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The WHY of It: Langdell's Generation Speaks to Today's Law Students

David S. DeHorse
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Author’s Galley Proof

DAVID S. DEHORSE

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David S. DeHorse, J.D., LL.M., retired from the United States Army before studying the law. He wrote this book under his personally derived theory that most law students could actually develop an ability to feel the original 1870 Case System of Legal Study before walking into a law school classroom by reading about its idealized form. The author believes his personal learning would have been significantly elevated under the contemporary Case System derivatives he experienced had he read this book before beginning his legal studies. But that is the author. Each reader must determine for themselves how this book applies, and is used, in any academic pursuit, or any other human endeavor, if at all. Put simply: feel free to read and apply this book at home, or anywhere else, wherever that may be, at your own risk. No law student, or any student, should consider this book a substitute for timely consultation with one’s professor to resolve doubtful points about the law, or program of study, once classes begin.

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Photo credits—Front cover: Christopher Columbus Langdell, founder of the Case System of Legal Study, by Frederick P. Vinton, 1893. Back cover: the Dane Hall Library Stacks at the Harvard Law School. The Centennial History of the Harvard Law School, 1817-1917, is gratefully acknowledged as the source of both photographs (frontispiece and facing page 98). The Appendix A and B photographs are also Centennial History extracts: John Chipman Gray in Second Lieutenant’s Uniform (facing page 206); William Albert Keener (facing page 222); C.C. Langdell about 1874 (facing page 228); James Bradley Thayer about 1874 (facing page 276); James Barr Ames in 1874 (facing page 176); Austin North (facing page 80); Dane Hall – The Working Library (facing page 94); and the Austin Stacks in the early 1890’s, with “Mr. Ames’ Desk in the foreground, covered with books just as he often left it” (facing page 180).

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Printed in the United States of America
For my parents, Charlotte and Douglas, and my daughter Joanna.

Memorial Day — 2010
My Glance Back

A painting tucked away on a back wall caught my eye the first time I visited the Wisconsin Veteran Museum in Madison. It depicts the Wisconsin 8th Infantry moving forward at Vicksburg on May 22, 1863; I've visited it many times. The artist portrays a sea of swirling action that repels the sensibilities while drawing the viewer into a desperate human experience: smoke and carnage are everywhere, the column of infantry is packed tightly together as they move forward, young lieutenants with swords drawn keep the line steady as the colors and guidon snap in the air. The Regimental mascot, Old Abe, is in the middle of it all carried forward by the men on a wooden perch without a tether. The small eagle seems too fragile to be in that place, and yet it is fitting. He is a study in understated proportions: wings slightly extended as if preparing to take flight but his talons resolutely grasp the perch, his beak opening in a cry muted against a clamor we cannot hear. His eyes are piercing and in them the sense of place, event, personage, even identity become blurred and ultimately lost in deeper meaning. Something has occurred forward of the line that we will hopefully never again be able to imagine: a young recruit gasps in horror as others recoil in disgust, shock, a smile laced with lucidity; older veterans simply hunch their shoulders tighter the way they do, giving nothing more than “the look.” While the line does not waiver it is neither straight nor clean nor perfect, it simply is. Although frozen in time the line moves through time propelled by an unseen force that keeps them together, and moving forward. I’ve walked the ground at Vicksburg where small markers no more than 30 yards apart chart the final steps of many hundreds who felt that force as they heard Old Abe’s battle cry amid the clamor. On a very different day, long before I knew this painting existed, I reached the top of the small hill, turned, and sat awhile. Looking back at the markers scattered through the forested cathedral, I may have heard the little eagle’s battle cry. I am sure I saw the soul of the nation.

David S. DeHorse, 2005-2010
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Acknowledgments

I will always carry a debt of gratitude for the encouragement of professors Jong Goo Lee and Joo-Hwan Chung of the Dankook University Law School, Republic of Korea to publish the essay that formed the basis for this book. That essay, also titled “The WHY of It,” was published in the December 2008 edition of the Law Review of Dankook University, Volume 32-2, by the Institute of Legal Studies, Dankook University, Republic of Korea. I met Professor Lee while he was researching and writing on contract law in Madison; Professor Chung is published in the area of trade secrets.

While I feel certain Professor Langdell would decline acknowledgment even today, it must be given, but how? Perhaps by recognizing the first seven students that struggled through his new system, helped him refine it, and earned the title of “Langdell’s freshmen,” or some tribute for Charles Eliot who appointed him. Each would be appropriate, but not completely so.

I think the right ones to acknowledge are his sisters Hannah and Mary, who provided constant encouragement, and more. According to the Centennial History referenced in the first footnote, Hannah, “sent him occasionally small sums of money out of her earnings, saying to herself each time . . . ‘This is the happiest day of my life.’ ” Mary, “…also made him small gifts. It is quite possible that, without the encouragement and touching devotion of his sisters, each of whom, like himself, worked for a time in a mill, he might not have realized his ambition for a college education.” Since Harvard effectively gave the Case System to the world in the Centennial History, I will also make large contributions to support education generally, and legal education specifically, from any royalties I receive. I really like the Case System, and respect what I see as open generosity; keeping that going is the right thing to do, that’s all. So, if you’re reading this you’ve already bought the book and the idea of donations did not affect your decision; instead, you really want to feel the Case System. That’s the spirit! You know, the quotes you’re going to hear by Langdell’s Generation are really wonderful; if you enjoy them as much as I have, that will be Hannah and Mary’s real legacy.
Introduction

I wrote this book to give new law students, the 1Ls who tread rarefied ground across the nation each fall, a richer understanding of the first hour in their very first law school class. The perfect reader is one preparing for law school who has heard rumors about the Socratic Method. Everybody knows about this, right? The professor will enter the room and immediately ask questions about the 80-page reading assignment, and you might get to respond! One student might remain under the spotlight for a single minute, another for much longer.

Some will react as coolly as if it were the most natural thing in the world, others will be confused, some might appear angry, many will be embarrassed. But one thing is certain: in that first class everyone will experience such reactions as the professor frames his or her next question. What might not be known is that the questioning instilling those reactions is an ancient technique adapted for use in the Case System of Legal Study. The Case System was introduced by Professor Christopher Columbus Langdell at the Harvard Law School in 1870. Yes, some of what you are about to experience began well over a century ago.

This book sketches the Case System’s contours by releasing the long silent voices of Langdell’s Generation. Professor Langdell said little about his idea, so this book is what some would call today a 360° evaluation painting the picture of an idealized Case System in the words of professors, lawyers, and jurists who first saw it, turned it over, used it, and then wrote about it between 1870 and 1918. As such you will hear the same observations of the system described differently, by different voices, in differing context. This is intended. However one studies law using a collection of appellate level cases today, the idealized 1870 Case System is trying to get in the room, and Langdell himself is going to ask you to feel the living growth of the law using his system. You can prepare in many ways, but I believe you need to feel the Case System to really understand how it asks you to feel the living growth of the law. Using different voices promotes this, and you never can tell which one will trigger understanding, and thus learning.

That is what I suggest this book can do.
How should this book be read?

**Interact.** The footnotes are on each page to encourage immediate interaction with Langdell’s Generation. Think of my words as nothing more than a sort of window into their world. Studying appellate level cases will be easier since the footnotes are fewer. But since the *Case System* expects one to sort through lengthy materials to actually *feel* the living growth of the law, this book introduces you to that process in about the same number of pages as the readings for one evening, roughly. Interact with these voices and their messages will stay with you beyond your exams.

**Listen.** This book does not define legal education as it was or is. But make no mistake, the voices in this book describe reality, this is not fiction. And even though my impressions, writing ability, and weighing all factor into this work, I have no doubt students in American law schools today will see events like those portrayed in this book unfold before their eyes *this fall*. That is how significant Langdell’s innovation is, not was. Because I attempt to portray the *idealized* Case System, there are inconsistencies between the voices as important to note as any agreement. Two or three opposed system use, another was neutral, but each are included because some of what they say is important to the full picture. Listen to each voice but adopt a critical posture. Begin with the idea that you know everything about the Case System and you doubt that it works or, perhaps, that it is still relevant. Really. Compare, contrast, stand everything you hear up against your knowledge and experience. I strove to maintain true to contextual meaning, and believe I succeeded. But like one of the voices you will hear, I constantly see new and better things in these words. You will too. Know that the impressions and interpretations of the voices being released from the dusty pages of old law books in this work are my own. Similarly, any misinterpretations and misimpressions are my own.

**Don’t read in.** The voices you are going to hear have a conversational quality that can be misinterpreted. This informality is characteristic of most of the early law reviews I have read, so this impression was informed by more than the voices in this book: no doors were closed. This generation was striving to understand something entirely new that appeared promising to their common undertaking, and they wanted us to understand it. They are
refreshingly candid. And while they brush lightly against other concepts and methods here and there for comparative purposes, I had no sense of any air of superiority in relation to other legal systems, the perspectives or beliefs of others, or anything else of a negative nature. I would not have listened to them, or undertaken this work on behalf of any student, had that been the case.

*Try to feel it.* This book is intended to be read by 1Ls before their metamorphosis begins in their first class. The legal jargon that will soon shape your thought patterns is minimally applied. Similarly, the voices from Langdell’s day are of the same form: clear, direct, and unadorned. My words should only be taken as the left and right limits of theirs as I transport the idealized Case System from their day into yours. Try to feel it. Depending on your academic background and, frankly, your personality, one or more of the available study guides will probably be useful. The voices in this book will too, but in a completely different way. This book is less about a method for cutting your path through some stand of trees as much as smelling, hearing, seeing, and sensing the path you must navigate. *It’s about feeling the path.* Here’s an example: imagine yourself in a crowd of 75,000 watching a soccer match. It is hot and you are being jostled, but a breeze and the late afternoon sun feel good on your face. Then, out of nowhere, some player performs a feat that is so incredible every single spectator gasps as one as the same thought comes to each: “I have just seen a human being reach so far beyond himself that he touched the very essence of purity.” Now, what I’m talking about is not the movement of air in the stadium you feel when the crowd erupts in applause. By “feel it,” we’re going for your gasp, the one that comes from deep inside, the one that only you know. One of these voices will probably do that for you, just like some did for me.

I think each must feel the Case System to get the most learning and value out of law school. One should begin feeling it by simply attending classes, but there is a matter of timing here. I think the best time is *before* the first question is posed, rather than two months down the road. But that’s just me. I’m sure you already know your professors are going throw materials at you representing several different learning theories, and all for good purposes. This book is about what to anticipate and prepare for when anything resembling a collection of appellate level cases
comes out. I wish I had heard the voices in this book before I began law school, I believe you’ll be glad you did.

**Knock down walls.** The dominant law school teaching style before Langdell was lecturing. Law students, including Langdell himself, essentially memorized and repeated back the work and conclusions of others, just like other students in the pre-Civil War decades. When Langdell introduced the Case System he flipped the status quo on its head quite purposefully by developing the capacity for individual thought *in each student*; an idea that was not broadly accepted. I suspect the Case System’s most visible component, what I call Socratic inquiry because I think this better captures its essence, obscured the system’s larger moving parts forming a barrier to acceptance that endured for decades. Now don’t misunderstand, lecturing was and is an educational cornerstone. Langdell simply called for greater balance, a generation later someone called for greater balance to his idea. We question, and knock down, walls constantly, and the first are often our own. The voices in this book used the Case System to knock down educational barriers worlds away from Langdell’s classroom. Wherever you are embrace its Socratic inquiry component to improve your legal education, and you’ll knock down an ageless wall suggesting you cannot, or should not, think.

**Flexibility.** Understand that the Case System is to be individually adapted by each professor, so after almost a century and a half no two classroom experiences will unfold exactly as described in this book. Think of the impression you form of the *idealized* Case System by reading this book as the historically earliest case, the most prominent one, in a line of cases, extending from Langdell’s classroom to yours. The student challenge is to prepare for Langdell’s first question, to identify the Case System when it appears as distinguished from other forms of legal study, engage in the Socratic inquiry process, and then undertake any post-class effort you deem appropriate, including outline preparation. A flexible mind is an asset.

**Observe.** One hundred and twenty-nine years after the *Case System* was first introduced, and a thousand miles from where it was introduced, I saw some of my law school classmates using student techniques you will hear described in this book, and professors using the techniques described by other voices. I
anticipate that by the time you reach Part 4, the many voices you will have heard are going to blend into a single unitary voice that will serve as a useful guide even after more than a century. But, of course, each must decide how to use the system, and this book, to improve his or her learning.

**Be receptive.** This book does not enter into any pedagogical debate. I write as one who appreciates Langdell’s system and found information about it the modern law student will not normally see absent a great deal of personal research. Receptivity to voices over a century old will help you feel the system and enhance your learning.

**Did I say Interact?** If you use this book to prepare for law school have a basic dictionary and highlighter at hand for interesting words and passages, you can add a law dictionary later. In this moment just focus on *feeling* the system, find its contours. These tools will help, particularly highlighting any interesting words. Why? Interaction. If you thought you’d skip to the Index to find key concepts and, well, save time, this book doesn’t work that way. And neither does the Case System. You, personally, must interact with the materials. I left the Index bare bones and built in blank spaces to promote this. Flesh out the Index based on *your* interaction with Langdell’s Generation: dissect their views of legal education, impressions of the Case system, thoughts about studying law, ideas about the faculty, anything you deem important. Think about their words and make the Index your own. Interacting with the text like this will help you feel it. This book is about a *beginning*. Langdell’s Generation wanted to impress this on us to bridge generations. Their words are important. For you, the end of this book, its Index, is your beginning. If you want one of real value you’ve got to build it yourself.

