"A Great Dread of Vulgarity": A Novel Perspective on Christopher Columbus Langdell and the Origins of the Case Method in American Legal Education

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ABSTRACT

When he introduced the case method of teaching to Harvard Law School in the
1870s, Christopher Columbus Langdell permanently changed the shape of American
legal education. Despite the enormity of Langdell’s influence on legal pedagogy, we
understand surprisingly little about what he intended to accomplish with his innovations.
This Article offers an original interpretation of Langdell’s contributions to the way we
think about the law and legal education. Reading Langdell in tandem with Gilbert
Osmond, the central male character in Henry James’s 1881 novel The Portrait of a Lady,
shows Langdell to be an example of a particular type of late-nineteenth-century American
intellectual. The comparison with Osmond reveals the extent to which Langdell’s
creation of the case method was informed by his disaffection from what he perceived as
the vulgarity of his culture. The case method, like Langdell’s work on equity pleading, is
the product of his nostalgic vision of an imaginary past in which authoritarian individuals
exercised unquestioned power over others. By seeing Langdell in the cultural context

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provided by James’s novel, we can better understand the unique nature of his contribution to American law.

INTRODUCTION

In 1870, an unknown lawyer named Christopher Columbus Langdell was elected to the Dane Professorship at Harvard Law School. In the autumn of that year, despite having been a professor for only a few months, he was elected Dean of the Law School. That autumn, Langdell also taught his first contracts class, in which he first employed the case method of instruction. By teaching law exclusively from printed reports of appellate cases, Langdell radically altered the form of American legal education. On the level of theory, Langdell defended this innovation in pedagogy by explaining that law was a “science,” and that “all the available materials of that science” were contained in “printed books” of judicial opinions.

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1 See 2 CHARLES WARREN, HISTORY OF THE HARVARD LAW SCHOOL 359 (1908).
2 Id. at 370-71.
4 See, e.g., WILLIAM M. WIECEK, THE LOST WORLD OF CLASSICAL LEGAL THOUGHT 93-94 (1998) (arguing that “no one . . . had as pervasive an influence on legal education in the United States” as Langdell, and that his influence is “undiminished in our time”). The “case method” will be familiar to anyone who has spent time in an American law school. Those who have not enjoyed that experience will be pleased to learn that it has been the subject of considerable scholarly attention. See, e.g., ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s (1983) (discussing legal education in America before, during, and after the Langdellian revolution). Langdell also initiated a number of other pedagogical reforms which have since become the standard practice at American law schools. Educational customs for which the credit, or blame, must be laid at Langdell’s door, include law school examinations; the requirement that students possess a bachelor’s degree before being admitted to law school; and a graded, sequential curriculum. See, e.g., Bruce A. Kimball, Young Christopher Langdell, 1826-1854: The Formation of an Educational Reformer, 52 J. LEGAL EDUC. 189, 189 (2002).
Though Langdell is unquestionably the founder of modern American legal education, it is only in recent decades that scholars have begun to take him seriously as an intellectual figure in his own right. For much of the twentieth century, his work was unexamined, and he himself was remembered, if at all, as a mere “legal theologian,” or even dismissed as an “essentially stupid man.” More recently, however, legal historians and theorists have begun to pay closer attention to what Langdell actually thought and did. In particular, significant attempts have been made to contextualize and understand the significance of Langdell’s pedagogical innovations, and to make sense of his claim that law is a “science.”

The task of understanding Langdell’s work has been complicated by the fact that he published almost nothing in explanation or defense of his ideas. Langdell wrote no manifesto, no statement of purpose to justify his beliefs. In our attempts to understand him on his own terms, we are restricted by the limited nature of the texts Langdell left behind: a contracts casebook, a book on equity pleading; a relatively small number of

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6 This was Oliver Wendell Holmes’s famous epithet for Langdell. See Oliver Wendell Holmes, Jr., Book Review, 14 AM. L. REV. 233, 234 (1880).
7 Grant Gilmore, The Ages of American Law 42 (1977). For a more recent take on Langdell which takes him seriously as an intellectual figure, albeit a “mad” and “incoherent” one, see John Henry Schlegel, Between the Harvard Founders and the American Legal Realists: The Professionalization of the American Law Professor, 35 J. LEGAL EDUC. 311, 322 (1985).
9 See, e.g., William P. LaPiana, Logic and Experience: The Origin of Modern Legal Education (1994) (re-assessing Langdell’s pedagogical contributions); Grey, supra note 3 (re-assessing Langdell’s legal theory).
10 See, e.g., John Henry Schlegel, American Legal Realism and Empirical Social Science 276 n.11 (1995) (observing sardonically, but not inaccurately, that Langdell’s “total output of legal theory is about a page of print”).
law review articles on such recondite subjects as “discovery under the Judicature Acts”
and the legal status of the territories annexed during the McKinley administration, and a
few miscellaneous speeches and addresses. Whatever the value of these documents,
they by and large do not speak directly to Langdell’s larger purposes. From these texts,
we can see what Langdell thought about a number of subjects. But, for the most part,
they do not tell us why he held his broader views, or explain what motivated him to
institute the changes he brought to legal education.

Moreover, it is difficult to obtain a sense of Langdell’s project from the writings
about him produced by his contemporaries. Although Langdell, in his twenty-five years
as Dean of Harvard Law School, was arguably the most prominent and influential law
professor of his time, there are surprisingly few first-hand assessments of the man and his
work. And the accounts we have were, for the most part, written after his death by
Langdell’s colleagues and former students, who were disposed to affectionate defense of
their mentor.

In the absence of any definitive and comprehensive Langdellian statement of
Langdell’s intentions, modern scholars have attempted to reconstruct his project using a
variety of extrinsic sources. This approach was pioneered in a 1980 article by Marcia
Speziale, which attempted to correct “distorted” views of Langdell’s thought by arguing

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13 See, e.g., C. C. Langdell, Discovery under the Judicature Acts, 1873, 1875, 11 Harv. L. Rev. 137 (1897);


15 For an assessment of these contemporary accounts of Langdell’s life and work, see Kimball, supra note 8, at 282-89. As Kimball notes, the most significant of the contemporary essays on Langdell was the one written by James Barr Ames. See James Barr Ames, Christopher Columbus Langdell, 1826-1906, in LECTURES ON LEGAL HISTORY AND MISCELLANEOUS ESSAYS 467 (1913). Ames had been one of Langdell’s first students at Harvard, and was appointed to a professorship in 1873, shortly after graduating from law school. See 2 Warren, supra note 1, at 388. For an example of an account by a former student, see Samuel F. Batchelder, Christopher C. Langdell, 18 Green Bag 437 (1906). Batchelder’s essay is severely criticized by Kimball for its hasty composition and inaccuracies. Kimball, supra, at 284-86.
that his pedagogical innovations should properly be understood in the context of the
“nineteenth-century empiricist and evolutionist thinking” that Langdell’s thought
“parallel[ed].” Thomas Grey tried to “reconstruct the premises” of Langdell’s “system
of thought” by elucidating an analogy between the “core notion” of that thought, the idea
of a “legal science,” and Euclidean geometry. More recently, Bruce Kimball has
argued that Langdell’s pedagogical ideas originated in his youthful reading of John
Locke’s Some Thoughts Concerning Education, which, on Kimball’s view, led Langdell
to embrace the idea that students should be presented “with original sources rather
than abstract rules.”

In this Article, I will offer a fresh perspective on Langdell by providing a new
lens through which to consider his work. I propose to examine Langdell as an example
of a particular type of late-nineteenth-century American intellectual. To construct a
picture of that type, I turn to the work of one of Langdell’s contemporaries who has not
been considered by other Langdell scholars: namely, Henry James. In his fiction, Henry
James portrayed a variety of “typical” Americans. In particular, James portrayed a type
of contemporary intellectual that is epitomized by the character Gilbert Osmond, who

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16 Marcia Speziale, Langdell’s Concept of Law as a Science: The Beginning of Anti-Formalism in American Legal Theory, 5 VT. L. REV. 1, 2, 29 (1980).
17 Grey, supra note 3, at 5, 16. In particular, Grey argued that Langdell’s thought should be understood according to the view of geometry which was “standard” in the late nineteenth-century; that is, the view reflected in “the bible of Victorian philosophy of science, J. S. Mill’s System of Logic.” Id. at 18.
18 Kimball, supra note 4, at 201-02, 235.
19 See, e.g., Miranda Oshige McGowan, Property's Portrait of a Lady, 85 MINN. L. REV. 1037, 1043 (2001) (arguing that James’s characters “reflect social attitudes of his time”). The most notorious of these types is the so-called “American Girl,” a character that James made famous with his first major success, the novella Daisy Miller (1878). See generally VIRGINIA C. FOWLER, HENRY JAMES’S AMERICAN GIRL: THE EMBROIDERY ON THE CARPET (1984) (discussing at length the psychological portrayal of the typical “American girl” in James’s fiction). More recently, it has been argued that James, in a number of his works, depicted a typical kind of “marginal” male figure (marginalized, in part, by dint of being homosexual in a heterosexual world). See, e.g., KELLY CANNON, HENRY JAMES AND MASCULINITY: THE MAN AT THE MARGINS (1994).
appears in James’s 1881 novel *The Portrait of a Lady*. Osmond, as we will see, is disaffected from what he perceives as the vulgarity and bustle of modern life. He is nostalgic for an imagined past that, he supposes, would have been more orderly than the chaotic present, a past in which lines of authority were much more clearly demarcated. And he is a man who chooses to devote his life to the collection and arrangement of objects.

The constellation of dispositions, attitudes, and modes of behavior which characterize Osmond in James’s novel are also characteristic of Langdell. Langdell, as I will demonstrate, was also disaffected from modern life. In Langdell’s case, that disaffection stemmed from his experience working as a business lawyer in New York City during the corrupt “Tweed Era” of the 1860s. Langdell, too, felt nostalgic for an imaginary bygone era in which a clearly established authority figure was able to dictate what people should and should not do. And Langdell also devoted his life to the collection and arrangement of objects. In particular, Langdell was obsessed with collecting and arranging *cases*, which then became the centerpiece of his most significant contribution to legal education: the case method. By attending to James’s depiction of Osmond’s actions and motives, we can arrive at a better understanding of Langdell.

Why turn to Henry James to understand Langdell? On a superficial level, James was familiar with Langdell’s world. He moved in the same circles as Langdell, and even spent a brief time at Harvard Law School in the 1860s. On a deeper level, James was as perceptive an observer of humanity as the United States produced in the second half of the nineteenth century. Of course, it doesn’t follow that his depiction of a character in a

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novel necessarily tells us anything about Langdell. The speculative enterprise of this Article will be to point out aspects of Langdell’s life and work which have eluded explanation by modern scholarship. Those facets of Langdell’s project – including his refusal to defend his pedagogical ideas in print; his work on equity pleading, with its wistful depiction of the equity chancellor’s nearly boundless authority to compel people to do what they “ought to do”; his insistence that law could only be learned by way of cases – come into focus and make sense in a new way when they are set alongside comparable facets of Osmond’s character.

In the first part of this Article, I provide a brief overview of Henry James’s life and career, and quickly synopsize The Portrait of a Lady. In the second part, I show how the character of Gilbert Osmond bears striking similarities to what we know of Langdell, and use those similarities to illuminate Langdell’s project. First, I point to a curious episode at the beginning of Langdell’s scholarly career: his refusal to take any action to advance himself for a position at Harvard. After linking this reluctance to Osmond’s comparable unwillingness to push himself forward to win Isabel Archer’s hand in marriage, I argue that, for both men, this attitude was tied to their disgust with the “vulgarity” of modern life. I then discuss Langdell’s refusal to defend his ideas in print, and connect the way Langdell achieved success – i.e., through the enthusiastic work of disciples who proselytized on behalf of his ideas – to Osmond’s similar aspirations for a success that would consist of “impressing” himself on a faithful devotee. In both Langdell and Osmond, I argue, this attitude derives from distaste for the vulgarity of the masses, and a concomitant refusal to submit to being judged by others. That distaste led both men to embrace an imaginary vision of an authority figure who, at some point in the
past, had the unquestioned power to dictate what others would do. This vision, which is explicitly described by Osmond, finds a parallel in Langdell’s work on equity pleading. As I show, that work centers on Langdell’s celebration of the absolute power of the chancellor to compel others to do only what the chancellor believed they ought to do. Finally, I examine Langdell’s defense of the case method, which I interpret as the culmination of the peculiarly Osmondian personal values and attitudes held by Langdell.

I. **Henry James and *The Portrait of a Lady***

Henry James was born on April 15, 1843 in New York City.21 His father, Henry James Sr., was a wealthy man, having inherited a fortune from his own father.22 James spent his childhood traveling between America and Europe, where he studied with tutors in a number of cities. In 1862 he enrolled at Harvard Law School, but spent less than a year there, and seems to have spent most of that time engaged in literary rather than legal pursuits.23 His first short story appeared in 1864,24 and he went on to publish fiction, plays, and criticism in voluminous quantities until his death in 1916.25

In the autumn of 1880, James began serially publishing his novel *The Portrait of a Lady* in English and American periodicals.26 The novel was a massive popular success

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22 *Id.*
24 *Id.* at 92-93.
and a “cultural event of significant magnitude.”\textsuperscript{27} Its esteem has grown with time, as many modern critics consider it one of James’s masterpieces.\textsuperscript{28}

At its heart, \textit{The Portrait of a Lady} is the story of Isabel Archer, the title “lady,” who moves to Europe and marries an expatriate American, Gilbert Osmond. At the beginning of the novel, Isabel is a young American girl living a quiet life in Albany, New York. From there, she is whisked away to England by her imperious aunt, Mrs. Touchett, who takes Isabel to the Touchetts’ country manor, Gardencourt. There, Isabel captivates all the men she meets: her uncle, Mr. Touchett; her cousin Ralph; and the Touchetts’ neighbor, Lord Warburton, who quickly proposes to Isabel. Isabel, however, refuses his offer, just as she has earlier refused to marry an American suitor, Caspar Goodwood.

