran far below that of the other schools. It cost less to instruct each student in the Law School (\$115 per student) than in the Academical Department (\$158), the Divinity School (\$432), or any other department.²⁶⁸ Recognizing a good deal when they saw one, in 1904, the Corporation finally arranged for the full consolidation of the Law School with the rest of the university and ended the old proprietary arrangement where Law School instructors were solely responsible for all profits and losses. Instead, Law

²⁶⁵ See JACKSON, *supra* note 4, at 81.

²⁶⁶ See *id.* at 136.

²⁶⁷ See Stevens, *supra* note 162, at 453-64.

²⁶⁸ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 218 (1911).

²⁶⁹ See *id.* at 218-19.

²⁷⁰ *Id.* at 221. Rogers arrived at the \$90,000 figure after factoring in the costs of a real estate mortgage, library purchases, and construction funds, all of which were paid by the Law School. See *id.*

²⁷¹ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 15 (1908).

School finances were mixed in with the rest of the university and professors were paid a salary out of the university treasury.²⁷² In making the change, President Hadley argued that Yale needed to pool the Law School's resources with those of the other university departments if the school was to compete on equal terms with the legal programs at Harvard and Columbia.²⁷³ Sometime between 1911 and 1916, the administration relinquished full control of Law School profits and agreed to earmark any surpluses exclusively for the Law School.²⁷⁴

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

The kind of preliminary training which is needed for law differs from that which is needed for medicine. . . . The best way for a law school to assure itself that its students have these preliminary requisites is to require a college degree as the general condition of admission. It has taken me some time to reach this conclusion.²⁷⁵

²⁷² See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 10 (1904); see also STEVENS, *supra* note 156, at 444 n.10 (describing the end of proprietary law school funding at Yale and other "leading universities").

²⁷³ See REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 23 (1904).

²⁷⁴ See Letter from Dean Thomas Swan to John Wigmore (May 16, 1916), HADLEY PRESIDENTIAL RECORDS, Series I, Box 83, Folder 1639. Swan was trying to convince the respected Northwestern professor to accept a position at Yale. As part of his pitch, Swan noted the school's financial stability. "You may be interested to know that profit which the School might make (as it has in the past) must be devoted to Law School purposes instead of going into the general funds of the University," he wrote. *Id.*

²⁷⁵ REPORT OF THE PRESIDENT TO THE FELLOWS OF YALE UNIVERSITY 18 (1912).

Now all Law School applicants (except for Yale College Seniors) needed four years of college work for admission.²⁷⁶

CONCLUSION

In the last third of the nineteenth century, the Yale Law School struggled to gain the attention of the university administration. Yale's reverence for the traditions of the College made it hostile to innovations in graduate and professional education that threatened to alter the College's nature. Presidents Porter and Woolsey largely ignored the Law School as they focused on preserving the College's system of moral training. Until Timothy Dwight became president in 1886, the administration minimized interaction between the College and Yale's other schools.

Without strong direction from the administration, the Law School was free to develop according to the beliefs of the members of the local bar who rescued the school from destruction in 1869. The faculty would expand in the 1880s and 1890s, but mostly with addition of lecturers and part-time faculty; the four men who took over the school after the Civil War continued to set the school's direction.²⁷⁷ These men conceived of legal education in broad terms, moving to expand the curriculum when other law schools were removing public law from the lecture hall. In most respects, the Law School's expansive curriculum meshed with the presidents' beliefs about the proper scope of legal

²⁷⁶ HICKS, *supra* note 126, at 43.

²⁷⁷ Morton Horwitz writes that Baldwin had "unrivalled power to shape [the school's] direction" during this period. *Foreword to GOETSCH*, *supra* note 68, at xvii, xxiii. Charles Goetsch credits Baldwin, Platt, and Robinson with laying the foundation that carried the Law School into the 20th century. *See id.* at 31-32.

education. Both the administration and the law faculty believed that legal study was useful to all enlightened citizens, not just future professionals. By providing "amateur law" classes to College seniors, the Law School built a bridge between itself and the College that encouraged interdisciplinary study.

As the Law School's place at Yale became more secure, the law faculty and the central administration clashed over admissions standards and the enrollment of College seniors in Law School classes. Unlike their decisions to expand the curriculum, on the issue of admissions standards the law faculty fell in step with the efforts of the American Bar Association and elite law schools to limit access to the legal profession. The university administration, which twenty years before had largely ignored the financial and organizational needs of the Law School, now acceded to the desires of the law faculty.

In 1924, the Law School celebrated what it reckoned as its one hundredth anniversary. Thomas Swan, the dean of the Law School at that time and a Harvard Law School graduate, explained that the school had two duties: to train students for practice and to offer graduate instruction for future law professors.²⁷⁸ Harlan Fiske Stone, Dean of the Columbia Law School and future Supreme Court Justice, spoke on trends in American legal education. He urged law professors to inform their analysis through the use of the social sciences,²⁷⁹ a view that would take hold as Yale became the center of the Legal Realist movement. But it was President Woolsey's son, Theodore S. Woolsey, who spoke first. He gave an address on the history of the school. Woolsey remarked that

²⁷⁸ See Woolsey, Historical Address, *supra* note 64, at 18.

²⁷⁹ See *id.* at 31.

the gap between the Law School and the College had been closed over the last one hundred years. "The academic officer is no longer the whole thing," he said. "This is good for him and not distasteful to us."²⁸⁰ Woolsey's statement showed that the Law School had taken its place as a respected component of a larger university. But it took time for the Law School to earn this respect and it only began to occur at the very end of the nineteenth century.



²⁸⁰ *Id.* at 17.