**The mental image.** This roadmap is important for reading efficiency. Legal education evolved over the course of many centuries. In 1870 Langdell and his generation established a pedagogical innovation that elevated the law school experience most of the way up to today’s modern graduate level undertaking. A strong sense exists of their conviction that the educational outcome needed to extend much farther and further than the classroom, and the vision they shared would promote this. This is the “eyes on the horizon” image to keep in mind. A *working*
understanding of the Case System can come from searching for system component parts and their contours within this framework. And even if reading is not your dominant learning preference the straightforward nature of the way Langdell’s Generation speaks and the unmistakable motive transparency in their words will probably cause you to come around to their way of thinking. I did the first time I picked up the Centennial History, but I knew the system worked from an earlier life applying derivatives that probably held no more than two degrees of separation from Langdell’s classroom. But even if I had not had those life experiences, even if I totally disagreed with Langdell, I believe I would still come to feel his system by the way his generation describes it. But that’s just me.

Slow down. This book has three building blocks: this Introduction, five text parts, and an Afterword. You cannot scan this book or read it too quickly. You must read it all in order and reflect on the words of Langdell’s Generation for understanding, not mine. In this age of unrestrained stimuli where we expect and even demand instantaneous gratification, this is the time to slow down. Really, slow down. Fast comes later.

This is not a perfect book, but it will give the reader a better understanding of what is expected in law school today. I also suspect that the voices in this book have messages applicable to other graduate level students, even in disciplines far removed from the study of law, but they’ll have to come to grips with this themselves. For anyone who reads this book, anywhere, at anytime, in any context, the moment you link something you heard Langdell’s Generation say, to something occurring in front of your eyes, another of Langdell’s freshmen is born. When this happens to you on the rarefied ground that only the 1L treads, and it will, consider yourself privileged, but also burdened in equal measure. And here’s something for later: if any of the words you’re about to hear come to mind as you’re considering some important future decision, large or small, personal or professional, weighty or light, and they will if you can slow down now, I think you join Langdell’s Generation. Enough for now, let’s go meet Langdell’s Generation.

—DSD
The *WHY* of It
Part One

Questions

The generation that will influence the American legal landscape in the second half of the 21st century began their careers in hundreds of law school classrooms last fall. Their initiation unfolded as it has since the late 19th century, with questions: “‘Mr. Fox, will you state the facts in the case of Payne v. Cave?’ “Mr. Fox did his best with the facts of the case. “‘Mr. Rawle, will you give the plaintiff’s argument?’ “Mr. Rawle gave what he could of the plaintiff’s argument. “Mr. Adams, do you agree with that?’ 1

The form of inquiry was expected by some, but others sought answers: “…‘What do we care whether Myers agrees with the case, or what Fessenden thinks of the dissenting opinion? What we want to know is: “What’s the law?” ’”

The interaction sketched above reflects an ancient teaching method called Socratic inquiry that is still used in legal education today. Socratic inquiry is central to the Case System of legal study.

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1 Harvard Law School, Harvard University, The Centennial History of the Harvard Law School 1817-1917 34 (Harvard Law School Association 1918)[hereinafter Law School, Centennial] citing Samuel F. Batchelder, Christopher C. Langdell, 8 Green Bag 436, 440 (1906) (with this exchange, “the case-system of teaching Law had begun.” This is the most recent in a trilogy of references produced by Harvard beginning in the late 19th century that anchor this book. Together they trace the borders of institutional development including the Case System’s introduction and first decades. The voices we hear describing Langdell’s system here, like all others in this book, are the original sources. Together they paint a first-hand impressionist portrait of the original, idealized, Case System. And as a centennial history approaching its own centennial, this trilogy reference is a refreshingly open window into an earlier day).

2 Id. at 35 (reflecting new anxiety, Langdell’s “attempts [to use the Case System] were met with the open hostility, if not of the other instructors, certainly of the bulk of the students. His first lectures were followed by impromptu indignation meetings”).
introduced by Professor Christopher Columbus Langdell in 1870.\textsuperscript{3} Langdell is so associated with the System that it bore his name in the early days: the \textit{Langdellian System}.\textsuperscript{4} Because it is shaped according to professorial instinct, the professor will initially wield complete ownership and control.\textsuperscript{5} But since the first answer is the tip of a spear serving the student’s professional pursuits for many decades, ownership is transitory by design. For Ms. Rawle and

\textsuperscript{3} \textit{Id.} at 228 (Langdell was appointed the Dane Professor of Law in January of 1870, and first Dean of the Law School that September. \textit{Id.} He practiced in New York City between 1854 and 1870 where “[h]e spent much of his time in the library of the New York Law Institute.” \textit{Id.} at 227. As a law student Langdell, “possessed, as he afterwards said of himself, “the virtues of a slow mind.”” \textit{Id.} at 225).

\textsuperscript{4} \textbf{ASSOCIATION COUNCIL, HARVARD LAW SCHOOL ASSOCIATION, REPORT OF THE NINTH ANNUAL MEETING AT CAMBRIDGE, JUNE 25, 1895 80} (Harvard Law School Association 1895)(1895) [hereinafter \textbf{ASSOCIATION, REPORT}](referring to the Case System as the “Langdellian System.” This second work in the trilogy is an account of the celebration at Cambridge on June 25, 1895. \textit{Id.} at Introduction. This ninth annual meeting was a platform to honor Professor Langdell’s Silver Anniversary at the law school; more than five hundred and twenty-five members and their guests crowded into Sanders Theater and the Hemenway Gymnasium to hear the orations. \textit{Id.} The speeches converged on Langdell’s Case System which was receiving increased acceptance after a quarter-century of often heated debate. Each trilogy volume holds some evidence of period collegial familiarity, but where Langdell’s system is discussed collegiality falls away. The sense I reached and strive to portray is that those who witnessed the Case System being introduced and finally accepted it, saw it as more than a new pedagogical approach. It was the touchstone of something \textit{needed}: student development, self-fulfillment, relevance. And the tones in their voices go more to critically reviewing what they were trying to accomplish, and had accomplished, on behalf of legal education, than any other sense. Professor Pollock, visiting from Oxford, voiced clear concern that his public praise of the law school’s aims and work remained “above suspicion of partiality” in this regard. \textit{Id.} at 12. I do not know Harvard other than by reputation, but hold great partiality for the Case System, so I now echo Professor Pollock’s sentiment).

\textsuperscript{5} \textit{Cf.} Clarence D. Ashley, \textit{The “Failure” of Professor Langdell}, 2 Am. L.S. Rev. 257, 260 (1908)(concepts are often submerged in labels. Disagreement about the Case System included whether it was a system or a method. Dean Ashley was one who considered such debate minor: “But why should there be all this pother about “systems” and “methods”? I use \textit{system} as best descriptive because I see four distinctly independent but interrelated and complex components essential to learning outcome: the case book, the student, the professor, and multi-level interaction by and among each, in and outside of the classroom, and as well before and after any given class. Isolating the student-professor Socratic inquiry as experience totality makes characterization as a \textit{method} completely fitting, but very incomplete).
Mr. Fox this fall, and next, Langdell’s system will generate much anxiety just as it did in 1870, but not absent purpose.  

To partially calm that anxiety many excellent law school primers have been written to demystify the first year, or “1L”, law student experience. Such primers can elevate the level of understanding before the student enters their first classroom. They do this well, so this book will not attempt to replicate their efforts. But they do their job well because they offer, in large measure, a pragmatic unidirectional lens focused on matters of absolute present and future importance like what to expect, grades, a 2L internship, landing that first job. They reduce student anxiety by framing the why of the 1L experience with future leaning roadmaps that lend a sense of form, substance, and meaning to the experience. This is all important, but the approach may inadvertently contribute to an imperceptible erosion of meaning as new generations quickly come forward, and more quickly begin navigating their way into the future, with little knowledge of the past that is going to shape their lives.

This book seeks to nudge the level of student understanding of their impending experience forward by momentarily coming to a complete stop and glancing back. Reaching a fuller sense of experience relevance is the goal. Rather than focusing on the compelling future why of the experience, I ask the new 1L to consider the equally compelling past why of the experience that will be overlooked absent additional (generally personal) study and reflection. This is accomplished by calling on voices from the past that critiqued and ultimately accepted the Case System of legal

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6 See Editorial Board, The Increasing Influence of the Langdell Case System of Instruction, 5 H.L.R. 89, 90 (1891)(quoting a Law Quarterly Review note favorable of Fisher's 1888 article, infra note 34; I suggest purpose has both an internal and external transitory nature:

The [Case] system is a thoroughly sound and practical one. It has been to some extent adopted in other American law schools, and approximations to the method have been tried in this country in the Inns of Court and at Cambridge with very good effect... One of the first and greatest fallacies besetting law students is to suppose that law can be learned by reading about the authorities. Professor Langdell’s [Case System] strikes at the root of this)(original emphasis).
study, an approach the system itself takes to instill an appreciation for the living growth of the law in each inductee. The professors, jurists, and lawyers who considered and adapted Langdell’s system from 1870 to 1918 left us their unclouded opinions of the system, including the student role in it, which may not be mentioned this fall or next. As citizens and lawyers their clear and direct voices tell us the system is not just about grades, the student must come to own it, and understanding the past is a necessity.

Students frequently come to the law schools without any considerable experience in intensive intellectual work. They come without any idea of the kind of work which is expected of them. They often come entirely devoid of any knowledge as to how to apply their efforts to make them effective in securing the preparation they seek. Law school work under the case system depends for its success to the individual student largely upon the effectiveness of the student’s own efforts.

To begin framing why law is taught as it is today, Part Two broadly sketches the pedagogical evolution that unfolded before Langdell introduced the Case System. Langdell did not despair of past teaching practices as much as he suggested the future would require a slightly different tack: petere fontes was Langdell’s vision

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7 LAW SCHOOL, CENTENNIAL, supra note 1, at 229 (an idea Langdell modeled: “[o]n the title-page of his first collection of cases, [Landgell] tied himself to the past by quoting words written by Coke two centuries earlier: “It is ever good to rely upon the book at large, for many times compendia [fere] sunt dispendia, and melius est petere fontes quam sectari rivulus.”’ Or, the farthest way about is the nearest way home, and, it is better to drink at the fountain than to sip in the streams)(original emphasis).

8 See James Brown Scott, The Study of the Law, 2 AM. L.S. REV. 1, 1 (1906)(noting, “[t]hat wealth and fame may result from the study of law is for our purposes immaterial; for we do not consider the purpose of the law school to make men either wealthy or famous, but by training to make safe counselors and law-abiding citizens”).

9 Lauriz Vold, System of Study for Students under the Case Method of Instruction, 4 AM. L. S. REV. 194, 194-195 (1916)(Vold might suggest the Case System disregards geography, regional norms, and other walls limiting the educational experience; he transported it to the University of North Dakota Law School which, at that time, was a world away from Langdell’s classroom. Note that it is not at all my sense that Vold was criticizing his students as much as he was revealing his deep interest in their learning).
for legal education. This Part does not purport to give a full or authoritative account of evolutionary developments in American legal education. Rather, it sketches the broad contours using the impressions Langdell’s Generation drew on to frame why they considered the Case System an important and logical stepping-stone in that evolutionary process. And while it was very clear to me that Langdell’s Generation worked tirelessly to refine their conceptions of legal pedagogy to narrow the gap between the theoretical of academic settings and the practical of practice settings, they expressed their ideas differently than professional educators today. The impression I formed was that theirs was clearly an age of becoming. Challenges and change and innovation were occurring in every discipline. Disciplines themselves seemed to be emerging overnight. And it is the directness, the clarity, the extraordinary simplicity in the way they spoke that, at least to me, makes the words they left us so understandable, real, human, and thus compelling.

Part Three erects my personal interpretation of the Case System’s three primary pillars: logical and disciplined thought develops lifelong student habits. Similarly, my identification of relevance, consistency, and efficiency in Part Two are my contemporary interpretations of what Langdell’s Generation was striving to achieve. In large part because the value I see in the Case System is framed in terms of my personal life experiences, I chose to sketch its borders using the voices of Langdell’s Generation who supported and promoted system use. Including dissenting viewpoints would probably not shed any new light on case system debates that have occurred, or might be ongoing, and such a tack goes well beyond my goal of portraying Langdell’s system in a way contemporary law students might find useful the moment that first question is posed, rather than much later in the semester. An important point to note is that Langdell himself was noted for not defending or elaborating on his idea, he just did it. So just as his generation characterized the system according to the terminology of their day, I provide interpretations in terms that will be recognizable to students today, but not necessarily helpful to any academic debate. Each can determine for themselves how well my

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10 LAW SCHOOL, CENTENNIAL, supra note 1, at 37.
interpretations do justice to Langdell’s Generation, and how they might be used to improve their legal education.\textsuperscript{11}

Part Four explores why Langdell’s inspiration was considered so important to his generation. The Case System promotes rapid learning, growth, and independence, yes. But my sense is that something more than anxiety over grades or internships is submerged in their voices. \textit{That} something was their “WHY of it,” and part of my sense of this was of a firm belief their efforts could and would make a difference. You might form your own impression as we go along. Langdell’s Generation was not at all different from my own, or yours. Part Five holds my concluding thoughts and, appropriately, parting words from Professor Langdell.