Isabel’s cousin Ralph is impressed by her willingness to turn down marriage to a wealthy, and highly eligible, English lord. He wants her to be able to maintain her independence, and secretly persuades his dying father to bequeath a huge sum of money to Isabel. Before Mr. Touchett dies, however, a friend of Mrs. Touchett’s named Madame Merle shows up at Gardencourt to spend time with the Touchetts. Merle proves captivating to Isabel, and the two become friends.

After Mr. Touchett dies and Isabel, to her own surprise, inherits a staggering fortune, she decides to travel so that she can expand her horizons. While in Italy, she again encounters Madame Merle, who introduces Isabel to Gilbert Osmond. Osmond was born in America, though he has made his home in Italy, where he lives with his young daughter Pansy. He is a poor gentleman, whose only occupation seems to be

\textsuperscript{27} \textit{Id.} at 430.
\textsuperscript{28} \textit{See, e.g., ROBERT BARNARD, A SHORT HISTORY OF ENGLISH LITERATURE} 141-42 (noting that by “general consent” the “greatest novel” of the first phase of James’s literary career is \textit{The Portrait of a Lady}); F. O. MATTHIESSEN, \textit{HENRY JAMES: THE MAJOR PHASE} 153 (1963) (“\textit{The Portrait of a Lady} is [James’s] first unquestioned masterpiece”).
painting desultory pictures and collecting an assortment of artworks. For reasons which do not become clear until much later in the novel, Merle decides that Osmond should marry Isabel, and throws them together so that Isabel can be seduced by Osmond’s charms. Isabel then continues her travels, now accompanied by Merle. Upon her return to Italy, Isabel decides to marry Osmond, despite protests from both Ralph and Mrs. Touchett that Osmond is only interested in Isabel’s fortune.

After their marriage, Osmond and Isabel move to Rome, but their relationship sours as Osmond tries to reshape Isabel’s character to his own liking. Their marriage, which has already deteriorated significantly, reaches a crisis when a man named Ned Rosier falls in love with Osmond’s daughter Pansy. Regardless of the fact that Pansy is also in love with Rosier, Osmond refuses to allow her to marry him, as he wants Pansy to marry a nobleman. His dreams seem to have come true when Lord Warburton shows up in Rome and, after spending time with Osmond and Isabel, expresses interest in becoming Pansy’s husband. Osmond is delighted by the prospect of being the father-in-law of a rich British lord, and tries to manipulate Isabel into pushing the marriage forward.

When Lord Warburton returns to England without marrying Pansy, Osmond blames Isabel for balking his scheme. In a crucial scene, Isabel accidentally enters a room in which Osmond is discussing the situation with Merle, leading her to belatedly realize that Merle had arranged for her to fall in love with Osmond. At this point, Isabel learns that her cousin Ralph, from whom she has become estranged during her marriage, is dying back in England. Osmond forbids her to go see him. Osmond’s sister, however, who loves to provoke Osmond, chooses this moment to inform Isabel that Osmond and
Merle had once had an affair, and that Pansy is in fact Merle’s daughter. Sickened by this revelation, Isabel goes to England, but not before she visits Pansy in the convent to which Osmond has relegated her, where she promises not to abandon her stepdaughter. In England, Ralph confesses to Isabel that he had arranged for her to inherit his father’s wealth so that she could be independent, and thus unwittingly made her the prey of a fortune-hunter. After Ralph dies, Isabel is once more importuned by her first suitor, Caspar Goodwood, who urges her to leave Osmond for him. But she decides not to do so, and the novel ends with Isabel returning to Italy and her marriage to Osmond.

II. TWO NINETEENTH-CENTURY LIVES: CHRISTOPHER COLUMBUS LANGDELL AND GILBERT OSMOND

In 1870, Langdell was plucked from obscurity and appointed, in rapid succession, to the positions of Dane Professor and then Dean of Harvard Law School. In an essay published after Langdell’s death, James Barr Ames, who was Langdell’s successor as Dean, recounts a curious anecdote about the period prior to Langdell’s appointment. Langdell, Ames writes, was

so little known by the members of the governing boards that he was asked to give the names of some New York lawyers who were in a position to answer inquiries as to his qualifications for a law professor. He could not see his way to comply with their request. Pending the confirmation by the

29 See LAPIANA, supra note 9, at 10-14.
Overseers of his nomination by the Corporation, he was invited to meet a number of the Overseers at dinner. This invitation was also declined. He was unwilling to take a single step to influence his own election.\textsuperscript{30}

Ames offers this story as an illustration of Langdell’s “characteristic independence” and “determination to win only by sheer force of merit.”\textsuperscript{31} But that hardly accounts for the extremity of Langdell’s abstention at this critical moment in his career. How does a commitment to the “sheer force of merit,” after all, explain Langdell’s refusal even to supply the names of possible recommenders?

It is not as if Langdell did not want the job. In a reminiscence published after Langdell’s death, Charles Eliot, the President of Harvard who was instrumental in the hiring of Langdell, wrote that when he first proposed a professorship to Langdell, he “saw that the proposal attracted him strongly.”\textsuperscript{32} Eliot noted that Langdell “apparently wished to teach law rather than practice it, but to teach it in a new way.”\textsuperscript{33} Eliot also remarked that in their conversation, Langdell had adverted to the “obvious fact that he was a new kind of candidate for a professorship in the Harvard Law School,” and claimed that Langdell “expressed a good deal of doubt as to whether he could be elected.”\textsuperscript{34} Eliot concluded that Langdell was “right in both respects,” stating that the Harvard Corporation consented only “with some reluctance” to elect Langdell to a professorship,

\textsuperscript{30} Ames, \textit{supra} note 15, at 473.
\textsuperscript{31} \textit{Id.}
\textsuperscript{33} \textit{Id.}
\textsuperscript{34} \textit{Id.}
and that it was “with even more reluctance” that the Board of Overseers signed off on the Corporation’s election of Langdell.\(^35\)

Elliot’s account of his role in bringing Langdell to Harvard has been criticized for its implication that all the credit for the move belongs to Elliot himself.\(^36\) Regardless of the accuracy of Elliot’s depiction of his own centrality in the hiring of Langdell, there seems no reason to doubt Elliot’s claim that Langdell badly wanted the position. After all, once Langdell was appointed dean, he would hold the job for the next twenty-five years; he stayed on as Dane Professor for another five years after that, until he became emeritus in 1900.\(^37\) And given how obscure Langdell was at the time of his appointment, it is unsurprising that he would have felt serious doubt as to whether he could be elected to the job. He may well have been Elliot’s preferred candidate, but in 1870 Elliot had only been President of Harvard for a year.\(^38\) Moreover, at the time Elliot was a relative youth: far from being a grizzled veteran of academic politics who might expect to have his way with a Board of Overseers, he was in fact the youngest President of Harvard since the 1640s.\(^39\) Furthermore, it is not as if Harvard was in the habit of plucking relative unknowns out of practice in New York to become professors of law. Langdell’s immediate predecessor in his professorship, Theophilus Parsons, had already been an extremely well-known figure in Boston before he was appointed to the position: his

\(^{35}\) Id.

\(^{36}\) See, e.g., LAPIANA, supra note 9, at 11 (noting that Elliot first “promulgated” his account of how he alone was responsible for Langdell’s selection at a dinner in 1886, and subsequently took steps to keep that “official” version “undisturbed” by future historians).

\(^{37}\) Ames, supra note 15, at 473.

\(^{38}\) See 2 WARREN, supra note 1, at 355.

\(^{39}\) See id.

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father had been Chief Justice of Massachusetts, and he spent twenty years as a prominent member of the Boston bar before becoming Dane Professor at the age of 50.\textsuperscript{40}

It is thus plausible that, as Charles Warren suggests, “sorrow and dismay” were felt at Harvard when it was announced that Langdell, “a young New York lawyer . . . whose name was hardly known in Harvard College or Boston legal circles,” had been chosen as Parsons’s successor.\textsuperscript{41} As Warren sums up the event, Langdell’s election marked the “first time in the life of Harvard Law School” when it was “proposed to choose as Professor, a young man of no legal reputation (except among the few lawyers who had employed him), a man of no national fame, and a lawyer who had had substantially no court practice.”\textsuperscript{42}

Given how unprecedented it was for a man like Langdell even to be considered for a professorship at Harvard, and given how badly he wanted the job, why would he be so adamant in his refusal even to provide the names of recommenders? Langdell himself left no explanation of his reticence, and recent scholarship on Langdell does not seem to regard this as a problem requiring an explanation.\textsuperscript{43}

Despite the fact that he declined to lift a finger to influence his election, getting hired at Harvard was the signal event of Langdell’s career. It was only because of his position at Harvard that Langdell was able to implement the ideas through which he made

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\item 2 W\textsc{arren}, supra note 1, at 359.\textsuperscript{41}
\item Id. at 360.\textsuperscript{42}
\item For example, the recent biography of Langdell by Bruce Kimball passes directly from an account of Langdell’s work as a New York lawyer to a chapter on the scholarship he produced in his first decade on the Harvard faculty, without any consideration of the circumstances under which he was hired at Harvard. \textsc{See} BRUCE A. KIMBALL, THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C. C. LANGDELL 1826-1906, at 85-87 (2009).\textsuperscript{43}
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his mark on the world.\footnote{As one modern critic of Langdell has remarked, it “would be hard to find yourself at a better place at a better time” than Langdell did at Harvard in the 1870s, in terms of the fit between Langdell’s novel ideas and an institutional structure which required the kind of “wholly complete, conceptually unified universe” he had to offer. See Schlegel, supra note 7, at 323.} In *The Portrait of a Lady*, James depicts a similar critical phase in the life of Gilbert Osmond. When we first meet Osmond, he is mired in obscurity. As Ralph Touchett describes him, Osmond is a “mysterious American,” a “poor gentleman” who lives on his small income in Florence (447). Then Osmond’s friend (and former lover) Madame Merle steers Isabel into his sights, with the hopes of arranging a marriage between Osmond and Isabel. Marriage to Isabel, as James makes clear, is Osmond’s equivalent of a Harvard professorship. Isabel is enormously wealthy, having been bequeathed 70,000 pounds by her uncle (439). If Osmond marries her, he will instantly have the wherewithal to live where he wants and do what he pleases. Moreover, Isabel is herself extraordinarily desirable, regardless of her riches. By the time we reach the midpoint of the novel, we have seen Isabel effortlessly captivate each of the men who has fallen into her orbit. Indeed, it sometimes seems that she has but to meet a man and he is instantly under her spell, doomed, as are Caspar Goodwood and Lord Warburton, to vainly and repeatedly propose marriage to her. In short, Isabel’s attractions are not in doubt; and lest we wonder whether Osmond is the one man in the world who might be immune to Isabel’s charms, James informs us that she “had pleased him from the first of his seeing her” (503). Furthermore, James makes it clear that Osmond is eager to get married, telling us that it was “[c]ertain” that “Osmond’s desire to marry had been deep and distinct” (504).

As if these weren’t reasons enough for Osmond to be eager to marry Isabel, James offers yet another. Up to the point at which Osmond met Isabel, we are told, Osmond
had been a “failure” in life. However, James tells us that, for Osmond, “success” in life would simply consist of “mak[ing] himself felt” (505). To achieve that particular mode of success, James goes on, Osmond needed to “impress himself not largely but deeply” on another human being: say, on the “clear and sensitive nature” of a “generous girl.”

By marrying Isabel, then, Osmond would achieve everything he could desire in life. All he wants is money, to pursue his aesthetic lifestyle, and a “sensitive” person on whom he could impress himself. Marriage to the willing, desirable, and impressionable Isabel should have been the opportunity of a lifetime for him, one he would grasp at without hesitation. It is thus surprising to find that Madame Merle has to work so hard to provoke Osmond to take an interest in Isabel. As the novel makes clear, Merle has a difficult time overcoming Osmond’s self-proclaimed “indolence” to induce him to court Isabel (435). When Merle first tries to excite Osmond’s interest in Isabel, she laments “If I could only induce you to make an effort!” (436). Osmond replies that the idea of courting Isabel is “tiresome,” and doubts whether doing so is “worth an effort.” Later, after Merle has brought the two of them together and seen to it that Isabel falls in love with Osmond, Isabel proposes that Osmond visit Rome while she is there. Even this clear indication that he has begun to make himself “felt” by Isabel, though, wearies Osmond. Merle is forced to insist that Osmond must go to Rome to see Isabel, prompting Osmond to complain that “it makes one work, this idea of yours!” (483). As Mrs. Touchett sums up, after Isabel has decided to marry Osmond: “He has a very good opinion of himself, but he was not a man to take trouble. Madame Merle took the trouble for him” (535).45

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45 This emphasis is missed by critics who suggest that Osmond set out to ensnare Isabel with the assistance of Madame Merle. As James makes clear, it is Merle who takes the initiative, while Osmond has to be
The question, then, becomes: Why would Osmond be so reluctant to take the “trouble” needed to win Isabel? The definition of success, for Osmond, is marriage to someone like Isabel, and yet he seems strangely unwilling to take the steps necessary to bring the marriage about. By understanding why Osmond shows such reluctance to push himself forward with respect to Isabel, we can better understand why Langdell would show such reluctance to push himself forward with respect to his Harvard professorship.

First, we need to observe that it is not the case that Osmond is indifferent to success. In fact, James tells us that the “desire to succeed greatly – in something or other – had been the dream of [Osmond’s] youth” (503). James goes on, however, to qualify Osmond’s ambitions in a way that helps us understand why Osmond would be resistant to making an effort to secure Isabel. He tells us that “as the years went on, the conditions attached to success became so various and repulsive that the idea of making an effort gradually lost its charm” for Osmond.