This book seeks to improve the 1L experience by stabilizing its fast moving parts and examining them with fresh optics to get a fuller sense of their measure. The Case System’s early advocates came to a conclusion that might startle today’s new 1L: “We have long given up the attempt to maintain that the common law is the perfection of reason. Existing human institutions can only do their best with the conditions they work in. If they can do that within the reasonable margin to be allowed for mistakes and accidents they are justified in their generation. Even their ideal is relative.”\textsuperscript{12} Langdell suggested that finding that reasonable margin against the weight of an unstable past, present, and future required those who would be lawyers, to learn how to \textit{think}.\textsuperscript{13} However mundane this might sound today, in

\textsuperscript{11} \textit{Cf.} Ashley, \textit{supra} note 5, at 257 (it is my impression that much of what needs to be said has already been said. Replying to a critic who wrote after Langdell’s death, Dean Ashley of the New York University Law School issued a disclaimer that I now echo:

The writer is not a graduate of the Harvard Law School, and never knew Professor Langdell. He took his law degree at Columbia after a course under Professor Dwight. The following lines represent only his own ideas, and no one at Harvard is responsible for them. He has no authority to speak for Harvard, and does not even know that their law faculty will approve of what he has written).

\textsuperscript{12} \textit{ASSOCIATION, REPORT, supra} note 4, at 19-20 (comment by Sir Frederick Pollock, Corpus Professor of Jurisprudence at the University of Oxford, and keynote speaker in Sanders Theater on June 25, 1895).

\textsuperscript{13} \textit{LAW SCHOOL, CENTENNIAL, supra} note 1, at 365-371 (debates over Langdell’s system lasted decades. For additional reading, articles supporting and neutral on the system
1870 it was an unconventional idea set against many centuries of conventional tradition and practice:

The day came for [the Case System’s] first trial. The class gathered in the old amphitheater of Dane Hall – the one lecture room of the school – and opened their strange new pamphlets, reports bereft of their only useful part, the head-notes! The Lecturer opened his.... Consider the man’s courage.... Langdell was experimenting in darkness absolute save for his own mental illumination. He had no prestige, no assistants, no precedents, the slenderest of apparatus, and for the most part an uncompromising corpus vile. He was the David facing a complacent Goliath of unshaken legal tradition, reinforced by social and literary prejudice.14

Then again, the idea may be more important to this generation, and even the next, as each comes forward and asks in their turn, “What’s the Law?”


14 LAW SCHOOL, CENTENNIAL, supra note 1, at 34-35 (if a sense of anxiety arises this fall, consider how Langdell must have felt the first day he took the podium)(original emphasis).
PART TWO

SECTARI RIVULOS

However forcefully or comfortably applied, the Case System is now a pedagogical constant influencing all local philosophy, an evolutionary development spanning centuries rather than decades of experimentation in legal education. This Part sketches that evolution to begin framing the why of the 1L experience. Ancient and medieval learning practices evolved into the lecture method Langdell found dominating America’s 19th century legal education landscape when he began teaching. The evolutionary record is not clean, pedagogical forms superimposed themselves on one another and the student during the course of many centuries, and still do. Langdell added a new layer in 1870.15 One that modestly proposed the living growth of the law could and should be felt as a matter of pedagogical design, rather than just observed or heard.16 Langdell suggested that all earlier law students had been sipping from streams, sectari rivulos, rather than drinking from the fountain of legal education he envisioned.17

15 Id. at 176 (in the form of the world’s first case book: “Part I of the first case-book, “Langdell’s Cases on Contracts,” was presented to the students. The use of this book was a touch-stone of intellectual ability”).
16 See ASSOCIATION, REPORT, supra note 4, at 17 (Professor Pollock:

For the law is not a collection of propositions, but a system founded on principles; and although judicial decisions are in our system the best evidence of the principles, yet not all decisions are acceptable, or ultimately accepted, and principle is the touchstone by which particular decisions have to be tried. Decisions are made; principles live and grow. This conviction is at the root of all Mr. Langdell’s work, and makes his criticism not only keen but vital).

17 See LAW SCHOOL, CENTENNIAL, supra note 1, at 229; compare ASSOCIATION, REPORT, supra note 4, at 16 (Professor Pollock suggested the profession stands on the shoulders of its students: “if we are to know what the profession, at its best, will be in the coming generation, we still have to look among those who are teaching and learning”).
One — Apprentices & Abridgments

The first three forms of legal education evolved in ancient and medieval times. Educational relevance, consistency, and efficiency generally increased from the former to the latter. But at least in part because the ancient and medieval forms had superimposed themselves on American legal education, Langdell’s Generation gave me the impression that legal education may not have been as much a part of a professional life cycle from the founding to their day, as much as that sense began rising under the best examples of lecturing, and then most particularly after Langdell introduced his system to distinguish the 1L experience from all others.

18 Law School, Centennial, supra note 1, at 64-65 (Langdell’s Generation identified apprenticeship, lecturing with a book in the lecturer’s hands, and lecturing with a book in the student’s hands, as approximations of the three earliest teaching methods. Langdell introduced the Case System in 1870); see also Harvard University, A Record of the Commemoration, November Fifth to Eighth, 1886, on the Two Hundred and Fiftieth Anniversary of the Founding of Harvard College, 84 (Harvard University 1887)(hereinafter University, Commemoration)(Langdell noted a reliance on apprenticeship in English speaking countries including America as the educational standard of the day requiring elevation. This is the earliest of the trilogy volumes evoked in this book. Commemoration activities included a Law School Day. Id. at 16-114. The speeches given that Friday, November 5, 1886, included many remarks on the Case System’s establishment).

19 Law School, Centennial, supra note 1, at 64 (Langdell’s Generation described their educational design using broad nomenclature. For example, lecturing was described as “a more finished method” of teaching. Id. Since that time how we think and speak about education has become more sophisticated, but modern outcome concepts like generalizing, observing, inferring, or identifying assumptions and alternatives are clearly recognizable in the voices of Langdell’s day as they debated legal education as earnestly as any modern educators. The approximations of “a more finished manner” I inferred from the voices in this book about the Case System are: relevance, consistency, and efficiency. Relevance is how well an educational approach relates to post-educational professional requirements; consistency is how well an approach achieves the educational goal and objectives in and across generations; efficiency is how well the approach accomplishes the stated goal and objectives in relation to wasted (or guarded) resources. I bundle these concepts together as educational design usefulness, my personally derived framework for assessing the reasons Langdell’s Generation said the Case System is the touchstone of intellectual thought).

20 See discussion infra, Part Four, Section Eight.
The first and “most primitive [benchmark in legal education]
is the method of apprenticeship; the young man learns his law by
sitting for many years in court, watching the administration of
justice.”21 However one might conceptualize graduate level
educational design today, ancient apprenticeship appears to lean
toward the haphazard end of any design spectrum: ancient court
scheduling clerks probably guided learning as much as if not more
than consciously designed and sequenced learning objectives.22
Langdell’s Generation recognized that the pillars ancient students
sought were submerged in “formulas…more modern and abstract”
than their own.23 And the time required to reach successively

21 LAW SCHOOL, CENTENNIAL, supra note 1, at 64; see also id. (‘‘[i]t is thus [through
apprenticeship] that the traditional justice of the folk-mote recruited its ministers, in
Greece and Rome as well as in ancient England. This method continued after the folk-law
had been succeeded by the “judge-made” law of a professional tribunal’’).
22 Cf. id. at 64-65; see also JOSEPH REDLICH, THE COMMON LAW AND THE CASE
METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE
FOUNDATION FOR THE ADVANCEMENT OF TEACHING, BULLETIN NO. 8, 60 (Merrymount
Press 1914)(1914)(Redlich clearly saw elements of “lasting value” in the classical period,
and would probably have agreed that consistency of educational design is an important
matter:

The great men among them [Roman lawyers] were not theorists but
ingenious practitioners, and to them we owe the art of legal technique:
the art of utilizing the legal mechanism already at hand to satisfy the
newly arising need; the art of building upward and outward from the firm
foundation of the law; the art of discerning, in every relationship of life,
those sides which the law must regard, if it is not to crystallize into
unreasonable rigidity).

23 See ASSOCIATION, REPORT, supra note 4, at 25 (Professor Pollock gives an example of
the subtleties requiring explanation:

The history of Roman forms of action and Roman legal categories is
quite different from ours. The common law has never had a procedure
answering to the Roman vindication. At first sight it may seem a small
matter whether a man who finds his cattle in strange hands shall say
“Those are my beasts; it is no business of mine where you got them: I
claim them because they are mine” (which is the Roman way), or shall
reverse the order of thought and say “Where did you get those beasts?
for they were mine, and you have no business to hold them against me”
(which is the Germanic way). Practically, no doubt, the result may come
to much the same thing; but the divergence of method goes pretty deep.
The formulas of the Roman republican period are already more modern
and abstract than ours, and the Roman lawyers of the Empire, when they
began to systematize, had to construct their system accordingly).
higher levels of understanding would not only have been greater, but access to such time colors the experience less in terms of the beginning phase of a profession, as the outcome Langdell’s Generation hoped to forge.

24 See J.C. Gray, Cases and Treatises, 22 Am. L. Rev. 756, 761 (1888)(as was the case with apprentices in Langdell’s day:

The best material for legal education would undoubtedly be real cases, and the fact that a student in a lawyer’s office has real cases to deal with, is some compensation, though a very inadequate one, for the unsystematic instruction and the consequent frightful waste of time which is usually the lot of a student in an office).

25 Cf. Henry Sumner Maine, Ancient Law: its connection with the early history of society, and its relation to modern ideas, 37 (John Murray, 6th ed., 1876)(Maine’s voice is not attributable to Langdell’s Generation, but the pictures he paints of ancient law and education hold similarities to pre-Langdell apprenticeship and lecturing: “[t]he vivid pictures of a leading jurisconsult’s daily practice which abound in Latin literature ‒the clients from the country flocking to his antechamber in the early morning, and the students standing round with their note-books to record the great lawyer’s replies ‒are seldom or never identified at any given period with more than one or two conspicuous names”; see also Id. at 35 (Maine again: “…the service [ancient students] rendered to their teacher seems to have been generally repaid by his sedulous attention to the pupil’s education”); compare University, Commemoration, infra note 57 (using finer brushes, Langdell isolated and held out the traits exhibited by Roman jurisconsults as highly relevant to teaching law); compare also Redlich, supra note 22, at 60-61 (I perceive the classical period teacher-pupil interaction Redlich brings forward below as paralleling Langdell’s preference for jurisconsult-like law professors engaging in a fundamental of professional development in every field: student-teacher interaction featuring debates and disputations that strongly resemble professional mentoring:

The science of the Romans remains, therefore, essentially casuistic; even their commentaries and systems are casuistic. But it is not that hair-splitting, scholastic casuistry that takes pleasure in solving the most strange and paradoxical combinations, but a living, practical casuistry which strives only to embrace and to rule the wealth and the variety of actual life.

And corresponding to this fluid condition of classical Roman law, we find also casuistic characteristics in its methods of instruction. Legal education, at the time of the great jurists, was based not only upon lectures, but often also upon oral debates and disputations between teachers and pupils upon particular law cases and legal opinions. Up to a certain point, in short, the well-defined parallel which can be traced in many respects between the two world systems of law —the Roman law and the English common law —obtains also for the methods of legal science and legal instruction).
At some point, mediaeval student-apprentices improved on their experiences by actively taking notes of court happenings. Eventually one of them added headings to make his notes more organized and usable creating “the so-called Abridgment,” a legal education milestone. And from time to time judges would “condescendingly” acknowledge student efforts by explaining “the more obscure processes of justice.” Educational treatises were noted in the history of Roman law but Langdell’s Generation portrayed the rise of Abridgment writing as a stepping-stone to the Case System promoting something that was needed by the profession: more active student involvement and learning than is gained listening to court proceedings or lectures:

Langdell determined that the student should be trained to use those original authorities, and to derive from judicial decisions, by criticism and comparison, the general propositions which text-writers [successors of treatise and Abridgment writers], if they do their work conscientiously, find in the same manner, —that, in other words, the student should not be fed with pre-digested food.

26 LAW SCHOOL, CENTENNIAL, supra note 1, at 64.
27 Id.; but see Maine, supra note 25, at 35 (ancient students prepared and edited “Books of Responses” in the sense of a duty rather than learning, and probably not arranged by any “scheme of classification” like mediaeval Abridgments. If forms superimposed themselves on one another, the points to consider are the degree to which the student desired to prepare the writing and the nature of the thought involved).
28 LAW SCHOOL, CENTENNIAL, supra note 1, at 64.; see also MAINE, supra note 25, at 32-33 (noting that, “…thirteenth century [judges] may have really had at their command a mine of law unrevealed to the bar and to the lay-public…”).
29 Maine, supra note 25, at 35 (as Maine noted:

The educational treatises called Institutes or Commentaries...are among the most remarkable features of the Roman system. It was apparently in these Institutional works, and not in the books intended for trained lawyers, that the jurisconsults gave to the public their classifications and their proposals for modifying and improving the technical phraseology).

30 LAW SCHOOL, CENTENNIAL, supra note 1, at 229 (the earliest environmentally interactive model in Langdell’s march toward active, inductive learning, as the educational design threshold); see also Id. at 64 (on Abridgment writing).
Abridgment writing elevated the relevance, consistency, and efficiency of legal education from ancient to medieval times.\textsuperscript{31} Relevance and consistency increased as the student interacted intellectually and physically with the body of knowledge to a greater degree than was possible observing ancient courts; such an outcome probably results anytime a written tradition begins taking hold and replacing oral traditions. Efficiency and consistency would have increased both in the student ability to appreciate court developments in the context of time, as well as in what the Abridgment writing process itself represented as an intermediate step to the increased efficiency of treatise writing, followed by lecturing based on that treatise.\textsuperscript{32} In short, student Abridgment writing was a necessary intermediate step in the march toward the increased efficiency of lecturing over ancient court watching. It was also an active learning advancement that co-existed with apprenticeship oriented education until well after the rise of professional tribunals in Europe.\textsuperscript{33}

Langdell’s Generation did not dwell on ancient or medieval forms to measure the Case System, but what they noted lends

\begin{itemize}
  \item \textsuperscript{31} See id. at 64-65 (this is the sense Langdell’s Generation used to roughly frame the evolution of legal education in relation to the Case System’s introduction. The widespread reliance on apprenticeship in ancient times that endured into nineteenth century America seems as equally unsatisfactory as any earlier passive form of study).
  \item \textsuperscript{32} See id. (treatise writing followed Abridgment writing); see also James Schouler, \textit{Cases Without Treatises}, 23 Am. L. Rev. 1, 1 (1889)(Schouler has a voice writing in opposition to the Case System, but his perspective helps sketch the stepping-stone process in which Abridgments, early treatise, later treatise, and text-book writing were all essential evolutionary steps leading to the casebook writing of Langdell’s system. Each step with import beyond function, steps not taken absent opposition:
    
    The school which Nathan Dane, the digester, founded on the proceeds of his Abridgment, which gained such rapid renown under its earliest professors, writers of treatises like Story and Greenleaf, and which broadened that renown under later writers of treatises like Washburn and Parsons, turned its back rudely all at once upon its proudest traditions [in using the Case System]. A new revolution began. Huge [case-book] volumes began to issue from the press in the names of their new and young successors, which were called “Selected Cases,”…).
  \item \textsuperscript{33} See LAW SCHOOL, \textit{CENTENNIAL, supra} note 1, at 64 (apprenticeship endured after the formation of tribunals).
\end{itemize}
insight into its acceptance. First, there is the sense Langdell’s Generation viewed the ancient and medieval educational forms as environmental in nature. The ancient learning environment is more external—the court and law office where the student apprenticed. Once students began writing Abridgments, the environment began shifting internally as they intellectually grappled with the body of knowledge to organize, digest, and label it. If intellectual activity is the touchstone, however, unstructured Abridgment writing would have remained a haphazard learning method. Legal education therefore leapt forward with formal lectures, but it also took a slight environmental step backward from the more intellectually active learning represented by Abridgment writing:

[This haphazard system of studying law [court watching and unstructured Abridgment writing] was supplanted and at last superseded by a more finished method. Some lawyer, learned in a certain subject, presented to the

34 See Sydney G. Fisher, *The Teaching of Law by the Case System*, 27 Am. L. Reg. N.S. 416, 417-418 (1888) (the idea was to enhance student self-development:

Students who have read law only in text-books are often dreadfully taken aback, when for the first time they are given a set of facts and asked their opinion of the law. Their heads are full of knowledge, but they have no practice in applying it. In this respect, the case system is a great saving of time. The ordinary way of studying law is a violent effort to memorize. The student reads over pages and pages of matter which has no particular bearing on elementary principles, which is simply reference matter, to be looked up for special occasions).

35 See LAW SCHOOL, *CENTENNIAL, supra* note 1, at 64-65 (describing the early methods of learning); see also ASSOCIATION, *REPORT, supra* note 4, at 21 (Professor Pollock imparts a sense of the internal and external learning environments:

In our own system the most elementary phrases of equity jurisprudence carry with them a vast burden of judicial and political conflict; and the range of activity left open to the Court of Chancery in Blackstone’s time can be understood only when we have mastered both the strength and the weakness of the action on the case two centuries earlier. But history does not exclude reason and continuity, any more than a man’s parentage and companions prevent him from having a character of his own. Development is a process, and not a succession of incidents. Environment limits and guides the direction of effort; it cannot create the living growth).
students in a set lecture, or in a treatise, the whole law on his particular topic.  

Two — Lecturing

Langdell studied under the lecture method and found it dominating legal education when he became a professor in 1870. But exactly when lecturing gained prominence, how long it had been prominent, who had ascended as its masters, even why it was prominent seem less important to early Case System advocates than what lecturing had done for legal education. Like court watching and Abridgment writing, the study of law by lectures was a necessary evolutionary step to the Case System itself.

Lecturing inculcated legal education with greater consistency, relevance, and efficiency than either court watching or Abridgment writing. Consistency increased when the physical environment shifted from civic facilities to learning facilities: from a court, to the Inns of Court, to ancient universities, to 19th century American universities. Efficiency and consistency both increased by placing a text in the lecturer’s hand, and then more particularly when students began receiving lectures with a text in their hands. Lecturing also increased the relevance of legal studies by

36 Law School, Centennial, supra note 1, at 64 (efficiency and consistency are involved, but I suggest Langdell’s Generation considered the rise of lecturing to be a relevance shift as the student slipped toward passivity in receiving lectures resembling the more passive learning of watching court proceedings).

37 Id. at 64-65 (particularly with the creation of permanent professorships in those universities:

From the later Middle Ages to the present day the readers of the Inns of Court have been delivering lectures on branches of the law; and during the same period treatises have been placed before the profession for the information of those who would learn the law. In the history of the Roman law, Justinian’s Institutes form a general treatise of this sort; while in our own legal history the foundation of the Vinerian Professorship at Oxford, and its first-fruits, Blackstone’s Commentaries, furnish the classic example of this method of instruction and of the lecture-treatise which it produced).

38 See id. at 65 (the sense is a blend of educational consistency and efficiency advancements promoted by other societal developments like introduction of the printing press. Langdell essentially built upon the enhanced stability of words on paper made
supplanting random judicial assistance with that of a dedicated lecturer.\textsuperscript{39} Learning the law by lectures was a decided step forward, but it was also a step backward.

A step backward is inferable when the student becomes the focused object of uninspired fear-based teaching.\textsuperscript{40} A step backward is also inferable where the student ultimately holds less responsibility for, and therefore ownership of, learning itself; unlike widely possible by printing presses that allowed more students than ever before to interact with learning materials in their hands; that stability is as important to the instructor as to the student and therefore to society. The interactive relationship between technology, improvements in learning methods, and the need for enhanced pedagogical result was all in play before Langdell who simply leveraged everything in play to reach the fourth evolutionary level: the Case System. While technological advancement made it possible for Langdell to improve legal education, and future advancements may improve it further, the idealized Case System suggests that robust human interaction, positive interaction, as part of a system of study, is the key to effective legal education.

\textsuperscript{39} Id. (a relevance advancement in the suggestion of the breadth of treatises that came available as universities slowly formed, writings were assembled, and presses made copies available for instruction in dedicated learning environments called classrooms:

The system of teaching by lectures tended toward this third method, as lecturers published their treatises, and either commented upon them afterwards themselves or provided them as material for the comment of others. From the publication of Blackstone’s Commentaries to the publication of Langdell’s Cases on Contracts, this was the prevailing method of legal instruction in America, and it still survives in the “textbook schools”).

\textsuperscript{40} See William Henry Dennis, Object-Teaching in Law Schools, 21 AM. L. REV. 228, 228 (1887)(to enliven “the dry and unillustrated style of the lectures which are relied upon to supplement the text-books,” Dennis advocated using technology in the form of wall charts as simple visual aids. He in no small measure advocates the same active learning approach I see in the Case System, but in the technological phraseology of his day this may have put him on a wall between Langdell and lecturing. Still, his portrayal of the fear based 19th century lecture hall is one that any attempt at pedagogical innovation might improve:

The [lecturer’s] platform will be adorned only with a table and a pitcher of water, warning [the new law student] mutely of the aridity of the subject, while chairs or benches front it in rigid rows, all adding to that effect of “saw-dust without butter” which of old was held up to terrify the aspirant).
that attending Abridgment preparation. Under lecturing, process reversed itself from the internal environment of Abridgment writing (actively listening, watching, thinking, and writing what one thinks) to resemble the external environment of ancient court watching (a more passive activity listening to, or watching and documenting, the conclusions of others).

Where the medieval law student owned his Abridgement, his education, the 19th century lecturer owned the educational experience just as it was once owned by the ancient court clerk.

41 Compare LAW SCHOOL, CENTENNIAL, supra note 1, at 199 (just as lecturing began rivaling Abridgment writing and apprenticeship in usefulness, the Case System began rivaling lecturing in usefulness when it was introduced:

To a prospective practitioner, Judge [and Professor] Bradley’s lectures were useful samples of the sort of exposition valued in courts; and though the Langdell system of study was more exacting and thorough, it was well for the Law School that the [Case System] should compete not with unskilled presentations of the old system but with the old system at its best).

42 Redlich, supra note 22, at 39 (Redlich supported the use of lectures in American law schools. But he also clearly opposed the passivity in the lectures he witnessed suggesting the science of the law was not being taught:

The main defect in this mode of teaching is clear from these very words: it lies in the fact that law is taught here as a kind of elementary instruction of immature pupils, like any branch of knowledge in the high school. The principles are laid down in the text-book and in the professor’s lectures, ready made and neatly rounded, the predigested essence of many judicial decisions. The pupil has simply to accept them and to inscribe them so far as possible in his memory. In this way the scientific element of instruction is apparently excluded from the very first. Even though the representatives of this instruction certainly do regard law as a science, that is to say, as a system of thought, a grouping of concepts to be satisfactorily explained by historical research and logical deduction, they are not willing to teach this science, but only its results).

43 See George L. Reinhard, American Law Schools and the Teaching of Law, 16 GREEN BAG 165, 166 (1904)(Reinhard on lecturing:

Formerly, written lectures and recitations from treatises on given subjects constituted the principal means by which a knowledge of law was imparted to law school students. Where the text-book [method] only was employed great emphasis was placed upon the necessity of following the ideas and conclusions of the author; and the contents of the texts were
Even though the overall effectiveness of the learning experience would have advanced under lecturing, before Langdell its dominance suggests the American law school experience\textsuperscript{44} was mostly environmentally external; as it remained for some time:

> It may be surprising, but it is a fact, that even now the work in many law schools consists of memorizing passages from Blackstone, and cramming the mind with rules and definitions as they are stated in text-books.

> Is this the best way to begin the study of the law? is a question which every young man who enters the profession must ask himself. Some men have answered this question in the affirmative, and we have the “Text-Book” schools. Other men have answered it in the negative, and we have the “Case System.” The former is a product of an old notion of education. The latter was born of a new conception. The old notion of education was based upon memory. The new

\textsuperscript{44} Redlich, \textit{supra} note 22, at 7-8 (represented by lecturing and text-book learning. The Carnegie Foundation commissioned the Redlich report in 1913 to evaluate the Case System at a time when its establishment had broadened, but probably had not been completely accepted as the basis of legal instruction in America. Redlich began with the American evolution: “…[a]ll the older American law schools started by being so-called lecture schools…[and used]Blackstone’s \textit{Commentaries}…for purposes of instruction…[and][w]ithin a generation there developed very naturally out of these same lectures a literature of text-books; and straightaway the second method of American legal education in order of time—the text-book method—came into being.” The early methods generally required students to memorize and repeat the work and conclusions of others. Redlich:

The essential feature of this was, and still is, that, from recitation period to recitation period, the students are assigned a specified portion of a regulation text-book to study, and for the most part to memorize; this is then explained by the teacher and recited on at the next period. In this method of instruction one part of the hour is occupied with the more or less purely mechanical testing of the knowledge learned by the students, the so-called “quizzing.” Frequently also, in such schools, particularly where the number of students is large, the instruction was, and still is, supplemented by the appointment of special assistants — quiz masters — who conduct this part of the instruction in special hours).
conception of education is founded upon understanding, (original emphasis). 45

The utility of lecturing is evidenced today by its prominent use in second and third year classes; it promotes the consistent, efficient, and relevant transference of current legal knowledge and information, 46 just as it does when used in any academic discipline or professional development effort. But the 19th century student was as bound to the lecturer's knowledge, skills, experiences, availability, bias, and perspectives as any ancient medieval apprentice. 47 The 19th century law student was also bound to a text-book with its own relevance implications as the law changed

45 See Young B. Smith, The Study of Law by Cases: A Student's Point of View, 3 AM. L. S. REV. 253, 253 (1913)(Smith was writing toward the end of the period I have considered, but paints a picture of the early lecture and text-book methods featuring a limited sense of active learning. His voice includes a sense of (1) strong student interest in educational usefulness, (2) Case System resistance, and (3) general misunderstanding of the system as late as 1913. As an aside, the Case System was intended to spur independent student research and writing, so Smith’s essay stands as an example of that design outcome).

46 Compare LAW SCHOOL, CENTENNIAL, supra note 1, at 176 (lecturing was the normative and preferred teaching style when Langdell arrived:

To the great majority of the class [Langdell’s new case-book and system] was mere folly; they wished to learn the law as the older professors in the school had settled it to be, and they felt sure that no way was easier, quicker, or surer than that of listening [to lectures] while these professors told them).