What, exactly, does this mean? What are the “conditions attached to success” which are so “repulsive” that Osmond can hardly bring himself to entertain the “idea of making an effort” to succeed? James supplies the hint when he goes on to tell us that Osmond “had a great dread of vulgarity” (503). As we see increasingly in the later chapters of the novel, this “dread of vulgarity” is one of the touchstones of Osmond’s character. In a conversation with Goodwood, Osmond remarks on how the modern world is characterized by “a certain kind of vulgarity” which “is really new” (710). Tellingly, he compliments Goodwood by remarking that, even though Goodwood has been engaged

pushed into a relationship that will be so advantageous for him. See Novick, supra note 23, at 420 (“Madame Merle determined to make a marriage between Isabel and her former lover . . . With infinite art, she enlisted Osmond in the scheme”); cf. Donatella Izzo, The Portrait of a Lady and Modern Narrative, in NEW ESSAYS ON THE PORTRAIT OF A LADY 35-36 (Joel Porte ed., 1990) (asserting that it is Osmond who “trap[s]” Isabel “[w]ith the help of . . . Madame Merle”).
in “commercial” life, he has “escaped” the “danger” inherent in such occupations (711). Osmond explains that the “whole American world” is in a “conspiracy” to make men vulgar, while praising Goodwood for having “resisted” its influence.

Whether or not we believe Osmond to be sincere in his praise of Goodwood, these remarks tell us a great deal about Osmond’s own worldview. For Osmond, contemporary American life is characterized by pervasive “vulgarity,” by which he seems to mean the habit of paying attention to commercial interests. Osmond contemptuously dismisses the society of his time as consisting merely of a “bustling, pushing rabble” (738). Moreover, for Osmond this rabble is in “conspiracy” against the finer spirits; it wants to drag them down to its level, and only through active resistance can one evade its pull. As Osmond indicates to Isabel, it is essential for him to keep himself “unspotted” by the “infinite vulgarity of things” (634).

It is for this reason, we can infer, that Osmond is so reluctant to pursue Isabel. He is, in a way, marrying her for her money, which is exactly the kind of vulgar behavior he prides himself on resisting. On the one hand, she is an ideal wife for him; on the other hand, almost any effort to win her would make him seem like just another member of the money-minded, “pushing” rabble he despises. Given that attitude, it is less surprising that he would have to be repeatedly coaxed by Madame Merle to win over Isabel, regardless of how attractive both she and her money might be.

With this Osmondian impasse in mind, we can return to Langdell and see his reluctance to push himself forward for a professorship in a new light. The same disgust with what Osmond terms the “vulgarity” of American life has also been remarked upon in Langdell. A telling example appears in an essay on Langdell written by William
Schofield, who studied under Langdell at Harvard Law School in the 1880s before joining the school’s faculty. In a posthumous tribute to Langdell, Schofield wrote that the “message” conveyed by Langdell’s life was that “self-seeking, self-advertising, are not essential to success.” As Schofield put it, “[n]either Commercialism nor noisy Strenuosity had any place in his career, as student, lawyer, or teacher.”

This aspect of Langdell’s character is discussed more thoroughly in a recent biographical assessment of Langdell. In their study of Langdell’s career as a Wall Street lawyer, Bruce Kimball and R. Blake Brown argue that Langdell, far from being a naïve, “contemptible scholastic” during his time in New York, was actually a “shrewd and successful attorney.” But Kimball and Brown also demonstrate that Langdell was changed by his experience as a business lawyer. When Langdell first began to practice in New York, he expressed contempt for lawyers who resorted to “mean and disgusting” tactics simply in order to “make a little more money.” Instead of seeking to extract the maximum fees from his clients, Langdell would only request a “reasonable” sum. As Kimball and Brown write, at the start of his career Langdell adhered to a principled resolve to set his price “justly rather than in relation to the market,” even though this meant that, for the major case he worked on during his early years in New York, he only received about one percent of an award of over one million dollars, in a matter to which he had devoted three and a half years of work.

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46 2 WARREN, supra note 1, at 443.
47 William Schofield, Christopher Columbus Langdell, 55 AM. L. REG. 273, 295 (1907).
48 Id.
50 Id. at 64 (quoting a letter from Langdell to Joseph Webster of July 26, 1859).
51 Id.
52 Id. at 64-65.
Over the course of his professional life in New York during the 1860s, Langdell was transformed. Kimball and Brown argue that Langdell, during his career in practice, came to experience “disaffection” from the business world in which he worked.\textsuperscript{53} On their account, Langdell became “estrange[d]” from his professional life in New York, an estrangement that was a response to the “corruption” he observed in Gilded Age New York.\textsuperscript{54} This estrangement is reflected in the letters President Eliot received from New York attorneys whom he solicited for reports on Langdell in 1869. George Shattuck, for instance, informed Eliot that Langdell was “out of relations with the present state of things in New York” and that Langdell was “disgusted with [the] courts and general mode of doing business.”\textsuperscript{55} Eliot also received a letter from New York lawyer James C. Carter, who reported his impression that Langdell had a “hearty disgust for the means and methods by which business, place, and reputation” were gained in New York City.\textsuperscript{56} According to Carter, Langdell “was not sufficiently content to take the world as he found it.”\textsuperscript{57} Carter concluded that Langdell “must have felt . . . much disappointment, and the effect of it may have been in some degree to impair the freshness and elasticity of his character and encourage a sort of dissatisfaction with himself and the world.”\textsuperscript{58}

While Kimball and Brown argue that Langdell eventually became disgusted by life in New York City, they contest the conventional view that this disgust arose from a feeling of “sour grapes” on Langdell’s part brought about by perception of his own

\begin{itemize}
  \item \textsuperscript{53} \textit{Id.} at 39.
  \item \textsuperscript{54} \textit{Id.} at 44-45.
  \item \textsuperscript{55} \textit{LaPiana, supra} note 9, at 12 (quoting a letter from George O. Shattuck to Charles W. Eliot, Dec. 17, 1869).
  \item \textsuperscript{56} \textit{Id.} at 12-13 (quoting a letter from James C. Carter to Charles W. Eliot, Dec. 20, 1869). Interestingly, the word “disgust” is also used by other characters in the novel to describe Osmond: Ralph, for instance, says that Osmond looks like someone who is perpetually in “a state of disgust” (447).
  \item \textsuperscript{57} \textit{Id.}
  \item \textsuperscript{58} \textit{Id.}
\end{itemize}
inadequacy. Instead, they argue that Langdell was justifiably outraged by the “late 1860s corruption of the New York City bench and bar,” which had been pervaded by the Tweed Ring. As they show, Langdell was personally acquainted both with lawyers who had collaborated with the corruption of the Tweed Ring and lawyers who had “blown the whistle” on the organization. They conclude that it was not sour grapes, but “influence buying, judicial corruption, and the concomitant confounding of legal doctrine and procedure” that account for Langdell’s disaffection with his professional life in New York.

By supplying an objective correlative for Langdell’s alleged “disaffection,” Kimball and Brown provide a firmer foundation for understanding Langdell’s disgust with contemporary American life. They give us a Langdell who experienced a principled estrangement from the culture of his day, rather than one who was merely disgruntled because of his perceived inadequacy as a practicing lawyer.

They also suggest that by the time Langdell’s career in New York was drawing to a close, he may have been led to abandon some of his most cherished principles. In his final major case as a New York lawyer, Langdell represented several parties in a dispute over a substantial estate. Kimball and Brown argue that Langdell was willing to resort to “questionable tactics” to protect the interests of his clients, and suggest that he did so in a manner which indicates that his “experience on Wall Street had induced Langdell to dilute his early pristine sense of honorable practice with a tincture of expediency.” In the course of his work on the case, Langdell employed an “expedient” strategy by which

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59 Kimball & Brown, supra note 49, at 85.
60 Id. at 86.
61 Id. at 87-89.
62 Id. at 93.
63 Id. at 94-95.
64 Id. at 95-96.
he threatened to “bleed” the estate dry, thereby compelling the other side to reach a compromise.  

Langdell also secretly reached a settlement agreement with one of the junior co-counsels for the other side, despite the fact that the senior counsel for the other side had expressly disagreed to it. Moreover, that senior counsel, Charles O’Conor, was a “long-standing personal and professional acquaintance” of Langdell’s, and in fact was the person to whom Langdell owed “his first entrée into the Wall Street legal elite.”

Langdell was labelled a “robber” and a “swindler” for his conduct in the case, epithets which Kimball and Brown concede were “perhaps deserved.” As they show, by the end of his professional career in New York, Langdell appears to have been “willing to breach personal and professional trust” in order to win a case. They conclude that Langdell’s “deception demonstrates how much he had changed by 1869” from the principled young attorney who had begun practice in New York a decade earlier.

Kimball and Brown’s meticulous archival research demonstrates that Langdell, during the course of his years of practice in New York, seems to have compromised his own idealistic beliefs. When Langdell started out in New York, he was a principled advocate who rejected “mean and disgusting” methods; by the end of his career as a practicing lawyer, he had become a shrewd tactician willing to practice deception and engage in sharp dealing to achieve his ends. By dispelling the caricature version of Langdell as an ineffectual scholastic who was simply a “fish out of water” in the rough-and-tumble world of practice, Kimball and Brown demonstrate that Langdell in fact

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65 Id. at 96-97.
66 Id. at 98-99.
67 Id. at 99.
68 Id. at 96.
69 Id. at 99.
70 Id.
threw himself into the “commercial” world, and that his character was at least partly changed by it.

What does this have to do with Osmond? Shattuck and Carter reported that Langdell had become “disaffected” because of the “disgust” he felt at the way business was conducted in New York. Kimball and Brown substantiate the claim that Langdell was disaffected, and show that he too had become infected by the business practices he condemned. This correlates directly with Osmond’s sense that American life is a “conspiracy” to vulgarize the men who participate in it, a conspiracy which one must actively resist. Osmond’s sense of the “infinite vulgarity of things” leads him to stress the “virtue of keeping one’s self unspotted” by that vulgarity (634). But instead of escaping the danger of vulgarity, Langdell had allowed himself to become spotted by it, becoming yet another “pushing” business lawyer. We can understand Langdell’s refusal to make any move to push himself forward for the Harvard position, then, as a belated attempt to resist vulgarization. Instead of hustling for the job, Langdell ostentatiously declined to do anything that even hinted of such behavior.

There is another aspect of Osmond’s character which can help us understand Langdell’s refusal to campaign for a job. One of Osmond’s defining traits is a dread of competition. James tells us that Osmond “felt that any enterprise in which the chance of failure was at all considerable would never have an attraction for him; to fail would have been unspeakably odious, would have left an ineffaceable stain on his life” (503). This is one of the reasons for Osmond’s reluctance to actively court Isabel. Osmond refuses to engage in any enterprise in which failure is a possibility, which means that he cannot allow himself to visibly enter the arena of competition.

71 See supra notes 55-58 and accompanying text.
On the surface, this trait in Osmond would seem to distance him from Langdell, who was, after all, a successful attorney in New York for fifteen years. It is hard to imagine that Langdell could have had such success as a practicing lawyer if he had refused to undertake “any enterprise in which the chance of failure was at all considerable,” inasmuch as the “chance of failure” is always a risk in any litigation. As Kimball and Brown allow us to see, however, the Langdell of 1870 was a different man from the Langdell who had practiced law in New York in the preceding years. We know little about what Langdell was like as a person during his early years in New York. But the Langdell described by Shattuck and Carter – a man who was disappointed and disaffected; a man whose “freshness and elasticity of . . . character” had been impaired by his estrangement from the business world in which he had lived for so many years – is not unlike the disappointed, disaffected Osmond.

Seeing that Langdell, by 1870, had become similar to Osmond helps explain another oddity of Langdell’s professorial career: his refusal to defend his views in print. As one of Langdell’s acolytes observed after his death, one of the “most striking facts” in Langdell’s life was the “deep silence which surrounds his work,” as he “accomplished a revolution without getting into a controversy.” In his tribute to Langdell, Ames remarks on the same phenomenon. He notes that, despite the immense “hostility” with which Langdell’s innovations were received, Langdell “never wrote a word” on behalf of his theory aside from a brief preface to one early casebook. In Ames’s words,

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72 Schofield, supra note 47, at 286.
73 Ames, supra note 15, at 479.
Langdell’s “triumph was won solely by the influence of his teaching upon his pupils and by the impression made by them in the practice of their profession.”

With the exception of the three-page preface to his contracts casebook, which he wrote in his second year at Harvard, Langdell declined to offer any written justifications of his endeavor. Tellingly, when Charles Warren, in his voluminous history of Harvard Law School, wrote a chapter to explain to the world “what the case system really is,” he was unable to quote any writings by Langdell, the founder of that system. Warren noted that there had been a great deal of “misunderstanding” of, and “attacks” on, “Professor Langdell’s theories” of legal education. But he could not offer any examples of Langdellian attempts to straighten out those “misunderstandings,” for the simple reason that there were none to offer. Warren observed, no doubt correctly, that “[w]hat the Langdell System is can best be told in the words of its prominent exponents in the Harvard Law School,” even though its most prominent exponent, Langdell himself, was silent on the subject. Instead, Warren quoted writings by Langdell’s colleagues and disciples, a number of whom wrote at length to defend the theory of the case method.