47 See William R. Vance, The Ultimate Function of the Teacher of Law 3 AM. L.S. REV. 2, 2 (1911)(Vance recognized the Case System’s value and, by way of noting its requirements on the teacher, was advocating that the bar accept a separate class in the profession: law teachers. What we see here is a consistent effort to improve on the overlapping forms of instruction where:

In early days young men just grew up into the legal profession, somewhat after the fashion of Topsy. It is true that they usually entered the office of a friendly attorney, who was supposed to direct the student’s reading in the meager library possessed by lawyers of that time; but it is probable that in the great majority of instances the direction was perfunctory, and the student was compelled to educate himself. George Wythe complained that he was wholly neglected by his instructor, and considered the time spent in his office wasted...).
with the passage of time.\textsuperscript{48} As an evolutionary step in legal pedagogy, Langdell probably considered primary reliance on lecturing to be an environmental step backward.\textsuperscript{49} He probably also considered the 19\textsuperscript{th} century lecture classroom a less active learning environment than was needed, one developing passive and accepting ancient court watchers:

The lecturer who, having reduced his matter to set form, dictates it to the students, who write it as nearly as may be verbatim, and thus are enabled to take away with them an exposition of the law on the subject, with citation of cases for subsequent investigation, can hardly claim that he gives to the student very much exercise in legal thinking. The knowledge which he imparts is of importance, although even in this respect the student probably finds in the course of time that for subsequent use a fuller text-book serves a better purpose than his lecture notes, and loses greatly his confidence in their value... The lecture system implies acquisition of knowledge first, and discipline in applying it afterwards, which, as has already been

\textsuperscript{48} See UNIVERSITY, COMMEMORATION, supra note 18, at 111 (Professor John C. Gray suggested usefulness shortfalls in lecturing:

\begin{quote}
When I was a law student \([\text{before the Case System}]\) I read twenty or thirty text-books through: I fear little of them remained in my mind. I had to begin again with the study of particular cases and learn my law in that way. We try to save our students that experience, and start them in the way of practical learning three years earlier than if, as is so often the case, they had to acquire such learning after they have been admitted to the Bar).
\end{quote}

\textsuperscript{49} Id. at 62 (as the learning environment shifted from documenting the first-hand internalization of original sources, to reliance on external second-hand interpretations. Association President James C. Carter:

\begin{quote}
What was our former method of acquiring \([\text{legal knowledge}]\)? Going primarily to those judgments? No. For the most part the basis of legal education was in the study of text-books, the authors of which if they had acquired any knowledge of the law for themselves, must have obtained it by resorting to those original sources. We therefore got it at second hand. I think the result of all investigation concerning the methods by which any science may be best acquired and cultivated, has been to teach us to go to the original sources, and not to take anything at second hand).
\end{quote}
suggested, seems not to be the natural, nor most effectual
order.\textsuperscript{50}

Despite any step backward, students before Langdell would
have seen the principles involved, but \textit{feeling} them and their living
growth was considered less predictable, less useful,\textsuperscript{51} than if they
had written an Abridgment on the topic themselves. Langdell
proposed that new law students needed to engage their internal
learning environments with a more scientific approach
representing more active learning. With due respect for the past,
he set about re-shaping the future the day he walked into his first
classroom:

[Harvard’s] professors had produced treatises which held,
and still hold, a high place in the esteem of the profession.
Even laymen have heard of the works of Story, Greenleaf,
Parsons, and Washburn. Those productions had been
largely the fruit of classroom lectures. By the method of
instruction then current the student listened to lectures
and read treatises; and, in order that the task might not be

Bar. Assn. 401, 403-404 (1893)(from McClain’s address to the Legal Education Section
of the American Bar Association on August 30, 1893).
\textsuperscript{51} \textit{Id.} at 404 (as McClain further noted):

The use of an ordinary lawyer’s treatise, stating in brief form the points
decided in a large number of cases arranged according to some more or
less satisfactory system, comes nearer to a study of law in the concrete,
but the fundamental difficulty of such a text-book is that, on the one
hand, it does not and cannot give the facts of the cases referred to with
sufficient fulness to enable the mind to grasp and retain them, and, on the
other hand, it lacks entirely in perspective, so that the minor and
insignificant proposition, which is a mere deduction, is given as great
prominence as one which is fundamental. Indeed, as the most important
propositions are so well settled that they are not often expressed in
adjudicated cases, they are likely to be lost sight of entirely. The use of
the text-book does undoubtedly give legal discipline, but it does not give
exercise of the kind which lawyers and judges consider to be of the
highest type, for the lawyer or the judge, to a large extent, ignores the
statements of propositions found in text-books as a source of information
as to the law, and uses them only as a means of reaching the cases
involving the questions under discussion. To obviate these objections to
the ordinary text-book, special books for the student have sometimes
been prepared [case-books], and more might be done in this way to
facilitate the acquisition of knowledge of principles).
merely the memorizing of generalizations made by the lecturer or the text-writer, some instructors devoted much time to discussing concrete problems. Many men are still living who know that the work of those old days must not be treated disrespectfully; but Langdell, though trained in the method then current, was of opinion that he knew a method more scientific, more thorough, and better fitted to produce successful lawyers.\footnote{\textit{Law School, Centennial, supra} note 1, at 229.}

### Three — Student Inspiration

Langdell’s 1870 appointment as a professor and Dean of the Harvard Law School facilitated his introduction of a new teaching system.\footnote{\textit{Id.} at 228 (change began when Langdell became Dean of the law school in September of 1870, his Case System raised expectations:)} The Law School had been in existence for half a century and was already a respected institution,\footnote{\textit{Id.} at 103-104 (the pressing questions of the Civil War endured for decades. During his 1886 address at the Law Day Dinner held in the Hemenway Gymnasium, General (CSA) Alexander R. Lawton, Class of 1842, commented on the social, political, and legal stressors extending from the individual to the highest levels of government. Lawton was seated at the head table with Langdell, Gray, Keener, Thayer, Ames and Holmes nearby. The Germania Band played for the 400-person assembly between speeches. \textit{Id.} at 79. This is a good point to suggest slowing down, don’t just read words on paper, try to stand inside every quote from here on. “As General Lawton rose, Mr. Roger Wolcott proposed “three cheers for General Lawton, of Georgia,” which were vigorously given, and were followed by loud applause. When [this] subsided,” Lawton also engaged in relationship restoration:)} but society itself was reverberating with pressing questions taxing the legal system and its educational institutions.\footnote{\textit{Id.}} Langdell engineered change by implementing ideas he had formed as a student:

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\begin{quote}
The prospectuses of the school for 1870-71 contained for the first time strangely disquieting announcements. Examinations of a “thorough and searching character” would be held at the close of that year. “Each instructor will adopt such mode of teaching the subjects of which he has charge as in his judgment will best advance the pupils in his course.
\end{quote}
[Langdell] always wore a green-lined dark shade. Under his auspices there were a dozen of us who clubbed together. There I saw his "case system" in the making, although at the time I did not realize it. Over our sausage and buckwheat, or whatever it was, we talked shop, nothing but shop, discussed concrete cases, real or hypothetical, criticized or justified decisions, affirmed or reversed judgments. From these table-talks I got more stimulus, more inspiration, in fact, more law, than from the lectures of Judge Parker and Professor Parsons.56

The Case System is a pedagogical hybrid, the natural evolutionary stepping stone beyond all earlier pedagogical developments.57 Where ancient apprentices had observed the Gentlemen of the legal profession, during that period of darkness familiarly known as the “reconstruction period” the first ray of light to illumine it was flashed forth from the judicial department of the government. When that South-land was under military-proconsular government, and divided into “Districts Number One, Two, Three,” we trembled for the autonomy of the States, and feared lest the lines of State authority had become so dim that they might nevermore be seen by that unhappy people. Then it was that out of our profession, in a case at law earnestly argued and solemnly decided, the Supreme Court of the United States electrified the country and gladdened our hearts by the announcement that this is “an indissoluble Union of indestructible States.” Who so bold as to seriously dispute it, after the highest Court in the land, with the recent past in view [the Civil War], thus proclaimed the fundamental law of this dual government? Nothing is so powerful to convince or restrain as a formal judicial decision reached through regular channels. Nothing that Congress could have said, no utterances from pulpit or public meeting, could have been so comforting or reassuring in that hour of suffering and uncertainty. And thus are we permitted to claim for our noble profession the first rank in the final disposition of great and pressing questions).

56 LAW SCHOOL, CENTENNIAL, supra note 1, at 226 (Judge Charles E. Phelps, Langdell’s law school classmate, witnessed the Case System’s genesis); see also id. at 225-226 (Langdell began Harvard law school on November 6, 1851; “the course was then only a year and a half, [but] he remained at the school for three years, being, during the greater part of the time, librarian as well as student….. He was engaged by Professor Parsons to assist him in the preparation of his work on Contracts, and contributed many of the most valuable notes in that widely-used book”). 57 See discussion infra Part Four, Section 8 (professional life-cycle); see also UNIVERSITY, COMMEMORATION, supra note 18, at 86)(Langdell’s pedagogical design issued from a broad historical lens centered on the student-teacher-resource relationship. Langdell:
administration of justice as it unfolded physically (but slowly) before them, Langdell’s students saw justice marching rapidly through lines of cases in the time compressed readings for each class that spanned decades. Medieval students actively immersed themselves in the body of knowledge to write their Abridgments; similarly, the Case System engages the student to a greater degree than listening to court proceedings or a lecture: the Case System “trains the students in legal investigation through a first-hand study of judicial decisions and other sources, and tests by class discussion the results of this investigation.” And as lectures

I wish to emphasize the fact that a teacher of law should be a person who accompanies his pupils on a road which is new to them, but with which he is well acquainted from having often traveled it before. What qualifies a person, therefore, 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; not the experience of the Roman advocate or of the Roman praetor, still less of the Roman procurator, but the experience of the Roman juris-consult.

My associates and myself, therefore, have constantly acted upon the view that law is a science, and that it must be learned from books).

58 See LAW SCHOOL, CENTENNIAL, supra note 1, at 80 (along with other materials added as needed):

The first case book prepared for use in teaching was Langdell’s Cases on the Law of Contracts, published in 1871. This collection of cases covered only a few topics in the law of Contracts; and upon each topic covered all the important English cases were reprinted in chronological order, followed by American and Scotch cases. One argument of a great French lawyer was included, to enforce a doubtful point. An index was added. As conducted by Professor Langdell, the principle deduced by the first case was followed chronologically through its developments and applications in the later cases, until by constant iteration all doubt or forgetfulness was removed. This process, slow-moving but irresistible, like Langdell’s own mind, was caviare to the general, and his successors did not carry on a course at so slow a rate).

59 Id. at 65; and Redlich, supra note 22, at 39 (Redlich explains):

This is where the Langdell case method steps in. It proceeds upon the assumption that these threatened disadvantages of text-book instruction have generally been realized... It very properly rejects the elementary school type of existing legal education as inadequate to develop the specific legal mode of thinking, as inadequate to make the basis, the
transfer the legal information and knowledge gathered by recognized authorities, the Case System relies on those skilled in drawing out the student to think for themselves, to release their ability to independently find the law in situations that cannot be predicted in the classroom. Student investment is the common denominator. The Case System presumes a more active and interactive student role will develop the desired traits more usefully, specifically, the ability to feel the living growth of legal principles as a matter of pedagogical design, rather than by chance.

Relevance, consistency, and efficiency converge to this end: “as a matter of fact, any method of teaching is entirely consistent

logical foundation, of the separate legal principles really intelligible to the students).

See LAW SCHOOL, CENTENNIAL, supra note 1, at 229 (rather than giving them the conclusions of others: “…that, in other words, the student should not be fed with predigested food”).

By a “case lawyer,” I suppose, is generally meant a lawyer who has a great memory for the particular circumstances of cases, but who is unable to extract the underlying principles. But the “case system” has no tendency to produce lawyers of this type. It makes no effort and holds out no inducement for the student to charge his memory with the names or the facts of particular cases. It uses the cases merely as material from which the student may learn to extract the underlying principles.

See Editorial Board, supra note 6, at 90 (this quote is from Professor Pollock, an Englishman. Today’s sense is of American Law and people:

The lawyer or student who really enters into the results of a line of leading cases learns much more than a few verbal maxims which may be committed to memory. He sees what is the true meaning of legal doctrines when applied to fact; he ‘becomes,’ as Mr. Finch well expresses it, ‘familiar with the tone of thought, the attitude of mind, which prevail in our courts; he gets a touch of the genius of English law.’ He learns, in short, by the only means by which it can be learned, the notion of justice which the lawyers and judges of England have developed by labors extending over centuries, and have impressed upon the minds of the English people).

See id. (system usefulness. Professor Pollock visited Harvard in 1885 to observe the Case System and suggested such a convergence would yield a reciprocally based refined compression in which the student-teacher interaction features blended identity:
with [the Case System]; for, as James Thayer has shown, [the Case System] is, more exactly, a system of study rather than of teaching.  

Rather than “comment by the teacher on a text in the student’s hands,” Langdell’s system elevates investment by requiring student comment on a line of cases in their hands.  

Socratic inquiry not only requires the student to fully interact with the materials privately as they did when writing Abridgments, but to engage in guided public discussion as to the limits of those principles.  

By fully engaging the internal environment the Case

Of Harvard and its Law School I will say only this, that I have endeavored to turn to practical account the lessons of what I saw and heard there [about the Case System], and that this present book [The Law of Torts by Oliver Wendell Holmes, Jr.] is in some measure the outcome of that endeavor. It contains the substance of between two and three years’ lectures in the Inns of Court, and nearly everything in it has been put into shape after or concurrently with free oral exposition and discussion of the leading cases).

64 **LAW SCHOOL, CENTENNIAL, supra** note 1, at 36.

65 See Fisher, supra note 34, at 416-417 (the system embraces flexibility, but the general idea was:

The professor at the end of his hour with the class gives them a list of cases which they are to study for their next appearance. If the subject of fixtures was part of their work, they would be given the case of Elwes v. Mawe, 3 East, 38, and a careful selection from the later decisions. At the next meeting they would be asked whether a carpet tacked to a floor was a fixture, or whether a chandelier in the ceiling, a pile of stones in a field, the manure on a farm or the machinery in a mill, could be called fixtures. This is a simple illustration of the method and will give a general idea of the principle).