Eugene Wambaugh, another of Langdell’s former students who went on to become a law professor, wrote that from the time Langdell began teaching at Harvard,

74 Id. Ames also suggests that even Langdell’s law review articles on the relatively uncontroversial subject of equity jurisdiction were published by the Harvard Law Review “by [Langdell’s] sufferance rather than with his encouragement.” Id. at 474.
75 See CASES ON CONTRACTS, supra note 11, at v-vii. In one of the notable early attempts to make sense of Langdell’s innovations, Josef Redlich was forced to rely solely on that 1871 preface to make sense of “what Langdell sought and . . . accomplished” in his pedagogical revolution. See JOSEF REDLICH, THE CASE METHOD IN AMERICAN LAW SCHOOLS 9 (1914). Redlich observed that “curiously enough, Langdell seems never afterwards to have expressed himself concerning the entire question of method, and never himself entered into the lively battle of words that for two decades waged round his innovation.” Id. at 9-10. For a discussion of Redlich’s work, see Kimball, supra note 8, at 290-91.
76 2 WARRN, supra note 1, at 419-27.
77 Id. at 419.
78 Id. at 421.
79 Id. at 421-27. Warren quotes passages from the writings of William Keener, John Chipman Gray, James Thayer, and Jeremiah Smith.
there was “a Langdell system of study, and to describe or attack or defend that system has
been one of the most frequent undertakings of law students and of law teachers.” To be
more precise, it should be noted that to “describe or attack or defend” the Langdellian
system was a “frequent” undertaking for everyone but Langdell, who as Wambaugh notes
“himself spent no time in disputation” about his ideas. So how did Langdell triumph?
How is it that there is a “Langdell system” to discuss at all, given that Langdell himself
seems to have taken no trouble whatsoever to expound it?

The answer to this question is hinted at by the nature of the sources I have been
quoting: essays on Langdell by his former pupils. Ames, Schofield, and Wambaugh were
all Langdell’s students; they all went on to become law professors in their own right; they
all promulgated his views while he was alive, and – as these posthumous tributes to their
teacher suggest – continued to defend his legacy after his death. The personal loyalty
Langdell inspired in his most devoted students is legendary. As Ames, one of the first of
Langdell’s students, observed, Langdell’s initial classes were so poorly received at
Harvard that attendance at them “dwindled to a handful of students who were stigmatized
as Langdell’s freshmen.” However, Ames wrote, the “enthusiastic faith” of that

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80 Eugene Wambaugh, Professor Langdell – A View of His Career, 20 HARV. L. REV. 1, 1 (1906).
81 Id.
82 Warren offers a charming, if inadequate, explanation of this abstention from argument on Langdell’s part. He suggests that, though “[m]any lawyers and teachers . . . doubted” Langdell’s educational method, Langdell himself “was firm in his own belief, so firm that he left the system to prove its own value, utterly without aid of argument.” 2 WARREN, supra note 1, at 393. Warren does not explain why Langdell’s “firmness” of belief in the merits of this system would account for his “utterly” refusing to argue on its behalf, despite the decades of attacks it sustained.
83 Ames graduated from Harvard Law School in 1872, and began teaching there a year later. 2 WARREN, supra note 1, at 388. Schofield graduated from the Law School in 1883, and began his teaching career at Harvard four years later. Id. at 443. Wambaugh graduated from the Law School in 1880, then spent some time as a practicing lawyer before he “successfully introduced the Langdell system of introduction” to the University of Iowa; he returned to Harvard as a professor in 1892. Id. at 448.
84 Ames, supra note 15, at 479.
handful of students “gradually converted others.”85 Another of Langdell’s early devotees wrote, after his death, about the experience of being one of only a “very few” students who realized that Langdell was a “great teacher,” and suggested that Langdell’s disciples owed everything to his “gentle influence,” which “came to [them] as an emanation.”86

In short, Langdell’s system triumphed because he experienced exactly the kind of success that Osmond hoped to achieve. Osmond’s ambition in life, we recall, was to make himself “felt” by others; he longed to impress himself “not largely but deeply” on a few “clear and sensitive” characters (505). As James notes, that kind of distinction is not “officially recognized” by the world as success, “unless indeed the operation be performed upon multitudes of men.” What Osmond tried, but failed, to do with respect to one girl – Isabel Archer – Langdell succeeded in doing with multitudes of brilliant young law students. He impressed himself deeply upon the likes of Ames, Schofield, and Wambaugh, who then carried the banner for his ideas in the larger world.

In this context, it is interesting to consider another of Langdell’s innovations in legal teaching: namely, the novel idea of hiring law school professors who had no significant experience in the practice of law before becoming teachers. Before Langdell became Dean at Harvard, this was unheard of; recall that Langdell himself spent fifteen years working as a lawyer in New York before he began his second career as a professor. As Charles Eliot suggested in a speech honoring Langdell’s work as Dean, this shift in hiring practices was a radical innovation. Looking back, Eliot remarked on how “Professor Langdell early advocated the appointment, as teachers of law, of young men

85 Id.
86 Austen G. Fox, Professor Langdell – His Personal Influence, 20 Harv. L. Rev. 7, 7 (1906). Fox also wrote that “[s]o close was our friendship and so personal your leadership that we are inclined to wonder whether, after all, the question is not so much what we study as with whom we study.” Id.
who had had no experience whatever in the active profession. . . . what bold advice was that for the head of the School to give! This School had never done it; no School had ever done it; it was an absolutely new departure in our country in the teaching of law.”

Langdell himself, in a speech to the Law School Association, offered an explanation of why actually working as a lawyer was superfluous, if not detrimental, for the teaching of law. He began with the idea that “law is a science,” all of whose “materials” are contained in “printed books.” Starting from the premise that “printed books are the ultimate sources of all legal knowledge,” and that “every student who would obtain any mastery of law as a science must resort to these ultimate sources,” Langdell was able to pass easily to the conclusion that “the only assistance which it is possible for the learner to receive is such as can be afforded by teachers who have travelled the same road with him.” Thus, Langdell concluded that what “qualifies a person . . . to teach law” is “not experience in the work of a lawyer’s office, not experience in dealing with men, not experience in the trial or argument of causes, not experience, in short, in using law, but experience in learning law.”

By beginning with the notion that law is a science which can “only” be learned from “printed books,” Langdell was able to arrive at the conclusion that the only qualified teachers of law are people who are skilled at “learning law” – in particular, in learning law via Langdell’s own case method. I will return, later, to Langdell’s view that law is a “science” which can only be learned from casebooks. For now, though, it is worth noting how convenient this position was for a man who wanted his ideas to prevail,

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87 2 WARREN, supra note 1, at 389 (quoting a speech of June 25, 1895).
88 Christopher Columbus Langdell, Speech to the Harvard Law School Association, in 3 L. Q. REV. 123, 124 (1887).
89 Id.
90 Id.
but who declined to take active steps in defense of those ideas.\footnote{A point similar to this one, though with a different spin, was made by Eugene Wambaugh in his posthumous tribute to Langdell. Wambaugh observed that Langdell’s “system of study has required teachers of law to do work of greater thoroughness,” and argued that the system “thus aided to create, as a sort of by-product, the dignified career . . . of the professional teacher of law.” Wambaugh, supra note 80, at 3-4. Regardless of Wambaugh’s uncritical eulogy of the mode of professionalization compelled by the Langdellian system, his causal observation – that the system, of necessity, created a particular kind of professional career – remains valid.} The only way for Langdell’s influence to be felt was for him to impress himself on students whose “enthusiastic faith,” in Ames’s words, would lead them to “convert” others. But without positions in academia, Langdell’s faithful students would be incapable of converting others to his pedagogical views. Under the system for hiring law professors in America which prevailed at the time Langdell began his own teaching career – a system in which lawyers were hired to teach only after they had already made a reputation for themselves in practice – the Langdellian revolution would have been postponed for decades, even assuming that his acolytes had managed to sustain their passion for Langdell’s pedagogical ideas after spending years in practice. Given Langdell’s unwillingness to advocate directly in print for his own views, his innovations could never have spread as quickly and effectively as they did if not for this drastic alteration in the process by which law professors were hired.\footnote{For a discussion of Langdell’s “invention” of the position of the law professor “in its modern sense,” see LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 470 (3d ed. 2001). Friedman notes in passing that “Langdell must have been a charismatic teacher,” since his ideas “carried the day” thanks to “disciples who carried the message to the Gentiles.” Id.}

In the light of Osmond’s example, we can understand why Langdell would shun controversy and choose to succeed or fail solely on the strength of the personal influence he could exert on impressionable students. By writing a justification of one’s ideas, one implicitly acknowledges that one’s ideas are in need of justification. And to justify one’s work in print means submitting oneself to the marketplace of ideas. It necessarily involves taking a chance, in the hope that others will find one’s views persuasive. James
tells us that the only kind of success Osmond would deign to pursue was a success that would “seem in advance definitely certain” (503). But any entry into the marketplace of ideas, by definition, cannot be “definitely certain” in advance. One cannot dictate how one’s writings will be received by others. As such, Langdell eschewed written justifications, preferring to conquer through the efforts of faithful acolytes on whom he had impressed himself. As Ames, the first of those acolytes, rhapsodically described the experience of being in Langdell’s first classes: “The master as a pioneer was blazing a new path, and his disciples felt that they too were carrying an axe and were in some measure responsible for the master’s success.”

We can see this reluctance to enter the marketplace of ideas as an aspect of a more generalized anxiety, on the part of both Langdell and Osmond, about judgment and, in particular, about being judged. A written justification of oneself is, implicitly, a sign of faith in intellectual democracy. By publishing a defense of one’s views, one submits to being judged by anyone capable of reading one’s words. However, “faith in intellectual democracy” is the farthest thing from Osmond’s mind. Osmond yearns for a different kind of authority: an authority located in an imagined past, when one man, or so Osmond believes, indisputably had the power to set the proper estimations on things. After looking at this aspect of Osmond’s character, I will show that Langdell was imbued with a comparable nostalgia for an imaginary authority that once held absolute sway.

We first encounter Osmond’s fantasy of absolute authority in a passage in which he describes his youth. As Osmond puts it, he took his own “measure” early in life and determined that he was “simply the most fastidious young gentleman living” (463). What Osmond means by “fastidious” is revealed when he explains that the only people in the

93 Ames, supra note 15, at 479.
world he envied were the “Emperor of Russia” and the “Sultan of Turkey.” We note that Osmond, despite being a young American, did not fantasize about becoming President, or being an enormously wealthy plutocrat. Rather, his dreams were of being an Eastern despot. For Osmond, what is enviable is to be an absolute monarch, a figure in possession of unquestioned authority. He goes on to say that there were moments when he “envied the Pope of Rome – for the consideration he enjoys.” Again, by “consideration” Osmond clearly means “absolute deference.”

The same attitude manifests itself a few chapters later, when Isabel and Osmond discuss St. Peter’s in Rome. Isabel declares that the church is “very large,” to which Osmond replies that it is “too large; it makes one feel like an atom” (494). Isabel responds, naturally enough, by saying “Is not that the right way to feel – in church?” Osmond parries that it’s the “right way to feel everywhere, when one is nobody. But I like it in a church as little as anywhere else.” To which Isabel exclaims “You ought indeed to be a Pope!” She is more right than she realizes. For Osmond, the only way to fend off the sense that one is an anonymous “nobody,” a mere “atom” in a world that is far too “large,” is never to allow himself to be placed in a position in which he will have that realization of diminishment thrust upon him. “Ah, I should have enjoyed that!” Osmond replies to Isabel’s suggestion that he ought to have been pope. What Isabel doesn’t yet apprehend, however, is that Osmond arranges his life so as to receive as much “consideration” as he can manage.

It is Isabel’s failure to realize Osmond’s furious need for consideration, in fact, which explains the deterioration of their marriage. James tells us that it was Isabel’s “scorn of [Osmond’s] assumptions” which “made him draw himself up” and turn on her
Osmond himself, we are told, “had plenty of contempt,” and was happy to have a wife “well furnished” with the same characteristic. But he was unable to countenance a wife who would “turn the hot light of her disdain upon his own conception of things.”

Osmond’s refusal to accept that those around him should treat his assumptions, his conception of the world, with anything but complete deference explains the situation of the most pitiful character in the novel: Osmond’s daughter, Pansy. When we meet her, she is the most docile teenager imaginable. She seems incapable of defying her father’s wishes; moreover, she seems incapable of conceiving the possibility that her father’s wishes are merely that – his wishes – rather than natural facts which cannot be disputed. Pansy, we are told, had been “impregnated with the idea of submission, which was due to any one who took the tone of authority” (432). This may make Pansy seem ridiculously weak and helpless. However, once we understand Osmond, her character makes perfect sense.94

Prior to his meeting with Isabel, Pansy was Osmond’s greatest success in making himself felt. When Pansy falls in love with Ned Rosier, of whom Osmond disapproves, Osmond has no concerns about his daughter’s conduct, saying “This kind of thing doesn’t find me unprepared. It’s what I educated her for. It was all for this – that when such a case should come up she should do what I prefer” (577). And, indeed, Pansy does her father’s bidding. But it is more than that: she has been molded so

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94 Critics who read Pansy as a victim of masculine oppression, as embodied by Osmond, are not off the mark. See, e.g., Melissa Valiska Gregory, *From Melodrama to Monologue: Henry James and Domestic Terror*, 25 HENRY JAMES REV. 146, 149 (2004) (arguing that Osmond is an exemplar of James’s depictions of “a masculine domination so subtle that it appears nothing more than an extension of good taste”). In this regard, it is interesting to note that Langdell was the most outspoken misogynist of the Harvard Law School faculty of his time. As Bruce Kimball and Brian Shull have shown, Langdell, despite his ostensible embrace of “meritocracy” in legal education, “personally led the opposition to admitting women” to the Law School. See Bruce A. Kimball & Brian S. Shull, *The Ironical Exclusion of Women from Harvard Law School, 1870-1900*, 58 J. LEGAL ED. 3, 5, 31 (2008).
thoroughly by Osmond that she is incapable even of conceiving the idea of disobedience to his commands.

This is revealed most poignantly at a crucial moment late in the novel, when Isabel visits Pansy at her convent-prison to tell Pansy that she is going to England to see her dying cousin. She tells Pansy that she will be going alone, without Osmond, leading Isabel to wonder what Pansy thinks of “the apparent relations” between Osmond and Isabel (762). Isabel, we are told, was “sure” that Pansy must have “made her reflections,” and “must have had a conviction” that there was something not quite right about the relationship between her father and Isabel. But that assumption is merely an index of the difference between Isabel and Pansy. As James tells us, Pansy “was not indiscreet even in thought; she would as little have ventured to judge her gentle stepmother as to criticise her magnificent father.” Pansy, James writes, “didn’t presume to judge others,” because her father had raised her to be incapable of such judgments (764). Instead, she “bowed her pretty head to authority, and only asked of authority to be merciful.” That sentence sums it up: for Pansy, Osmond simply is “authority,” and she can do nothing but bow her head to his decisions and hope for mercy.95

It is in the light of Osmond’s obsession with absolute authority – in particular, his obsession with an absolute authority which, he imagines, was possessed in the past by sultans or popes – that we can understand one of Langdell’s more curious intellectual

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95 This point has been somewhat misunderstood by some critics of the relationship between Osmond and Pansy. Kristin Sanner, for instance, argues that Osmond is an extreme instance of a nineteenth-century “phenomenon of men acting maternally,” though his excessive “attention . . . effectively stifles and objectifies [Pansy].” Kristin Sanner, "Wasn’t All History Full of the Destruction of Precious Things?" Missing Mothers, Feminized Fathers, and the Purchase of Freedom in Henry James’s The Portrait of a Lady, 26 HENRY JAMES REV. 147, 154-55 (2005). On Sanner’s view, in “positioning himself as the absolute authority, Osmond has guaranteed that Pansy will endlessly search for ways to please him.” Id. at 157. But this is not quite correct. Pansy does not endlessly search for ways to please Osmond; if she were committed to “pleasing” him at all costs, she would have hardened her heart to Ned Rosier. All Osmond has done with Pansy is ensure that he is, in fact, her “absolute authority.” She need not please him, but he has ensured that she cannot even conceive of defying him.
productions: his book on equity pleading. The first edition of the book appeared in 1877, as a supplement to a casebook on Equity Pleading that Langdell assembled for a course.\textsuperscript{96} The book offers a historical introduction to equity jurisdiction and procedure, followed by a series of chapters that sum up particular aspects of that procedure. Nowadays, Langdell’s \textit{Summary of Equity Pleading} is little read: it has been referenced in law reviews only twenty-five times since 1970, and is usually only mentioned in passing to substantiate some minor historical point about equity procedure. This is perhaps unsurprising, inasmuch as equity no longer exists as a distinct system of American law. Indeed, equity was already disappearing at the time Langdell wrote his book. The long ebb of equity as an integral legal regime began in 1848, when New York adopted the Field Code.\textsuperscript{97} Lawrence Friedman observes that the Code was “meant to end all special pleading . . . and to close the chasm between equity and law.”\textsuperscript{98} By 1900, pleading reform had become widespread at the state level, and law and equity were at least “imperfectly merged” in all but a handful of states.\textsuperscript{99} As Charles Clark said, the “union of law and equity” was the “foundation principle” of the codification reform movement.\textsuperscript{100} While equity held on longer in federal courts, it was eliminated in 1938 with the promulgation of the Federal Rules of Civil Procedure.\textsuperscript{101} By the 1950s, most law schools had done away with a separate course in equity.\textsuperscript{102}

\textsuperscript{96} \textit{Equity Pleading}, \textit{supra} note 12, at v.
\textsuperscript{97} \textit{See} Friedman, \textit{supra} note 92, at 294.
\textsuperscript{98} \textit{Id.}
\textsuperscript{99} \textit{Id.} at 297.
\textsuperscript{100} Charles E. Clark, \textit{The Union of Law and Equity}, 25 COLUM. L. REV. 1, 10 (1925).
\textsuperscript{101} \textit{See} Thomas O. Main, \textit{Traditional Equity and Contemporary Procedure}, 78 WASH. L. REV. 429, 469-74 (2003) (tracing the movement from the Federal Equity Rules, which were first set forth by the Supreme Court in 1822, to the enactment of a uniform pleading regime in 1938).
\textsuperscript{102} \textit{Id.} at 431; \textit{see also} Jack B. Weinstein & Eileen B. Hershenson, \textit{The Effect of Equity on Mass Tort Law}, 1991 U. ILL. L. REV. 269, 272 (1991) (observing that equity was only “taught as a separate course until the 1950s”).
Since the traditional system of equity pleading is so unfamiliar to most modern lawyers, it is hard to know what to make of Langdell’s treatise on the subject. Even a dedicated scholar of Langdell like William LaPiana has found himself puzzled by the text. LaPiana asks: “What did Langdell think he would accomplish by spending so much time on the historical development of equity practice?” LaPiana does not offer an answer to his question. Instead, he merely observes that while Langdell “[s]urely . . . believed his studies were important to the working of law,” their “importance is not as clear to us as it was to him and his contemporaries.”

By reading the book closely while bearing in mind the example of Osmond, we can arrive at a better understanding of why equity practice was important to Langdell. The key to understanding the subject’s significance to Langdell is offered by Ames. In his tribute to Langdell, Ames praised the book as the “only one of [Langdell’s] treatises that covers its subject” and as the “best exhibition of [his] great powers of historic insight.” More significantly, Ames wrote that “to Langdell belongs the credit of emphasizing, as no other writer has emphasized” the “importance” of “asserting that the power of the chancellor, as representative of the sovereign, to compel the defendant to do what he ought to do and to refrain from doing what he ought not to do, is the key to the whole system of equity.” Ames concluded that this view of the chancellor’s absolute power – his authority to compel people to do what they “ought to do” and refrain

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104 Id. One of Langdell’s contemporaries who proclaimed the book’s importance was Frederick Pollock, who wrote that while Langdell’s “little book on Equity Pleading . . . is still not much known among English lawyers . . . it goes to the root of the matter far more thoroughly than any other modern treatise known to us.” Frederick Pollock, The Late Professor Langdell, 22 L. Q. REV. 353, 355 (1906).
105 Ames, supra note 15, at 476.
106 Id.
from doing what they “ought not to do” – “dominated all [Langdell’s] writing and teaching of equity.”

With this as a starting point, we can take a close look at Langdell’s account of the rise of equity pleading. As Langdell explains, equity pleading derives from the practice of English ecclesiastical courts. In Langdell’s discussion of these courts, the chief emphasis is on the centrality of the judge, which he contrasts to the relatively limited role of judges in common-law courts. Langdell points out that, in the ecclesiastical courts, the trial “took place before the judge alone,” and observes that it was the judge who examined all the evidence and determined whether or not a case could go forward. Langdell goes on to remark that both parties and witnesses “could only be examined by the judge,” with neither the adverse party nor his representatives having “any right to be present” during the proceedings. Even the cross-examination of witnesses, Langdell notes, had to be conducted “by means of written interrogatories delivered to the judge,” and the “adverse party was not furnished with a copy of these, as it would enable him to tamper with the witnesses, and instruct them how to answer.”

The picture that emerges from Langdell’s brief account is of a system in which a single authoritative figure – the judge – held total sway over the proceedings. Having offered an outline of the ecclesiastical courts from which courts of equity emerged, Langdell proceeds to consider the “origin and nature” of equity jurisdiction and procedure. Langdell begins this discussion with an explanation of the source of the authority wielded by judges in equity. On Langdell’s account, that authority derives from

107 Id.
108 Equity Pleading, supra note 12, at 1.
109 Id. at 6-8.
110 Id. at 11.
111 Id. at 13.
112 Id. at 27.
the pure power of the sovereign: he states that “[f]rom time immemorial it was one of the prerogatives of the king to administer justice to his subjects.”

The king, Langdell says, could either “do [justice] personally,” or else “delegate the power to others,” as he saw fit. The king delegated some of his judicial power to civil judges. However, in some cases, the civil judges were unable to provide an adequate remedy to the parties who came before them. In those cases, “the king along could take effective cognizance” of the matter; it was from those cases “that the jurisdiction in equity arose.”

On this view, equity jurisdiction “consisted of that portion of the king’s judicial prerogative in civil causes which he had retained in his own hands, having never delegated it to his judges.” Though the king, obviously, did not “take cognizance of equity cases personally,” in “legal contemplation he did”; and the chancellor (who directed equity proceedings) thus “exercised the king’s prerogative directly, his judicial acts deriving their efficacy from the fact that, in legal effect, they were the acts of the king.”

This view of the chancellor’s power was succinctly expressed by a chancellor of the early seventeenth century, Lord Ellesmere, who said that “Equity speaks as the Law of God speaks.” On this account, courts of equity are the province of chancellors who rule with absolute, unquestionable authority. But how did this power to speak “as the Law of God speaks” accrue to the monarch, much less to the chancellors who theoretically exercised it on his behalf? Langdell doesn’t even hint at an answer to that question. From Langdell’s book, the reader could only conclude that the royal

113 *Id.*
114 *Id.*
115 *Id.* at 27-28.
116 *Id.* at 28.
117 *Id.*
118 *Id.*
prerogative to administer justice as the king saw fit was a brute fact, something which
required no historical grounding. Here, it may be instructive to compare Langdell’s terse
discussion to the kind of detailed historical account of doctrinal development that Holmes
was offering contemporaneously in his book The Common Law. In the opening lecture of
that book, Holmes devoted thirty-odd pages to a thorough unpacking of the early history
of liability, tracing it from ancient times, through Teutonic and Anglo-Saxon laws, and
into centuries of common-law decisions.\textsuperscript{120} By contrast, Langdell simply announces that
the king’s power to do justice existed “from time immemorial,” then immediately presses
on to an ahistorical elaboration of the full measure of the chancellor’s derivative
authority.

Although he claims that he will discuss the “origin” of equity jurisdiction,
Langdell in fact has no interest in assessing the precise origins of the chancellor’s
immense power, or in offering a historical account of that power’s growth. Instead, he
hazily stipulates that the power always existed, before moving on to what really interests
him: a lengthy depiction of the immense scope of the chancellor’s authority, which he
contrasts to the relative impotence of common-law judges. Langdell spends pages
describing the weakness of common-law judges, a weakness which, he suggests, was due
to their relative lack of authority in comparison to the chancellors of equity. Among
these weaknesses, Langdell indicates, was that under the common law the “parties to an
action owe no obedience to the court.”\textsuperscript{121} As such, Langdell states, a common-law court
could never redress a wrong done to a plaintiff “by laying a command upon a

\textsuperscript{120} OLIVER WENDELL HOLMES, JR., THE COMMON LAW, 5-38 (Little, Brown, and Company, 1909) (1881).
\textsuperscript{121} EQUITY PLEADING, supra note 12, at 31.
defendant.” 122 Langdell explains what he means by writing that “if a defendant has refused to perform a contract, a court of common law can only give the plaintiff damages, no matter how important to the latter actual performance may be.” 123 Similarly, Langdell observes that a common-law court would be incapable of making a “division or partition of property among several co-owners,” since doing so “successfully in any but the simplest cases” requires “that the court should assume control over the parties.” 124 Langdell concludes that common-law procedure was beset by various “defects,” which limited the authority of common-law judges, and suggests that these defects could “be effectually remedied in only one way”: that is, “by adopting a procedure [from equity] founded upon the principle of compelling litigants to do whatever the chancellor decided that by law they ought to do.” 125

In contrast to the common law, which suffered from the “defect” of limited authority, Langdell posits the nearly boundless power of the chancellor. He writes that “all the decisions of the chancellor” were embodied in orders which “always direct[ed] the party against whom they are made to do or not to do something.” 126 If a party were to “refuse obedience” to the chancellor’s decision, he would be “punish[ed]. . . for contempt of the authority of the court.” 127 And because the chancellor acted with the power of the monarch himself, anyone with the temerity to refuse obedience to an order of the chancellor was “guilty of a contempt, not to the chancellor, but to the king.” 128 Thus, “when the chancellor proceeds to punish [someone] for his contempt, he adopts a

122 Id. at 31-32.
123 Id. at 32.
124 Id. at 33.
125 Id. at 34.
126 Id. at 29.
127 Id.
128 Id. at 30.
mode of proceeding unknown to any mere court of justice, the delinquent being treated as a rebel and contemner of the king’s sovereignty.”

What Langdell celebrates – the seemingly boundless power of the chancellor – has traditionally been the ground for some of the most scathing critiques of equity. John Selden notoriously complained that while in law we “have a measure, and know what to trust to,” in equity the measure is entirely “uncertain,” because it depends wholly on the chancellor’s “conscience.” He said that equity, therefore, was a “roguish thing,” and summed up his objection to the system by writing that “[o]ne Chancellor has a long foot, another a short foot, a third an indifferent foot. It is the same thing with the Chancellor’s conscience.” But Langdell never suggests that there were, or even could have been, any drawbacks to the chancellor possessing such considerable authority. On Langdell’s view, it was an unqualified good for the chancellor to be invested with vast power, because that power made the chancellor more effective than any common-law judge could be. Langdell states that common-law judges could only “exercise their authority when holding a court,” since the “delegation of authority” is to the court itself, “and not to the judges individually.” By contrast, Langdell celebrates the substantially greater power of the chancellor. Inasmuch as the chancellor represents the king, Langdell writes, “his authority is personal, and may be exercised at any place within the kingdom, and equally in term time or vacation.” The equity courts, Langdell suggests, were clearly superior to the common law courts, because they had taken from the older ecclesiastical courts a superior mode of exercising judicial power.