66 **LAW SCHOOL, CENTENNIAL, supra** note 1, at 229 (as Langdell’s system required human to human interaction, rather than passivity, it eclipsed lecturing as a student self-development tool:

The plan, as worked out, was that the instructor should reprint from the reports the cases adapted to show the growth of legal doctrine; that the student should master five or six cases in preparation for each classroom exercise; and that the exercise should consist of stating and discussing these cases and solving related hypothetical problems. However easy it may be to-day to see that this plan is reasonable, in 1870 it appeared to many persons, and indeed to most, impracticable and unscientific. To Langdell it seemed the most natural plan possible).
System eclipses waiting to be noticed by an ancient judge or passively being told what the law is during a lecture. Langdell and his innovative Case System began promoting enduring learning:

The quietness of [Langdell’s] teaching, however, was the quietness of intensive force, and the antique seeming of his law was all on the surface. His students found that they were carrying away his ideas in their heads as well as in their notebooks, and that those ideas really represented the law of to-day. The modern cases they examined for themselves, and annotated their notebooks with them. They found that the judges of the present time were saying precisely the same things which Langdell had been telling them, though possibly the words sounded more modern from their lips.67

Langdell’s innovation did as much to emphasize student self-sufficiency as the day the first student independently completed the first Abridgement, and then showed it to another student.68 But Langdell went further.69 Without denying the value of the

67 Id. at 233.
68 See Gray, supra note 24, at 762 (in part, by elevating the element of individuality among teachers and students alike:

I have used the expression “case system,” but I do not like it, for it suggests a hide-bound and stereotyped mode of instruction. Nothing can be further from the truth. No scheme of teaching affords a greater scope for individuality. To Professor Langdell belongs the credit of introducing the method at Cambridge, but the styles of teaching of the different professors are as unlike as possible. We agree only in making cases, not textbooks, the basis of instruction).

69 Scott, supra note 8, at 6 (by systematizing learning:

To see how admirably the analysis of precedents and establishment of principles leads unerringly to a science of law, we need only consult the Institutes of Justinian. The application of the same method to a like material must inevitably lead to a similar result, and precedent and single instance take the precision of a code under a master hand.

The single instance is the key to the structure, and the door to the treasure swings wide open if one but press boldly and turn the key. Pleading is from one point of view a systematic, albeit abstruse, whole, which cannot well be learned by rule. Or, to put it differently, the rule
lecture method, Langdell purposefully shifted the student metamorphosis away from passivity: “[Langdell’s] chief thesis is that the student in preparing for a lecture should study cases, rather than the conclusions which others have derived from the cases; petere fontes is its motto.”70 Its form is simplicity:

The central idea of the new method was thus indicted from the start. According to Langdell and his pupils, the law — meaning of course the English common law as it has been developed in America —should be acquired methodically from the original material of all principles and doctrines of the common law, —that is to say, from the decided cases, —by individual, purely personal, intellectual labor on the part of the student. To this end a further device was employed. Langdell began his actual teaching by having each of the cases, which the students had to study carefully in preparation for the class, briefly analyzed by one of them with respect to the facts and the law contained in it. He then added a series of questions, which were so arranged as gradually to lay bare the entire law contained in that particular case. This stimulated questions, doubts, and objections on the part of individual students, against whom the teacher had to hold his ground in reply. Teacher and pupils then, according to Langdell’s design, work together unremittingly to extract from the single cases and from the combination or contrasting of cases their entire legal content, so that in the end those principles of that particular branch of the law which control the entire mass of related cases are made clear. The two ideas taken together suggest and are sufficiently well described by the term “Socratic method,”—an expression which was indeed early employed by Langdell and his pupils.71

70 LAW SCHOOL, CENTENNIAL, supra note 1, at 37.
71 Redlich, supra note 22, at 12 (here, Redlich uses Socratic Method as the label and image future generations might bring forward when referring to and thinking about Langdell’s system. Professor Redlich, like the rest of Langdell’s Generation, was attempting to come to grips with something new —a sense that permeates the written record of the Case System. But I suggest that Socratic Method as a descriptive label is too narrow because it holds the unintended potential for misdirection. Since labels are often useful for everyday matters like this one, I suggest “the case system of legal study,” the label Langdell’s Generation used, more richly and fully points the student directly and unambiguously toward the essential essence of Langdell’s idea).
Langdell recognized that the ability to derive general principles is developed more usefully by active student interaction with the body of knowledge. He also recognized that student proficiency with this skill is a prerequisite to learning by lectures and, indeed, the relevance of any legal studies undertaken thereafter. The Case System enhances the usefulness of legal education because it recognizes the student, like the law, is subject to living growth. Acceptance occurred slowly, but Langdell

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72 Scott, supra note 8, at 2 (as Scott suggested:

By studying the cases of a particular subject, by separating the cases that deal with a particular subject, by dividing these cases so separated into groups, by analysis and classification, it follows that the principles underlying them all may be discovered and brought to light. In this way a general principle is established, and when once the general principle is established it may be —indeed, must be —applied to analogous cases).

73 See McClain, supra note 50, at 408 (as McClain later insisted: “[t]he student who has, by actual experience, learned how general propositions are derived from particular cases, may be safely given general propositions in the first instance on secondary branches of the law”).

74 See LAW SCHOOL, CENTENNIAL, supra note 1, at 230-231 (according to Langdell’s worldview as expressed in his first case-book:

Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever tangled skein of human affairs is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only, way of mastering the doctrine effectually is by studying the cases in which it is embodied).

75 Cf. ASSOCIATION, REPORT, supra note 4, at 17-18 (just as Professor Pollock observed in Langdell’s modeling:}
began inculcating legal education and the profession with the sense that both unfolded as a life cycle to a greater degree than any earlier pedagogical form.\textsuperscript{76}

Introducing the Case System represented a decided shift in learning environments.\textsuperscript{77} From ancient to medieval times the learning environment shifted away from many external environments to converge on a single internal one—the student intellectual activity that produced an Abridgment. As treatises and lecturing supplanted medieval Abridgment writing, the environment shifted back to a more external and passive form: listening to the conclusions of others. Langdell’s innovation is a hybrid because it blends the most productive features of earlier methods. In doing so it introduced greater potential for developing the logical and disciplined thoughts and habits of thinking lawyers and citizens.\textsuperscript{78} And it soon began wandering far beyond the classroom where it was introduced.\textsuperscript{79}

\begin{footnotesize}

\textsuperscript{76} See \textit{Law School, Centennial, supra} note 1 at 229 (Langdell, “…had devised part of [the case system] in his own student days. He understood himself to be simply applying to the student stage of the lawyer’s life the method established from time immemorial as to the work of the practitioner and the judge”).

\textsuperscript{77} But see \textit{id. at} 176 (but few initially recognized usefulness: “Langdell’s courses were soon practically deserted by all except a few devoted admirers, whose distinguished career at the bar and on the bench has justified their choice”).

\textsuperscript{78} See George Wharton Pepper, \textit{The Place of Original Research in Legal Education}, 33 \textit{Am. L. Reg. N.S.} 689, 693 (1894)(by one perception of the idealized Case System:)

\end{footnotesize}
Under the case-system the materials which are put in the students’ hands are the cases which the instructor has selected as the stepping-stone cases in the development of the subject or doctrine under discussion. These cases stand for the stages of development through which the doctrine has passed from the time that its germ first made its appearance until its present proportions were attained. With the facts of the second case, in historical sequence, before him and with the original decision as a precedent, the student is asked to address himself to the problem with which the court was confronted when that second case arose. Step by step he is made to carry the development forward as applied to the facts of the cases as they successively came up—thus entering into the inmost spirit of the opinions of the judges, after, in each case, first endeavoring to form his own. He is thus taught to look upon the law as a living and a growing organism, and to understand that the development is destined still to go on.

79 See ASSOCIATION, REPORT, supra note 4, at 79 (as Gustavus H. Wald noted: “the work of genius wrought by Professor Langdell was the revolution of the methods of legal study, not only in this School, but in the schools of all lands where English law is studied”); see also id. at 80 (Wald continues: “[s]ince [1882] England…has seen the Langdellian system introduced into the Inns of Court and the ancient universities…. [Wald then noted that Daniel Webster had looked forward to the time when] America shall repay to Europe the great debt of learning she owes her… repayment to England of that debt has already begun.” The Case System was accepted and exported at the height of the industrial age boom long after technology made the printed word widely available. My impression is that enthusiasm for the system was less about the consistency achieved by publishing case-books efficiently, that capability already existed. The greater sense is in the relevance of a very simple thought provoking idea: once form gains a certain level of complexity, something unorthodox might be needed to engender progress).
Langdell’s Case System supplanted the lecture method of legal education for his first seven 1L “freshmen,”\textsuperscript{80} and in so doing elevated itself to the level of a new pedagogical standard. At each process step the student must independently go to the source of knowledge and interact with it to feel its living growth\textsuperscript{81} and make it their own.\textsuperscript{82} Socratic inquiry was and is the source of student anxiety even though its purpose is simply to draw out the logic and discipline acquired during pre-class preparation. The approach suggests that higher order learning requires more than simply listening and then repeating what one is told; it requires logical and disciplined independent thought.\textsuperscript{83} Process consistency develops the habits needed to undertake the study and practice of

\textsuperscript{80} Redlich, supra note 22, at 13 (as Redlich noted, “[a]t the first class held by Langdell in Contracts, the students all gradually dropped out, with the exception of seven, who were called Langdell’s freshmen”).

\textsuperscript{81} Compare McClain, supra note 50, at 401 (such discipline builds on the general outcome of individual student capacity:

In considering methods it needs to be borne in mind that two quite distinct objects must be kept in view: First, giving the student discipline in legal thinking; and second, giving him knowledge of the so-called rules or principles of law. In no other calling, perhaps, is mere discipline recognized as counting for so much, in comparison with mere knowledge, as in the practice of law).

\textsuperscript{82} Compare William A. Keener, The Inductive Method in Legal Education, 28 Am. L. Rev. 709, 711 (1894) (by developing the internal environment, Keener, noting an observation by the National Educational Association supporting inductive learning like that embodied in the Case System: “[t]he principal end of all education is training. *** The mind is chiefly developed in three ways: by cultivating the powers of discriminating observation; by strengthening the logical faculty of following an argument from point to point, and by improving the process of comparison, that is the judgment).

\textsuperscript{83} Cf. Fisher, supra note 34, at 418 (innovation for the age: “[t]he case system is simply part of the progress of the age in education. It is analogous to the progress in the study of medicine and in the study of chemistry”).

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law as a scientific pursuit. Langdell’s goal for his students and his system was, simply put, petere fontes, to drink from the fountain.

Four – Logic

The Case System’s antagonists and (before their conversions) advocates alike reasonably questioned its usefulness for developing logical thought. The system does this by focusing student attention on appellate cases specifically chosen to demonstrate the evolution of selected legal principles or doctrines, independent pre-class study of those cases, classroom interaction using Socratic inquiry, and any post-class efforts the student might be assigned or independently determine to undertake. The student is not initially given a statement of the law, but rather develops the intellectual ability required of lawyers to discover the principle and its living growth by adherence to process.

84 See Gray, supra note 24, at 761 (to which Professor Gray countered: “There are two things to be acquired in a legal education. First. The knowledge of a certain number of facts. Secondly. [the aim of the Case System] The habit of correct reasoning on legal questions, with a ready and accurate perception of legal analogies, and the second is much more important than the first”).
85 McClain, supra note 50, at 407 (as McClain explains:

[W]hen resort is had to case study, some general statement of the question to be considered and the difficulties surrounding it should first be made to the student; that then without any statement of the law on the question he should read one or more very carefully selected cases, deciding the question in the light of legal reasoning, the cases being such as [to] either adjudicate the question directly or furnish a general rule which may be applied to it; that he shall then by some sort of colloquy or quiz be compelled to generalize and correctly apply the same legal reasoning to other similar questions, until he understands its scope and its limitations; and that finally, if practicable, some brief statement of the law be given him which may be easily remembered and will assist in recalling the principle of the cases in its proper connection. Under this plan the lecture or text may still play a very important part in the process of legal education, but will not be put into a false position as the original source of information as to what the law is).

86 See Redlich, supra note 22, at 39-40 (as Redlich noted:
capacity for logical thought, the student was thought better able to predict outcomes when the principle encounters conflict under other fact patterns. Langdell’s genius was not the use of cases or a 2,000 year-old dialectic method, but their use together as a system with the potential to develop logical thought faster and more usefully than any earlier teaching method. Regardless of any teaching variance today, the Case System intensifies the

Consequently as the [Case System] was developed, it laid the main emphasis upon precisely that aspect of the training which the older textbook school entirely neglected: the training of the student in intellectual independence, in individual thinking, in digging out the principles through penetrating analysis of the material found within separate cases: material which contains, all mixed in with one another, both the facts, as life creates them, which generate the law, and at the same time rules of the law itself, component parts of the general system. In the fact that, as has been said before, it has actually accomplished this purpose, lies the great success of the case method. For it really teaches the pupil to think in the way that any practical lawyer —whether dealing with written or with unwritten law —ought to and has to think. It prepares the student in precisely the way which, in a country of case law, leads to full powers of legal understanding and rules of Anglo-American law are recorded not as dry abstractions but as cardinal realities in the inexhaustibly rich, ceaselessly fluctuating social and economic life of man).

87 See LAW SCHOOL, CENTENNIAL, supra note 1, at 229 (on Langdell:

[T]he existence and limits of a rule of law must be proved finally, not by a textbook, but by the reported decisions of courts. [Langdell] knew that when a lawyer has occasion to test a rule of law he searches for those decisions. Langdell determined that the student should be trained to use those original authorities, and to derive from judicial decisions, by criticism and comparison, the general propositions…).