129 Id.
130 See 2 William Blackstone, Commentaries *431-32.
132 Equity Pleading, supra note 12, at 30.
133 Id.
Langdell concludes that the “weakness of the chancellor’s jurisdiction is as
conspicuous as its strength; its strength being that it can always command the obedience
of suitors; its weakness being that it has substantially no resource beyond commanding
such obedience.”134 However, Langdell argues that this “element of strength” is a
“necessary” feature of the system, while its “element of weakness” is avoidable.135 In a
markedly nostalgic passage, Langdell writes that “[i]f the system were to be constructed
anew, probably its element of weakness would be eliminated from it.”136 Moreover, he
goes on to suggest that “if [the system] could be reconstructed in an enlightened manner .
. . it would probably be improved.”137 Realistically, Langdell concedes that the
resuscitation, in the late nineteenth century, of a system under which judges would be
able to command absolute obedience of the parties before them was “a thing which is not
at all likely to happen.”138 Nonetheless, his longing for the bygone system is evidenced
in the mere fact that he could suggest that an “enlightened” version of it, in which its
weaknesses could be “improved,” might be conceivable.

The nostalgia inherent in Langdell’s text becomes even more visible when we
contrast Langdell’s discussion with Roscoe Pound’s roughly contemporaneous account of
the decline of equity in the late nineteenth century.139 Pound also felt that equity was
more than a historical curiosity, refusing to concede that the system had become a mere
“historical appendage, something a little better than a vermiciform appendix of the law,
which the legislative surgeon must sooner or later remove.”140 However, Pound

134 Id. at 38 n.4.
135 Id.
136 Id.
137 Id.
138 Id.
140 Id. at 26.
concluded that the reform of equity was a positive thing, inasmuch as it consolidated the venues in which a remedy could be sought and thus created greater efficiency in the judicial system as a whole.\textsuperscript{141} “To declaim against the fusion of law and equity to-day,” Pound opined, would be “futile.”\textsuperscript{142} And while Pound felt that there were elements of equity which were worth preserving in the modern era, he expressed no regret over the end of an era in which a chancellor could say “that the law of his court was in no wise different from the law of God.”\textsuperscript{143}

Unlike Pound, who briskly dispensed with the extravagant claims of authority made by the chancellors on their own behalf, Langdell implies that the absolute authority commanded by the chancellor was entirely beneficial. Indeed, Langdell goes further and wistfully suggests that a “reconstructed” modern version of the equity system would be a good thing. This wistfulness is part and parcel of Langdell’s nostalgia for the pre-modern world, a nostalgia which was remarked upon even by Langdell’s devoted disciples. Joseph Beale, in his tribute to Langdell, conceded that Langdell “was believed to regard modern decisions as beneath his notice,” and observed that from the cases which Langdell relied on to teach his course on Equity, “one might have fancied . . . that Lord Eldon was still on the woolsack and that America was legally undiscovered.”\textsuperscript{144} A similar nostalgia for the pre-modern (and non-American) world is recorded in Ames’s

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\item \textsuperscript{141} \textit{Id.} at 35.
\item \textsuperscript{142} \textit{Id.}.
\item \textsuperscript{143} \textit{Id.} at 27.
\item \textsuperscript{144} Joseph H. Beale, Jr., \textit{Professor Langdell – His Later Teaching Days}, 20 HARV. L. REV. 9, 10 (1907). Schofield touches on the same subject in his tribute to Langdell, in which he offers a somewhat strained defense of his teacher from the criticism that Langdell’s “collections of cases . . . are confined too exclusively to English cases and deal with obsolete subjects.” Schofield, \textit{supra} note 47, at 284. Schofield acknowledges that the casebook on Equity Pleading is, of all Langdell’s works, the one “most exposed to this objection,” as there “is not an American case in the book.” \textit{Id.} Schofield’s proposed reasons for Langdell’s refusal to include modern cases are less important than the fact that Schofield felt compelled to make some sort of response to what seems to have been a widely shared contemporary criticism of Langdell.
\end{itemize}
essay on Langdell. Ames sets forth, as a characteristic anecdote about Langdell, a story which was recounted by one of Langdell’s fellow law students. In Ames’s telling, that fellow law student once came upon Langdell reading a “black-letter folio” in the library, and was struck to hear Langdell exclaim “Oh, if only I could have lived in the time of the Plantagenets!”

Why would Langdell have preferred to imagine that America was still undiscovered, or have wished to live in medieval England? In answering this question, it is helpful to recognize that this is a wish that Osmond would have appreciated. James tells us that Osmond “had a high appreciation of the British aristocracy,” and had “never forgiven Providence for not making him an English duke” (501). In Osmond, the wish to be a duke is, no doubt, partly attributable to his general longing for power. But there is a distinction, however subtle, between wanting to be a duke and wanting to be a sultan or pope. After all, though it is no doubt a fine thing to be an “English duke,” the position doesn’t quite involve the sort of universal deference that is accorded to the potentates Osmond elsewhere confesses to envying. Osmond’s particular longing to be an English duke is connected to his dream of “the aristocratic life,” which, for Osmond, entails living within traditions that are “old . . . consecrated, and transmitted” (635). Osmond, we are told, had an “immense esteem for tradition.” On his view, the “best thing in the world was to have [a tradition],” and he goes on to remark that “if one was so unfortunate as not to have it, one must immediately proceed to make it.” Given that belief, it is no wonder that Osmond longs to be a duke. To be a British aristocrat (preferably, of course,

145 Ames, supra note 15, at 470-71. The same story is recounted by Samuel Batchelder in his colorful reminiscence of Langdell. Batchelder, supra note 15, at 439. I do not know whether Ames took the anecdote from Batchelder’s account, or whether both heard it from a third party; for my purposes, the important point is that someone as close to Langdell as was Ames would put this forward as a characteristic Langdellian anecdote.
one of the most powerful ones: a duke, not a viscount) is to belong to the oldest, most continually transmitted tradition in the English-speaking world.

Neither Langdell nor Osmond was born into such a venerable and grandiose tradition. Langdell grew up on a small farm in New Hampshire, and was only able to attend prep school thanks to a scholarship; later, he was compelled to take a leave of absence from Harvard College because of “want of pecuniary support.”146 And while James tells us little about Osmond’s upbringing, he gives us enough information to make it clear that Osmond’s youth was lacking in the kind of “tradition” Osmond would come to crave. Osmond’s mother, we are told in passing, was the “American Corinne,” a minor author who had “pretensions to ‘culture’” (479).147 To be raised by a little-known expatriate poetess is hardly the grand tradition Osmond dreams of, making him vulnerable to the sardonic commentary of his sister, who likes to belittle Osmond’s “pretensions” (470). Osmond’s sister protests to Madame Merle that there was nothing “particularly grand in his origin” and that there had not been “any great honours or splendors in the family”; as his sister correctly remarks, she “might be supposed to know” if there had been.

Since they couldn’t be born into a tradition, both Osmond and Langdell proceeded to make a tradition of their own. In both cases, they fashioned traditions for themselves on the assumption that there was nothing worthy of “consecration” or “transmission” in contemporary American life. Osmond elects to focus his energies on medieval Italy;

146 Kimball, supra note 4, at 198, 220.
147 As one critic has summed up what we know about Osmond’s background: “his family is commonplace, his mother the ‘American Corinne’ . . . he is completely ordinary.” D. Buchanan, “The Candlestick and the Snuffers”: Some Thoughts on The Portrait of a Lady, 16 Henry James Rev. 121, 126 (1995); see also Kathleen Ann Lawrence, Osmond’s Complaint: Gilbert Osmond’s Mother and the Cultural Context of James’s Portrait of a Lady, 26 Henry James Rev. 52, 56 (2005) (arguing that James’s naming of Osmond’s mother as “the American Corinne” alludes to Transcendentalist author Margaret Fuller).
Langdell preferred pre-modern England. The important point to observe is that Langdell was as resistant to admitting anything from nineteenth-century America into his world as Osmond would have been. For Langdell, including an American case in his book on equity pleading would have been as inconceivable as including a painting by Winslow Homer in his “museum” of a home would have been for Osmond.

Langdell’s rare attempts to justify his unwillingness to turn his attention to modern American law – which is, after all, the kind of law that almost all of his students would practice upon leaving Harvard – are tortured and implausible. As we have seen, both Beale and Schofield acknowledged that Langdell had been criticized for not including a single American case in his work on equity pleading. In a footnote to that book, Langdell offers the following explanation of why it omits any hint of American caselaw:

The reader is requested to bear in mind that it is the object of these sheets to aid the student in acquiring a knowledge of the equity system as such; and with that view the writer confines himself to the system as it existed in England from the earliest times to the end of Lord Eldon’s chancellorship. Any attempt to notice the modifications of this system which have been made from time to time in the different states and jurisdictions of this

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148 Langdell was only slightly more open to the inclusion of American cases in his earlier casebook on contracts. Of the 336 cases that appeared in that casebook’s first edition, 310 were English. See Bruce A. Kimball, Langdell on Contracts and Legal Reasoning: Correcting the Holmesian Caricature, 25 LAW & HIST. REV. 345, 353 (2007).
country, or in England since the date last named, would interfere with the
main design, without any compensating advantage.\textsuperscript{149}

This alleged rationale for excluding all American cases makes little sense.
Langdell gives no clue as to why he believes that the equity system “as such” can only be
understood by reference to English cases handed down “before the end of Lord Eldon’s
chancellorship.” But even assuming that it was necessary to freeze the picture of equity
at a point in the relatively distant past to avoid complications, Eldon was chancellor until
1827,\textsuperscript{150} meaning that Langdell could have selected from American cases prior to that
date. Moreover, this passage skirts a fundamental contradiction. Is the English system of
equity pleading relevant to American law or not? If it is, then American cases must also
be valid instances of the principles inherent in the system “as such,” and should thus be,
in theory, no less useful than centuries-old English cases for illustrating the principles of
that system. On the other hand, if the English system were irrelevant to American law,
then it is unclear why Langdell would bother to teach the system to Harvard students who
would, for the most part, go on to become practicing American lawyers. One would
think that “teaching future American lawyers how to practice American law” might count
as a “compensating advantage” of including modern American cases in a treatise.\textsuperscript{151} The
lameness of Langdell’s explanation of why he confined himself to old English cases

\textsuperscript{149} \textit{Equity Pleading}, \textit{supra} note 12, at 52 n.1.
\textsuperscript{150} \textit{See} Rose A. Melikan, John Scott, Lord Eldon 1751-1838: The Duty of Loyalty 142 (1999).
\textsuperscript{151} An anonymous contemporary review of the book made a similar objection. After quoting this passage,
the reviewer observed that “[w]hy the study of equity pleading at Harvard University in 1877 should be
limited to the system as it existed prior to 1827 is not explained,” and remarked that it was “to be regretted”
that Langdell, “even at the risk of interfering with his ‘main design,’ should not have stated . . . the
principal changes of the last half century in equity pleading.” Book Review, 3 S. L. Rev. (n.s.) 316, 317
(1877).
suggests that this is a screen, covering the fact that Langdell simply did not want modern
American cases to sully the tradition he had chosen to occupy himself with.\footnote{A similar instance of Langdell’s refusal of the modern was recounted by Beale, who wrote that “[e]ven [Langdell’s] warmest admirers felt constrained to give up his course on Mortgages when at Christmas-time he was still dealing with the rights of tenant and mortgagee under a common law mortgage, and had not yet informed us that equity preserved a right of redemption after breach.” Beale, supra note 144, at 10. That doctrine was “fully established” by the late sixteenth century. See 1 RICHARD HOLMES COOTE, A TREATISE ON THE LAW OF MORTGAGES 12 (Sydney Edward Williams ed., 1904) (citing Langford v. Barnard, a case decided in 1594, for the proposition).}

We have examined a constellation of shared attitudes and dispositions held, I have argued, by both Langdell and Osmond. But this leaves the question: What can a person who holds such beliefs do? Both Langdell and Osmond were unwilling to actively push themselves or their views forward; both were dismayed by the vulgarity of modern life; both turned away from the America of their time. But neither of them was prepared to utterly divorce himself from the world, to give up entirely on “triumphing” in it, even if they insisted that triumph could only come on their own idiosyncratic terms. Under these exacting conditions, what form of action was open to them?

For both men, I would argue, the preferred form of action was collection. This is obvious in Osmond, who is preeminently a collector of beautiful objects. In the scene in which Osmond first appears, Madame Merle admires his “rooms,” with their “old cabinets,” “pictures,” and “tapestries,” and tells him that he “appear[s] to particular advantage” when he serves as a guide to his “own museum” (439). A bit later, when Isabel first visits Osmond, he captivates her by showing her his “treasures,” which leads Isabel to reflect that the “key-note” of Osmond’s character was his belief “that life was a matter of connoisseurship” (458-59). Osmond confirms this intuition of Isabel’s a few pages later, when he discloses to her that all the real “events of [his] life” have been
acquisitive: “getting an old silver crucifix at a bargain,” or discovering “a sketch by
Correggio” that had been painted over by a lesser artist (463).

The reader quickly comes to realize that, as Isabel remarks, “connoisseurship” is
central to who Osmond is. But what is less clear is why he is so invested in collecting
things. One possible answer is suggested in Madame Merle’s observation that they give
him something to talk about when he invites people to his home. But this cannot be a
significant motivation, inasmuch as Osmond despises nearly everybody: an attitude
underscored when he heartily endorses Madame Merle’s remark that “[s]ociety is all bad”
(436). Moreover, while we are told that Osmond is capable of giving extended lectures
on his artworks – his sister warns Isabel that Osmond may show her “all his bibelots and
give you a lecture on each” (454) – we don’t actually ever see him discoursing on any of
his possessions. Later in the novel, when Ned Rosier attempts to engage him in a
discussion of Capo di Monte porcelain, Osmond brusquely replies “I don’t care a fig for
Capo di Monte!” and asserts that he is “losing [his] interest” in “old pots and plates”
(569). His life has been devoted to acquiring precious objets d’art and arranging them in
his “museum” of a home, and yet he doesn’t seem to evince any particular interest in any
of those objects.