88 See McClain, supra note 50, at 405-406 (as McClain noted:

There is nothing new, however, in this view of the advantage of studying adjudicated cases. Teachers, by whatever method, constantly refer to such cases and urge the student to examine them. It is in the method of using them, and in the relative importance to be given to such study, that they greatly differ, and my object is...to urge a more effective and satisfactory use of cases, whatever may be the particular plan of instruction).
development of student logic by design, thereby increasing educational efficiency, consistency, and relevance.\textsuperscript{89}

A subtlety of appellate cases lends Langdell’s system its most scientific nature. His first \textit{Cases on Contracts} featured “all important cases upon each topic, beginning with Tudor times; and in class [Langdell] went carefully through each case, taking up every point presented and extracting every possible legal principle from the case.”\textsuperscript{90} Because appellate case facts are the decided facts of a trial, a stability is reached exceeding what a student might ever observe apprenticing in a law office or observing facts in the making during trial proceedings.\textsuperscript{91} In those environments the facts are continuously in the unstable process of becoming, the living growth of any principle involved therefore more difficult to discern or predict.\textsuperscript{92} With this increased stability the student can

\textsuperscript{89} ASSOCIATION, \textit{REPORT, supra} note 4, at 40 (as President James C. Carter suggested: “[w]e have long heard that the law is a science, but we have never before known, as we now know, what kind of science it is, what are the facts with which it is concerned, where those facts are to be found, and how they are to be studied”).

\textsuperscript{90} LAW SCHOOL, \textit{CENTENNIAL, supra} note 1, at 36.

\textsuperscript{91} Cf. \textit{Id.} at 81 (a point Ames used to improve on the basic idea:

It was Ames who really fixed the type of case book in American law schools. His decisions were chosen, not with a purpose of tracing by slow steps the historical development of legal ideas, but with the design, through the selection of striking facts and vivid opinions, of stimulating the thought of the student, and leading his mind on by one step after another until he had become familiar with the fundamental principles of the subject and the reasons for them. Ames himself worked out one or two foundation principles in each topic, guided the class in its discussions to the adoption of these principles, and then used them for the solution of every problem that arose. His method became, at least for his pupils, the typical method of teaching by cases: Keener followed it, and later Wambaugh, Williston, Beale, and their younger colleagues).

\textsuperscript{92} \textit{Compare} Fisher, \textit{supra} note 34, at 417(this issue with stability will become more obvious in your civil procedure and evidence classes; in classes taught by the Case System:

The student is taken at once to the real sources of the law; he takes nothing second hand; he is accustomed from the start to the best evidence [of decided facts]. He is accustomed, moreover, to the practical work of a lawyer, that is, the study and analysis of cases and the drawing therefrom a principle or doctrine. More important still, he is trained from the beginning in the application of principles to facts).
methodically sort the unimportant from that which is important and coursing through the line of cases.\textsuperscript{93} The subject matter can be dissected, turned over, and diagnosed with increasing accuracy and confidence.\textsuperscript{94}

Process demands that each student independently search the assigned cases to prepare for class.\textsuperscript{95} An increased capacity for

\textsuperscript{93} See Vance, supra note 47, at 4 (Vance describes the practical challenge, and its implications for the educational challenge:

It is clear that the task of the lawyer is a heavy one. No rule of thumb will help him. No statement in a text-book, whether in black-letter or italics, will answer his need, nor will any general principle of law that may have fallen, however eloquently, from the lips of a distinguished lecturer. The only help for our lawyer lies in his capacity to reason accurately and convincingly from fixed precedents. Hence there slowly arose a recognition of the fact that the law school did most for its students which taught them to think clearly and accurately in terms of settled legal principles, to analyze, test, and weigh precedents under the fierce light of reason, and trained them in the art of applying old principles to new states of fact).

\textsuperscript{94} See Redlich, supra note 22, at 13 (felt, not simply heard:

Under the old method law is taught to the hearer dogmatically as a compendium of logically connected principles and norms, imparted ready made as a unified body of established rules. Under Langdell’s [Case System] these rules are derived, step by step, by the students themselves by a purely analytical process out of the original material of the common law, out of the cases; a process which forbids the \textit{a priori} acceptance of any doctrine or system either by the teacher or by the hearer. In the former method [lecturing] all law seems firmly established and is only to be grasped, understood, and memorized by the pupils as it is systematically laid before them. In the [Case System], on the other hand, everything is regarded as in a state of flux; on principle, so to speak, everything is again to be brought into question).

\textsuperscript{95} See McClain, supra note 50, at 405 (encouraging thinking like a lawyer:

In the study of such cases it is possible to get a definite understanding of the facts to be reasoned about, the considerations brought to the mind of the judge in behalf of the various positions of the opposing parties, the weight given to these different considerations, and the final result reached. The mind is thus inducted into the correct conception of the law, and the correct method of applying it).
logical thought springs from and is honed by this effort as the student “is taken down to the vital organs of the science.” The student can adopt any study method that works, but personal interaction with the materials is the threshold. Preparation is as environmentally internal as when the medieval student labored over his Abridgment because the system compresses many decades of the external environment onto a few printed pages, and then invites the student to allow them to converge on his or her intellect. But Langdell’s compression requires more than memorization:

By the new method the student reads the report of some selected case, and, having obtained the facts, he is required to determine whether there is or is not a “meeting of the

96 Fisher, supra note 34, at 418(further:

By the case system, [the student] is taken down to the vital organs of the science; the professor has complete control of him and leads him up and down among the pure fundamental principles, makes him argue about them, turn them over, handle and dissect them, until they are burnt into his mind).

97 Id. at 417 (as Fisher noted: “[t]he object of the case system is to compel the mind to work out the principles from the cases”); and LAW SCHOOL, CENTENNIAL, supra note 1, at 131 (the techniques below are now more than a century old. Today we use notebook computers, but I witnessed some of my law school classmates using these exact same techniques, in the 21st century:

The notebook is the principle tool of the student. In this he writes the abstracts of the cases assigned for the day’s work, what the lecturer says, and the questions and answers of those attending. In the [pre-exam] review...many additions and corrections are made. The entire notebook, or portions of it, are often abstracted or summarized. Notes concerning cases or legal articles, to which reference was made in the class, are inserted; occasionally even a few words are embodied from some disdained textbook with which the notebook owner has aided his review. To be sure, the notebook is often allowed to take the place of the student’s mind, and from the careful underlining and the different colored inks used in the review, it might seem in some cases that the maker was best suited for the course in Landscape Architecture. But more often the notebook is a servant and not a master. The reviewer uses his own ideas afresh and jots down questions concerning matters that he does not understand or with which he disagrees. These questions he tries to straighten out by talking or reviewing with his fellows, by reading additional cases or texts, and by conferring with his professors).
minds.” Regardless of the side he takes, the instructor takes the opposite side and argues with him, forcing him to be precise in his statements and logical in his reasoning. After one case has been carefully considered, the student states the facts in another case involving the same point, but in which the court reached the opposite conclusion. If the student agreed with the decision in the first case, he is asked to reconcile the two, and at once he is in a quandary. He then states the facts in still another case, and soon it becomes evident to him that the weight of authority leans toward one or the other of the views.\textsuperscript{98}

The premium on individual preparation carries over to the classroom experience by way of Socratic inquiry, an experience that must be seen or experienced for full appreciation.\textsuperscript{99} Like any athlete striving to maintain a center of balance, the student holds a principle in his or her mind alongside knowledge of how changing facts have influenced application.\textsuperscript{100} The student and professor explore those limits by varying the facts as they might present in future cases.\textsuperscript{101} How the inquiry unfolds will vary in

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\textsuperscript{98} Smith, \textit{supra} note 45, at 255.
\textsuperscript{99} Fisher, \textit{supra} note 34, at 417 (as Fisher observed: “[b]ut the important part of the system, the part wherein the greatest merit lies, is the actual work and questioning done in the class-room; and it is well nigh impossible to explain this on paper; it must be seen to be fully appreciated”).
\textsuperscript{100} Compare id. (by Fisher’s idealization: “The class-room exercise is neither a recitation nor a lecture. It would more properly be called a conference or quiz”); \textit{but compare} Redlich, \textit{supra} note 44 (the modern student must adapt. My sense of a “quiz” under the idealized system goes more to the idea of a conference or dialogue rather than what probably transpired when the “quiz-masters” took over following the early 19\textsuperscript{th} century lecture sessions: a verbal recitation of memorized facts. Each form is still going to materialize to different degrees today, but the distinction is a Case System fundamental and recognition of the shifts between forms as they occur is essential to learning).
\textsuperscript{101} See Fisher, \textit{supra} note 34 at 417 (the technique exercises logic, personal growth, and development:

In some subjects, as in contracts, books are published, containing a selection of cases. The students are made to state each case, and what it is supposed to decide, and are then cross-examined on it; and the facts of the case are varied and their opinions asked. The object of the case system is to compel the mind to work out the principles from the cases. The instruction is almost entirely by problems and actual or supposed cases, beginning with the simplest and rising to the difficult and complicated, mingled, of course, with explanations by the professor).
\textsuperscript{102} See \textit{LAW SCHOOL, CENTENNIAL, supra} note 1, at 37 (as Ames modeled:}

\end{footnotesize}
every occurrence, and framing the question is as much an art as answering one.\textsuperscript{103} Langdell was described as deliberate, ponderous, and maddeningly slow; but to some these traits were thought to enhance the process of, and student-centered learning inherent in, the Case System.\textsuperscript{104} Regardless of teaching style, Socratic inquiry will harness the student’s attention requiring it to logically work

\begin{quote}
The Socratic method of teaching, with [Ames], was neither a club nor a rapier. Like Socrates himself, he desired to open the eyes of his students and let them discover the truth for themselves. He would rather state a problem than a solution. His favorite device in teaching was to put one good student against another, that the class might learn the law from their argument.

\textsuperscript{103} McClain, \textit{supra} note 50, at 406 (as McClain noted:

There are, however, very great dangers attending this method of study which the teacher can guard against only by the exercise of care and skill. The difficulty raised in the student’s mind must be capable of solution, and the correct solution must be eventually attained, or he will conceive of the law simply as furnishing an uncertain and haphazard adjustment of the complications growing out of human relations. The fact that there are questions, some of them real, many more of them wholly imaginary, which cannot be satisfactorily solved by ordinary legal processes, will soon enough become apparent. The most important and useful impression that the student can get at first is, that these human relations fall into well-recognized categories, for each of which there are ascertainable rules, and that legal reasoning furnishes a common sense and satisfactory solution for most of the questions which puzzle one who is not familiar with legal methods).

\textsuperscript{104} LAW SCHOOL, \textit{CENTENNIAL}, \textit{supra} note 1, at 36 (of Langdell:

Langdell himself was not a born teacher. The course of his thought was too deliberate and ponderous; he relied too entirely upon intellectual process to reach all classes of students. He possessed in high development the historical sense and the logical faculty.... His method was that of Coke; and in these modern days it was criticized as slow and as ill-arranged. He certainly covered little ground. As he grew older, his eyesight failed, and he was forced to rely entirely on lectures for conveying instruction; and many students found even greater difficulty in making much of his courses. But for the better men his was a wonderful training in close legal thought, in precision and breadth of statement, in remorseless logic).
through the contours and limits of any legal principle, and then implant both in the mind of the student. 105

To those in Langdell’s day who observed and judged his inspiration as it was slowly accepted, the Case System was thought best suited for encouraging the bounded human mind 106 to fully address 107 the “great problems of the law,” but not without struggle:

This method of studying the law by going to its original sources is no royal road, —no primrose path. It is full of difficulties. It requires struggle. If there is anything which is calculated to try the human faculties in the highest degree, it is to take up the complicated facts of different cases; to separate the material from the immaterial, the relevant from the irrelevant; to assign to each element its due weight and limitation, and to give to different competing principles and rules of law their due place in the conclusion that is to be formed. And I know, on the other hand, of no greater intellectual gratifications than those which follow from the solution in this way of the great problems of the law as they successively present themselves. 108

105 Gray, supra note 24, at 764 (guided self-development promoting growth. Professor Gray:

In the matter of exciting interest and fixing in the memory the advantage is all on the side of the study of cases. To keep the attention fastened and every power of the mind awake when reading continuously a book so severely abstract as a treatise on law, is a very difficult task. To retain the contents in the memory is still more difficult. I know it was so for me. I believe most students who have been brought up on text-books will say it has been so for them. The case gives form and substance to legal doctrine, it arrests the attention, it calls forth the reasoning powers, it implants in the memory the principles involved).

106 See Fisher, supra note 34, at 420-421 (“[t]he case system makes sincere, earnest students; they become investigators, despisers of authority unsupported by a reasoning process, and obtain a mental training invaluable as an education…”).

107 ASSOCIATION, REPORT, supra note 4, at 17 (Professor Pollock: “[o]thers can give us rules; [Langdell] gives us the method and the power that can test the reason of rules. And therefore, as it seems to me, his work has been of a singularly fruitful kind, and profitable out of proportion to its visible bulk”).

108 UNIVERSITY, COMMEMORATION, supra note 18, at 63-64 (Association President James C. Carter).
The Case System was not well received, in part, because it departed from long accepted traditions, the status quo.\textsuperscript{109} Students, alumni, and faculty alike questioned its practicality.\textsuperscript{110} But to those who ultimately recognized its relevance\textsuperscript{111} against the backdrop of many centuries of pedagogical evolution, the system was said to promote what was needed in the coming century: reason.\textsuperscript{112}

\textsuperscript{109} See \textit{ASSOCIATION, REPORT, supra} note 4, at 70 (Association President Charles W. Eliot: “There have prevailed about [the Case System] some misapprehensions, particularly at the outset. A “case lawyer” was not an agreeable expression, and did not present a pleasing picture to the mind of the profession. Misapprehension concerning the nature of the method prevailed for a long time. It was not perceived that its keynote was discriminating, orderly selection of the material to be studied”).

\textsuperscript{110} See \textit{LAW SCHOOL, CENTENNIAL, supra} note 1, at 210-211 (for decades:

Even after Langdell and Ames had made the case system a success, [Professor John Chipman] Gray long continued his own method...giving a lecture of artistic form, with beginning, middle, and end, but with occasional questioning... Gray eventually became a convert to the case system at the time when Langdell’s method was meeting with much opposition among practitioners. He was most valuable in convincing the bar of Boston that there must be something in the new fangled way of doing things or Gray would not have believed in it. The fact that a practical man, not only interested in scholarly things, not only interested in what the law had been or was going to be or ought to be, but also interested in what it was and now happened to be, —that such a man believed in methods of teaching and administration that were being adopted, counted for much).