What, then, does “connoisseurship” mean to Osmond? What does he get out of his
collections, given that his contempt for society prevents him from showing his items to
others, and that he doesn’t seem intrinsically passionate about any of his possessions?
The answer is suggested in James’s comment that Osmond had an “air of refusing to
accept any one’s valuation of anything . . . and of preferring to abide by his own” (729).
It is in this refusal to accept other people’s valuations that we can understand the allure to
Osmond of collecting as a way of life. The point of a collection, for Osmond, is precisely the freedom it affords to ignore other people’s valuations and abide by his own. A collector is at liberty to collect anything he chooses, according to whatever criteria of value he prefers. And, of course, the objects in his collection passively accept his valuations of them. They don’t question or resist his arrangement of them, as Isabel questions and resists Osmond’s attempts to refashion her ideas. Nietzsche remarks that we “enjoy being in the open countryside so much because it has no opinion of us.” This is exactly why Osmond enjoys being in his “museum” of a home: his objects have no opinion of him. Furthermore, he has complete power over them. Having elected, for his own reasons, to extract them from the world and make a place for them in his rooms, he is free at a moment’s whim to discard any of them if it should cease to strike his fancy.

We can thus see the appeal of collecting for someone like Osmond. The activity combines the intoxication of absolute authority (over the fate of the objects in one’s collection) with the pleasure of feeling insulated from other people’s judgments and valuations. What matters, for Osmond, is not any particular “treasure,” but rather the activity of collecting itself and the sense of mastery it brings. As such, it is no surprise that collecting should be Osmond’s preferred mode of passing his time. But what does Osmond’s passion for acquiring pictures and tapestries tell us about Langdell?

This facet of Osmond’s character can afford us insight into Langdell, inasmuch as Langdell, also, was a serious collector. On the most obvious level, Langdell was a

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153 A number of critics have argued that Osmond actually has terrible taste, and that James pokes fun at his aesthetic pretensions by having him collect such unfashionable items as Second Empire clocks. See, e.g., Robert Weisbuch, James and the American Sacred, 22 HENRY JAMES REV. 217, 224 (2001) (arguing that “Osmond’s taste in art is atrocious”). But castigating Osmond for his alleged bad taste misses the point of his collection. For Osmond, a collection is an opportunity to disregard other people’s valuations; the fact that Second Empire furniture might have been deemed “in bad taste” by critics of his time (or ours) would be entirely irrelevant to him.

collector of books. Whereas Osmond accrued artworks for his home, Langdell accrued books for the Harvard library. As Ames observes, there were only 9,000 volumes in the Harvard library when Langdell arrived in 1870; during his time at Harvard, Langdell acquired ten times that number of books for the school. According to Eliot, the library was the first thing to which Langdell turned his attention after he “completed his reorganization” of the course of study. Nor was this a minor aspect of his tenure as Dean. As Eliot tells us, among Langdell’s main objectives as Dean of the Law School were “providing protection and safe management for” and “enlarging” the library, because Langdell “regarded a well-selected, well-kept, and ample library as the one essential piece of apparatus for any law school.” Of course, it may be said that this is an ordinary enough thing for any law school dean to believe. However, it is unclear why a Langdellian law school in particular – i.e., a law school in which every course would, ideally, be taught entirely out of a “printed [case]book” – would require the enormously expanded library Langdell acquired for Harvard.

Moreover, it is not every law school dean who feels, as Eliot says Langdell felt, that “books had a kind of sacrosanct character.” Eliot tells us that Langdell was insistent that the books in the Harvard library had to be “handled carefully” and that they could “never [be] defaced.” Indeed, Eliot states that the only time Langdell came to him to “procure[] the enforcement of his wishes by an exercise of [Eliot’s] authority” was in connection with the proper handling of library books. Langdell was so distressed

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155 See Ames, supra note 15, at 477.
156 Eliot, supra note 32, at 521.
157 Id.
158 See supra note 88 and accompanying text.
159 Eliot, supra note 32, at 522.
160 Id.
161 Id.
that other professors were sending books directly to the printers to have passages copied out for their own work, with the books coming back to the library “defaced” and “torn,” that he appealed to Eliot to intercede on the books’ behalf. It seems fair to say that this kind of extreme solicitude for books as physical objects is more characteristic of the fastidious collector than of the average academic bureaucrat.

But Langdell wasn’t only a collector of books. He was also, and more importantly, a collector of cases. To see the connection between Osmond’s habit of collecting objets d’art and Langdell’s habit of collecting cases, it is helpful to turn to the work of Henry James’s brother, the philosopher William James, who explains how the “instinct of ownership” is “fundamental” for educational purposes. Of special relevance is James’s observation that the “instinct of ownership” is “particularly important in connection with one of its special forms of activity, the collecting impulse.”

James writes that an object “possibly not very interesting in itself . . . will acquire an interest if it fills a gap in a collection or helps to complete a series,” and suggests that “[m]uch of the scholarly work of the world . . . would seem to owe its interest rather to the way in which it gratifies the accumulating and collecting instinct than to any special appeal which it makes to our cravings after rationality.” James allows us to see that Langdell’s desire to collect cases is a special instance of the general desire to collect anything. As James puts it, one person’s wish to gather “a complete collection of information, . . . to know more about a subject than anybody else” is much

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163 Id.
164 Id.
like another person’s “wish to own more dollars or more early editions or more engravings before the letter than anybody else.”  

As William James helps us to see, Langdell’s accumulation of cases was an instantiation of the same kind of “collecting instinct” that prompted Osmond to accumulate pictures and tapestries. And with that analogy in mind, we can come at last to Langdell’s most notorious defense of the case method: the 1871 preface to his casebook on contracts.  

For all its brevity, this is the text in which Langdell offers his most expansive discussion of the case method. In it, Langdell asserts that the only way for the “earnest student of law” to comprehend his subject is for him to attain “mastery” over the “principles or doctrines” which constitute the law, and claims that “much the shortest and best, if not the only way of mastering the doctrine” is by studying cases. However, while Langdell insists that studying cases is practically the only way of mastering the law, he is equally insistent that almost all cases are of no value for this purpose. As he says, the “vast majority [of cases] are useless and worse than useless for any purpose of systematic study.”

What is striking about this description of the case method is the bipolar attitude it adopts toward the value of cases. On the one hand, cases are everything: they are practically the only thing that is useful for the student of law who wants to attain mastery of his subject. On the other hand, cases are nothing: the “vast majority” of them are devoid of value for the student of law. But what does this mean? Why, exactly, would Langdell think that almost all cases were “worse than useless”?

\[\text{\textsuperscript{165}} \text{Id.} \]
\[\text{\textsuperscript{166}} \text{See CASES ON CONTRACTS, supra note 11, at v-vii.} \]
\[\text{\textsuperscript{167}} \text{Id. at vi.} \]
\[\text{\textsuperscript{168}} \text{Id.} \]
To unpack this claim, it may be helpful to consider the Langdellian approach to a typical legal rule and the cases that embody it. Take the so-called “mailbox rule” from contract law. A basic question of contract law is when a contract is assented to, if the parties are not negotiating face to face but instead communicating with one another by mail. If an offeree accepts the contract, is that acceptance binding on the offeror at the moment it is posted in the mail by the offeree? Or does it become binding only when it is actually received by the offeror? In modern law, there is a simple rule – the “mailbox rule” – which states that the acceptance is valid at the point when it is mailed.\textsuperscript{169}

At the time Langdell wrote his contracts casebook, there was no firm legal consensus as to the mailbox rule. Some courts followed \textit{Adams v. Lindsell},\textsuperscript{170} a pioneering English case of 1818 which established the rule, though Massachusetts courts of the time did not.\textsuperscript{171} In his summary of contract law, Langdell criticized \textit{Adams} and the mailbox rule.\textsuperscript{172} As Grey explains, Langdell’s understanding of contract law led him to conclude that the mailbox rule could not possibly be right, inasmuch as Langdell believed that “fundamental principles” of contract law dictated that an “acceptance must be received before a contract can be formed.”\textsuperscript{173}

Looking at this kind of split in authority allows us to understand what Langdell may have meant when he declared that cases might be “worse than useless” for purposes of studying the law. For Langdell, as Grey explains, law was a “science,” and the task of the lawyer was to “derive correct legal judgments from a few fundamental principles and

\textsuperscript{169} See E. ALLAN FARNSWORTH, CONTRACTS § 3.22 (3d ed., 1999); see also Grey, supra note 3, at 3-4 (discussing Langdell’s approach to the mailbox rule); Dennis Patterson, \textit{Langdell’s Legacy}, 90 NW. U. L. REV. 196, 198-99 (1995) (same).
\textsuperscript{171} See Grey, supra note 3, at 3.
\textsuperscript{172} SUMMARY OF CONTRACTS, supra note 11, at 11-12.
\textsuperscript{173} Grey, supra note 3, at 4.
On Langdell’s view, it followed from the “fundamental principles” of contract law that the mailbox rule could not be correct. Nonetheless, some cases, following the precedent of Adams, employed the mailbox rule. Those, presumably, would be the cases that Langdell would regard as “worse than useless.” They wouldn’t merely be “useless” – i.e., irrelevant or pointless – but would be worse than that, inasmuch as they would actively mislead students about the fundamental principles of the law.

Still, this doesn’t explain why, for Langdell, the vast majority of cases would be “worse than useless.” On this account, it should only be cases that embody the “wrong” rule which would be positively misleading to the student, and thus worse than useless. By contrast, any case which embodies the “correct” rule ought to lead the student in the right direction, and thus should be of pedagogic value.

How, then, can we make sense of Langdell’s dismissive attitude toward almost all cases? Again, it helps to call the example of Osmond to mind. For Osmond, as we have seen, the habit of caring to excess about things in general is entirely consistent with the tendency to dislike almost all things in particular. Osmond feels that objects are the only thing of value in life, while also feeling that almost all individual objects are worthless. When Osmond first introduces Isabel to his home, he tells her that while he has “got a few good things,” he doesn’t have what he “should have liked” (453). To indicate that this is not polite self-deprecation, Madame Merle – the one character in the book who thoroughly understands Osmond’s nature – underscores the remark by noting that Osmond “would have liked” only a “few things from the Uffizi and the Pitti.”

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174 Id. at 5.
In Osmond, this tendency to dislike most things is linked to his “sovereign contempt” for “everything in the world but half-a-dozen ideas of his own” (634). This is not mere arrogance on Osmond’s part. Rather, James suggests that Osmond’s prolific contempt is, in effect, a defense mechanism: it is his way of fending off the sense that he is merely an “atom” in a world that is “too large” (494). We can see the same nexus of ideas – the contemptuous dismissal of almost “everything in the world,” along with an indication that the world seems “too large” – in the preface to Langdell’s contracts casebook. After dismissing most cases as “useless,” Langdell goes on to assert that the “number of fundamental legal doctrines is much less than is commonly supposed.”\textsuperscript{175} Langdell does not bother to explain this assertion. He does not tell us what a “fundamental” legal doctrine might be, nor does he offer any examples of “supposed” fundamental doctrines which are actually insignificant, or merely duplications of other doctrines. Instead, he quickly goes on to assert that the “same doctrine . . . constantly makes its appearance” under “many different guises,” and that legal treatises to a “great extent” are merely a “repetition of each other.”\textsuperscript{176} And then, rather than unpacking either of those claims, Langdell announces that if legal “doctrines could be so classified and arranged that each should be found in the proper place, and nowhere else, they would cease to be formidable from their number.”\textsuperscript{177}

This sentence, I would suggest, is crucial to understanding the point of the case method for Langdell. First, consider Langdell’s insistence that doctrines need to be “found in the proper place, and nowhere else.” Langdell, as we saw in our consideration of his vision of the equity system, was nostalgic for a past in which an authoritative

\textsuperscript{175} \textit{CASES ON CONTRACTS}, \textit{supra} note 11, at vi.
\textsuperscript{176} \textit{Id.}
\textsuperscript{177} \textit{Id.}
figure could compel people to do only what was proper for them to do, and to refrain from doing what they should not do. He admired what he described as the “principle of compelling litigants to do whatever the chancellor decided that by law they ought to do.” Central to Langdell’s vision of law is the fantasy of a figure who has virtually unlimited power to implement his notions of what “ought” to be the case. In his wistful reconstruction of equity pleading, that figure was the chancellor, a man invested with the absolute power of the monarch and thereby enabled to impose his sense of what ought to be done on the litigants who came before him. Here, in his discussion of the case method, we see Langdell finding for himself a contemporary academic equivalent of the chancellor’s power. On Langdell’s view of equity, the chancellor deployed his authority to compel people to conform to his understanding of proper conduct. Likewise, Langdell developed a parallel view of pedagogy, according to which the compiler of cases deploys his authority to compel doctrines to conform to his understanding of their “proper place.”

Second, consider the last part of the sentence, in which Langdell asserts that cases, if only they could be properly classified and arranged, would “cease to be formidable from their number.” Why “formidable from their number”? What is it about the mere number of cases which should seem formidable? Again, it helps to return to the example of Osmond. As Isabel discovers, Osmond is a man for whom multiplicity is a threat. He has built himself a redoubt – physically, in his museum-like retreat in Italy; spiritually, in his rejection of almost everything and everyone he encounters – to protect himself against being overwhelmed by the multiplicity of perspectives at large in the world. Osmond copes with that multiplicity by selectively endorsing a tiny number of estimable objects while contemptuously dismissing the rest. By refusing to consider any

178 EQUITY PLEADING, supra note 12, at 34.
more than a few objects, ideas, and people which he deems worthy, Osmond reduces the
teesing world to a manageable residuum.

Langdell reacts to the multiplicity of cases in the same way. To cope with the
multiplicity of the world – what Langdell calls the “great and rapidly increasing number
of reported cases in every department of law” – Langdell endorses a few doctrines as
“fundamental” and a few cases as “useful and necessary.”179 And he, like Osmond,
contemptuously dismisses anything that falls outside the narrow purview he has carved
out for himself. On this view, most treatises are merely “a repetition of each other,“
while most cases are “useless and worse than useless.”180 The important thing to observe
is that this is not an inevitable response to the proliferation of cases. Rather, it is
Langdell’s idiosyncratic response to his feeling that such multiplicity is a “formidable”
threat which must be subdued. Like Osmond, he deals with that threat by, first, denying
the validity of most of the objects that constitute it, and second, by insisting that the
objects to which he assigns value must be “arranged” in their “proper place, and nowhere
else.”

It may be argued that the case method, whatever its psychological value for
Langdell, was also a natural pedagogical development.181 But a close reading of the early
part of the preface reinforces the impression that the case method had a deeper personal
significance for Langdell. There, Langdell offers an account of how he came to believe

179 CASES ON CONTRACTS, supra note 11, at vi.
180 Id. at vi-vii.
181 William Schofield, for instance, suggested as much in his tribute to Langdell. Schofield tries to explain
why Langdell’s system was not introduced prior to Langdell by arguing that the “true answer seems to be
that the time was not ripe for such a change.” Schofield, supra note 47, at 280. He asserts that the “books
of reports were not . . . so rich in illustrations that collections of cases could have been readily made,” and
that it wasn’t until the “surprising development of case law” in the later nineteenth century that the case
method was necessary or desirable. Id. at 280-81. The most obvious objection to this argument, of course,
is that Langdell had no interest in current cases. As Schofield himself concedes, Langdell’s “collections of
cases” were “confined” largely to “English cases” on “obsolete subjects.” Id. at 284. Given Langdell’s
preference for centuries-old English cases, he hardly had to wait for the time to become “ripe” with thickly
illustrated books of late-nineteenth-century reports.
that the case method was essential. He writes that even before he began his professorial
career, he held “a settled conviction that law could only be taught or learned effectively
by means of cases in some form.”\textsuperscript{182} He doesn’t attempt to explain or justify this “settled
conviction.” Instead, he tells us that he had “entertained such an opinion ever since I
knew any thing of the nature of law or of legal study.”\textsuperscript{183} Without further elucidation, he
proceeds to describe the difficulties he encountered when thrown into the work of
teaching: “I was expected to take a large class of pupils, meet them regularly from day to
day, and give them systematic instruction.”\textsuperscript{184} To accomplish this, Langdell claims, three
things were requisite. First, he insists that it was “necessary . . . that the efforts of the
pupils should go hand in hand with mine, that is, that they should study with direct
reference to my instruction.”\textsuperscript{185} Second, he says that the study needed to be “of the kind
from which [students] might reap the greatest and most lasting benefit.”\textsuperscript{186} Third, he tells
us that the instruction had to be “of such a character that the pupils might at least derive a
greater advantage from attending to it than from devoting the same time to private
study.”\textsuperscript{187}

Langdell sets these out as if they were self-evident desiderata, but it is far from
obvious that this trio of objectives would occur naturally to any novice teacher. The
second objective – that students should reap the greatest “benefit” from the material –
may be set aside as trivial. Any teacher would want his students to get the “most lasting
benefit” from his instruction, but that generic (if laudable) desire doesn’t dictate any
particular methodology. When we pause to consider Langdell’s first and third

\begin{footnotes}
\footnote{\textsuperscript{182} \textit{CASES ON CONTRACTS}, \textit{supra} note 11, at v.}
\footnote{\textit{Id.}}
\footnote{\textit{Id.}}
\footnote{\textit{Id.}}
\footnote{\textit{Id.}}
\footnote{\textit{Id.}}
\footnote{\textit{Id.}}
\end{footnotes}
requirements, however, they come to appear much more idiosyncratic and strange. In particular, they are remarkably autocratic. Langdell’s first criterion for any pedagogy is that it should necessitate that his students’ efforts “go hand in hand with mine.” The priority of the personal note here – the requirement that students “study with direct reference to my instruction,” and the insistence that students must derive “greater advantage” from attending to his instruction than from any merely “private study” they might carry on without him – needs to be recognized.

This repeated insistence that it was “necessary” for his students to follow his lead undercuts Langdell’s renowned proclamation that law is a “science.” Thomas Grey has argued that, for Langdell, legal science was analogous to geometry. But it is difficult to imagine an instructor of geometry starting from the first principle that his teaching must of necessity compel his students to “go hand in hand” with his instruction. Nor is it clear that a conventional math teacher would find it unacceptable for his students to learn as much from “private study” as from attending to classroom instruction.

In short, if we take Langdell at his word about law being a “science,” then it is hard to see why he should have been so passionate about how his students learned the principles of that science. For a teacher of geometry, the crucial concern is that his students master such principles as the Pythagorean theorem. Whether they learn that theorem by reading Euclid on their own, or by hanging on every word of his lectures, should be a matter of indifference to the teacher. The only thing that should, in theory, matter to a teacher of a science is that the principles of that science are comprehended by his pupils, regardless of the path by which they arrive at that comprehension.

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188 Grey, supra note 3, at 16.
When one dwells on the goals set out in the preface, it is hard to avoid the conclusion that they are more expressions of Langdell’s personal need for authority than positions which derive naturally from neutral pedagogical requirements. Moreover, the ambition Langdell describes for his pedagogical relationships with his students is disturbingly akin to the ambition Osmond had for his relationship with Isabel. Isabel realizes belatedly that Osmond had intended that “[h]er mind was to be his – attached to his own like a small garden-plot to a deer-park” (636). It is important to note, as James observes, that Osmond “didn’t wish her to be stupid.” “On the contrary,” James remarks, “it was because she was clever that she had pleased him.” But Osmond “expected her intelligence to operate altogether in his favour.” He wanted Isabel to be “richly receptive,” but only to his ideas. He expected her to “enter into his opinions, his ambitions, his preferences.”

So, too, Langdell expected his students to enter into his opinions. As we have seen, Langdell also wanted students to be clever, not stupid: that was the only way they could be effective promulgators of his views. But he wanted them to be receptive of his ideas, to “go hand in hand” only where he led them. John Henry Schlegel has argued that the real innovation of Langdell’s pedagogy was its replacement of the “monologue of justification that is the lecture” with the “dialogue that is the case class.” On Schlegel’s view, this move allowed Langdell to succeed in “engaging each student in an enterprise that implicated that student into jointly derived understandings of the appropriateness of the rules of law.” Schlegel thus argues that Langdell’s case method

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189 See supra notes 91-93 and accompanying text.
191 Id.; see also John Henry Schlegel, A Damn Hard Thing to Do, 60 VAND. L. REV. 371, 375 (2007) (“Langdell’s case method class changed [the] lecture-based monologue of justification into the
served an important cultural role, by providing a more effective means of justifying the “existing rules of law to the nascent members of the legal elite.” Whether or not this is an accurate description of the cultural work done by the case method in general, it points toward the particular work Langdell wanted the case method to do for him. The case method, as practiced by Langdell, engaged some of his students in an enterprise that implicated them in Langdell’s understanding of the “appropriateness” of certain rules. As a close reading of the preface shows, this was Langdell’s goal from the start. And, of course, he achieved his goal: he managed to captivate a small, but sufficient, number of his students, who entered into his opinions about the law, his ambitions for pedagogical reform, and his preferences for a particular understanding of the legal system and its proper teaching.

The most significant difference, finally, between Osmond and Langdell is that Langdell succeeded where Osmond failed. Isabel rejects Osmond, refusing to attach her mind to his. By contrast, Langdell managed to attach to himself followers like Ames, Beale, Schofield, and Wambaugh: “disciples” who were suffused with an “enthusiastic faith” for his ideas, and who came to feel themselves “responsible” for the success of his views. Thanks to them, Langdell experienced the triumph that eluded Osmond.

CONCLUSION

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193 Ames, supra note 15, at 479.
Today, the case method is ubiquitous in American legal education. But when Langdell introduced it in the 1870s, there was enormous resistance to Langdell’s innovations. Before the end of Langdell’s first term using the case method, his class had dwindled to the point that there were only seven students left, who went by the name “Langdell’s Freshmen.”\(^\text{194}\) Langdell’s system was remarkably “unpopular,” to the extent that “most of the students,” as well as Langdell’s colleagues on the Harvard faculty, regarded it as an “abomination.”\(^\text{195}\) Langdell’s teaching method was so strongly disliked that a new law school at Boston University was founded to provide a local alternative for students who wanted no part of Langdell’s newfangled approach to pedagogy.\(^\text{196}\) Even at Harvard, ten years had to pass before anyone other than Langdell and his first disciple, Ames, would employ Langdell’s methods in the classroom.\(^\text{197}\) A typical response to Langdell was that of John Chipman Gray, who began teaching at Harvard a year before Langdell joined the faculty.\(^\text{198}\) At first, Gray was staunchly opposed to Langdell.\(^\text{199}\) In a letter to Charles Eliot, Gray wrote that Langdell’s “intellectual arrogance and contempt [was] astounding,” and suggested that a “school where the majority of the professors shuns and despises the contact with actual facts, has got the seeds of ruin in it and will and ought to go to the devil.”\(^\text{200}\) In the course of time, however, Gray came around to

\(^\text{194}\) 2 Warren, supra note 1, at 373.
\(^\text{195}\) Id.; Centennial History of the Harvard Law School, 1817-1917, at 35 (1918).
\(^\text{196}\) See Friedman, supra note 92, at 470; Stevens, supra note 4, at 74 (observing that the law school at Boston University was founded in 1872 “by those who disagreed with the appearance of the case method at Harvard”).
\(^\text{197}\) Centennial History of the Harvard Law School, supra note 195, at 35-36.
\(^\text{200}\) See Duxbury, supra note 198, at 50 (quoting a letter from John Chipman Gray to Charles Eliot, Jan. 8, 1883).
Langdell’s system, and would even compile his own casebook on property.\textsuperscript{201} Similarly, another of Langdell’s colleagues, James Bradley Thayer, initially refused to go along with Langdell’s method.\textsuperscript{202} But by the late 1880s, Thayer also had become a committed Langdellian, employing the case method and compiling casebooks in constitutional law and evidence.\textsuperscript{203}

Just as Langdell’s colleagues succumbed to the case method, so too did American law schools. By 1914, an observer of American legal education could write that, despite the great “opposition and antagonism which Langdell’s method of legal instruction encountered at the outset,” it had grown to be viewed by “many American lawyers” as the “only conceivable and successful method” of teaching law.\textsuperscript{204} Fifty years after Langdell first introduced the case method at Harvard, it had become the standard model for legal education throughout the United States.\textsuperscript{205}

Although Langdell’s method has been entrenched as the norm in American law schools for the last century, it has not been without its critics. Lawrence Friedman sums up many of the objections to the case method by noting that it “severed the cords, already tenuous, that tied legal study to American scholarship, and American life.”\textsuperscript{206} Friedman observes that Langdell’s system “purged from the curriculum whatever touched directly on economic and political questions,” and laments that Langdell “brought into the

\begin{footnotes}
\item[201] See Steve Sheppard, The History of Legal Education in the United States 30 (noting that Gray eventually “caved in to the new method”).
\item[203] See Sheppard, supra note 201, at 30 (describing Thayer as the “last Harvard teacher of the era to succumb to the case-method allure”).
\item[204] See Redlich, supra note 75, at 9.
\item[205] See Kermit L. Hall, The Magic Mirror: Law in American History 220 (1989); see also Friedman, supra note 92, at 470-71 (describing the way Langdell’s method spread to other law schools in the late nineteenth and early twentieth centuries).
\item[206] Friedman, supra note 92, at 471.
\end{footnotes}
classroom a worship of common law.”207 By equating law “absolutely with judges’ law,” Friedman argues, Langdell insured that legal education would be utterly “divorced from living law and apathetic toward issues of social policy.”208

But even those, like Friedman, who deplore the consequences of the hegemony of Langdell’s views have taken his account of what he was doing at face value. Friedman accepts Langdell’s “boast . . . that law was a science,” while mocking Langdell for embracing a science of law that was like a “geology without rocks,” inasmuch as it ignored everything in society but reported cases.209 Similarly, John Henry Schlegel disapproves of the way Langdell’s case method led to an “intellectually impoverished” legal education by stripping legal study of political and economic theory.210 Nonetheless, Schlegel does not call into question Langdell’s claim that law is a “science”; nor does he ask why Langdell was so insistent on the importance of appellate cases.211

By attending closely to what Langdell actually said, and by setting his introduction of the case method in the larger contexts of Langdell’s career and the perspective on that career afforded by James’s portrayal of Gilbert Osmond, I have attempted to extend the critique of Langdell offered by scholars like Friedman and Schlegel. As I have shown, Langdell’s career at Harvard was shadowed by his disaffection from contemporary American society. Central to Langdell’s thought was his nostalgia for an absolute conception of power, an unquestionable source of authority which he found lacking in the America of his day. That nostalgic longing for

207 Id. at 471-72.
208 Id. at 472.
209 Id.
210 Schlegel, supra note 7, at 323.
211 Id. at 322-23. While Schlegel is caustic about Langdell – arguing that his “ideas about law were ultimately incoherent,” and saying that he was in fact “mad” – he doesn’t suggest any ulterior motives behind Langdell’s self-presentation. Id. at 322.
unquestionable authority, which can be seen so clearly in James’s depiction of Osmond, also lies at the base of Langdell’s writing on equity pleading. More importantly, it can also be seen to motivate his introduction of the case method. By seeing what was at stake for Langdell in his pedagogical innovations, we can better come to terms with their continuing influence on American legal education.