\textsuperscript{111} Smith, \textit{supra} note 45, at 254 (according to one student:

The study of the law from cases is the result of a belief that, since court decisions are the most authoritative evidence of the law, as a science it must be studied in the light of these decisions; that a better understanding of the law can be had by reasoning inductively from decided cases than by reasoning deductively from abstract definitions).

\textsuperscript{112} See Fisher, \textit{supra} note 34, at 418-419 (as in this modern day:

The law, like medicine and chemistry, is a practical science, or else it is nothing, and the advantage of the case system is that the student is put at once into as practical relations with his profession as is possible; it could not be more practical, unless he were given a case to argue in court, and paid a fee. He learns at once that the practice of the law is not simply a matter of information and knowledge, but a matter of reasoning. He
Five - Discipline

Langdell’s Generation suggested the discipline the Case System requires is the foundation for three primary pillars: interaction, thought, and habits.

What has already been said in regard to use of cases in imparting legal discipline to the mind, has also suggested the functions which cases can properly play in giving legal knowledge, for it is evidently impracticable, as it would be unwise, to divorce these two objects; but in the beginning the disciplinary feature ought to be given controlling importance. When the habit of legal thinking has been formed, legal knowledge may be much more readily acquired and assimilated.\(^\text{113}\)

Today we might say the Case System strives to develop intellectual memory\(^\text{114}\) just as athletes build muscle memory.\(^\text{115}\) It learns that great lawyers are always great reasoners, that as a lawyer he must stand or fall by his reasoning power, and that his knowledge is valuable only as it gives material for his reason. This reliance on argument, this reliance on his ability to persuade the highest faculties of the mind, is the chief merit of a lawyer, and gives the profession its power and influence in the community).

\(^{113}\) See McClain, supra note 50, at 407.
\(^{114}\) Scott, supra note 8, at 5 (Scott’s idealization: “[t]he teaching of the law by means of selected texts is an improvement upon the lecture method, because the student is forced to think; but it requires a trained mind to think in abstract terms, and it must be an exceptional person who from the abstract statement can suggest and apply concrete illustrations”); and id. (Scott might agree that my modern sound bite fits, but states it more fully:

If to the concrete case hypothetical instances and modifications be suggested, the student is led perforce into a theoretical discussion in which he discovers the theory underlying the case and its modifications. By the constant application of this method, not as a test of memory, but as an investigation of principles of law, the student is led insensibly to a grasp of legal principle. The concrete case suggests the theory, and theory and practice thus go hand in hand. From their happy combination knowledge of the law is produced. By means of this method the student is the chief factor; he trains himself; he discovers and reconciles difficulties…).
builds on the capacity to think.\footnote{Compare LAW SCHOOL, CENTENNIAL, supra note 1, at 128-129 (as in Langdell’s day, though the words may seem more antique:)} Discipline begins with pre-class study of the assigned lines of cases.\footnote{Cf. id. at 717 (according to Keener’s idealized version:)} The discipline the student

Why does the Law School possess this faculty of making its students, for the first time in most of their lives, really desire to study, and what is more, be proud of that desire? The causes are many. In spite of a perhaps all too utilitarian undergraduate course, the student now finds for the first time something of definite use to his future professional life. The joy of competition with some of the best graduates of one hundred and forty different colleges whets an appetite...[a]dded to these causes is the social force of the tradition of the School. Somehow or other, studying is and always has been the thing to do. It is strictly comme il faut, as athletics, fraternities, or what not, were at college)(original emphasis).

\footnote{See Keener, supra note 82, at 715 (as Keener suggests:)} How many students will do independent thinking and critical reading while preparing twenty pages of Parsons on Contracts for a lecture? But suppose you take the same subject-matter and, instead of giving him Parsons’ treatment thereof, you put into the student’s hand a few cases involving the principles but contradicting each other in many particulars and perhaps reaching opposite results. Can a student capable of thought fail to think, and having thought, whatever his conclusions may be, will not the lecture that he attends, where he will have his conclusions either confirmed or questioned, mean more to him and produce a more lasting impression?).

\footnote{Cf. id. at 717 (according to Keener’s idealized version:)}
gains includes recognition of the need to acquire knowledge, and that she can un-bundle legal questions independent of external assistance. To reach this level the student must place discipline before the acquisition of knowledge. The full inductive value of the exercise is gained by doing so. And regardless of how long ago the cases were decided, they can literally come alive with the effort. By studying the cases, and only by studying cases, can the student reach Langdell’s entreaty for discipline:

and required to deal with it in its relation to other cases. In other words, the student is practically doing, under the guidance of the instructor, what he will be required to do without guidance as a lawyer).

118 See McClain, supra note 50, at 406 (thus gaining an invaluable measure of confidence. McClain:

There is no greater incentive to the acquisition of knowledge than a recognition of the necessity for it. Let the student realize his ignorance as to a particular question before you attempt to give him a solution of it. Plunge him into the midst of a difficulty and then let him help himself out, as a lawyer or a judge would, by means of an adjudicated case, and he at once recognizes the utility and discipline of case study. But tell him what the case decides and describe to him the means of solution before the difficulty becomes apparent, and the exercise loses all its value).

119 Compare id. at 403-404 (in contrast to lecturing which, as McClain suggested: “…implies [the] acquisition of knowledge first, and discipline in applying it afterwards, which, as has already been suggested seems not to be the natural, nor most effectual order”).

120 Compare id. at 406 (as McClain noted:

The usual form of citing cases in a lecture or text book leads the student to look upon the case merely as a corroborator of what the lecturer or writer has already said. In this way the entire inductive value of the case, and its disciplinary value as well, is lost. The case becomes not a source of information, but a mere illustration; for what teacher following the so-called lecture or text-book method ever calls upon the student for independent knowledge acquired from the study of cases cited, and not derivable from the lecture or text-book itself?).

46
[The Case System] is the best because it is most in accordance with the constitution of the human mind; because the only way to learn how to do a thing is to do it. No man ever learned to dance or to swim by reading treatises upon saltation or natation. No man ever learned chemistry except by retort and crucible. No man ever learned mathematics without paper and pencil.\textsuperscript{122}

Langdell’s students would have agreed that increasing the level of intellectual activity involves disciplining oneself to active, critical, and purposeful individual thought.\textsuperscript{123} Just as the doctor wields the scalpel, the lawyer wields thought to resolve a question however removed from his or her base of knowledge and experience.\textsuperscript{124} Benefit is most notably gained when the student

\begin{quote}
See LAW SCHOOL, CENTENNIAL, supra note 1, at 227 (Langdell modeled student discipline:

The librarian being asked one day by Charles O’Connor where to look for the law on a certain question, pointed to Langdell and said: “That young man knows more about the law on such a matter than any one else.” ....[Langdell] was unheard of by the rank and file of the bar, but when the triumphant advance of opposing counsel was turned to rout by a sudden pitfall in the pleadings or an unexpected ambush in the argument, the well-informed would mutter, “Damn it, Langdell’s at the bottom of this somewhere!”).
\end{quote}

\begin{quote}
Gray, supra note 24, at 763.
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\begin{quote}
See LAW SCHOOL, CENTENNIAL, supra note 1, at 67 (a system outcome:

The student instructed by this system may leave school ignorant of the rules developed in important branches of law, for three years’ study is too short to make a man master of every branch of a complex and rapidly growing science. He ought, however, to be so trained that he will never be at a loss to find the required law and apply it to facts set before him, and this, after all, is the essential task of every lawyer in every branch of the profession).
\end{quote}

\begin{quote}
See Fisher, supra note 34, at 418 (using discipline and study:

Now the subject-matter of the law consists of disputes about life, liberty, and property. These the student sees as they lie in court, just as the student of medicine examines, as they lie in hospitals, the bodies of diseased and wounded men. For the greater part, however, of their elementary education, the medical men rely not on these living instances, but on dead bodies, with which they can do what they please. So likewise, with the man of law; and for him the reported cases are the dead bodies of the law; and some of them are very dead indeed).
\end{quote}
encounters conflicting holdings that allow case criticism by way of comparison and contrast. And at some (possibly advanced) process point, the student might even be inexorably drawn to other investigations, a phenomenon useful for self-evaluation. If Langdell’s Case System develops and advances the capacity for logical thought better than any earlier methodology, it does so by focusing on the internal environment, with and through discipline.

Discipline exercised through rigorous individual study and thought lays the foundation of professional habits and the acquisition of increasingly complex legal knowledge. The discipline required by the Case System is not one of giving the student the answer, but teaching him how to find the answer: “although an important object of education is to tell the student what others have found out, a more important object is to teach him to find things for himself.” Langdell modeled such discipline:

To the generation of students which knew Langdell... his most characteristic quality was patience. Whether in working slowly and carefully to a conclusion or in defending that conclusion against all assaults, he never allowed himself the luxury of assuming a point, however axiomatic it may have seemed to him. If he had occasion to examine a decision, he would study it for hours or for days, lest some feature of it might be overlooked; if he used a case in class, he would state the facts with careful fullness, and he would draw from it not only the lesson that seemed of

125 McClain, supra note 50, at 409 (“[b]ut it will be proper, and often desirable, to present cases which are apparently in conflict, in order that in reconciling them or discovering the real point of difference the student shall have exercise in case criticism”).
126 See Gray, supra note 24, at 764 (discipline encourages curiosity:

When from the cases the student has gained a vivid sense of what the difficulties of a subject are, he will be eager to turn, and he will turn with profit to find out what able and learned jurists have said on them, and to classify and systematize his knowledge. Their words will fall on a prepared soil, and will stay in his memory).

127 See LAW SCHOOL, CENTENNIAL, supra note 1, at 37 (which is also the basis for assistance: “[h]aving prepared himself for a lecture by such study [of cases], the student may then, consistently with the application of the system, receive help from the teacher in any way in which the teacher is able to give it”).
128 Gray, supra note 24, at 763.
immediate interest, but every other lesson that could possibly be of value to a lawyer. At that time, as a result of his failing sight, he never used the Socratic method in his teaching. He simply talked, slowly and quietly, stating, explaining, enforcing, and reënforcing the principles which he found in the case under discussion. And once in a great while something would amuse him, and then he would throw back his great head with a laugh that seemed to have the full strength of his mind in it.129

Many of those who weighed the protests over Case System use but ultimately accepted its value were clear and direct in their opinion: “[a]ll I contend is that the method of study by cases is the best form of legal education that has yet been discovered.”130

Six - Habits

To those asking, “What’s the law?” in 2010, as others did in 1910, Langdell will reply, “It is a science.”131 And as with other sciences the learning process requires developing the habits of lifelong students:

In spite of criticism, [Langdell] saw and insisted that, if law had any place in a university course, it must be studied as a science, —that is to say, from its original sources; that a law school is a place, not for teaching, but for inciting and helping men to study law; that education means what it

129 LAW SCHOOL, CENTENNIAL, supra note 1, at 232-233.
130 Gray, supra note 24, at 763 (note that Gray converted to the Case System slowly).
131 Keener, supra note 82, at 721 (as his generation explained:

It has been objected to the case system that it proceeds on the theory that the law is an exact science, and those urging this objection, assert strenuously that such is not the case. With the assertion that law is not an exact science, I think all will agree, but that there is any dependence in teaching law by cases, and its being an exact science, I fail to see. That law is a science is claimed by the advocates of the case system, and I trust not denied by its opponents. But it is an applied science, depending for its exactness upon human reasoning, and is not therefore one of the exact sciences. Yet I trust, for all that, not the less worthy of scientific study).
literally implies, —not stuffing or cramming, but drawing out the mind; not pouring into it as into a vessel the dead waters which others had gathered, but smiting the rock, that the pent-up living waters might leap forth.\textsuperscript{132}

Langdell’s idea to drink from the fountain, \textit{petere fontes}, reflected the necessary sentiment of his day that existing conditions can be improved.\textsuperscript{133} Where the lecture method might be thought of as the pouring of knowledge into the student as if he were a vessel, Langdell required the student to become that vessel first, and then go to, and drink from, the fountain.\textsuperscript{134} The distinction is less about teaching than student interaction with the materials, their investment:

\begin{quote}
[The Case System] is not a system which will work itself, but neither will any other system. I must, however, in frankness admit that, given a drone for a teacher and a dunce for a student, the study of cases would not be the surest mode to get into the bar. Probably a catechism made up out of Kent or Blackstone would be found the most efficacious. Though there is no mystery about the use of
\end{quote}

\begin{footnotes}
\item[132] \textit{ASSOCIATION, REPORT}, supra note 4, at 79.
\item[133] \textit{Compare} Fisher, supra note 34, at 420 (legal education was in a period of institutional expansion when Fisher made this comment directed specifically at process outcomes:

But that is not the real case system; it is not the system in its entirety. [Some 19\textsuperscript{th} century legal education is] conducted on the principle that if you bring a man in contact with a great quantity of knowledge some of it will soak through. [This] afford[s] no discipline, no genuine legal training. In [many cases] the students, as a rule, do not take their own notes. Some few industrious members of the class take full notes, and these are type-written, or reproduced in some form and distributed, often sold, to the rest of the class, and sometimes passed on to the succeeding class).

\item[134] \textit{See id.} (Fisher continues speaking to student interaction:

As I remember the case system, such slip-shod methods were unknown; every man took his own notes and wanted no others; and he thought it a great inconvenience if through sickness or some other cause, he was absent from the classroom, and had to rely on the notes taken by a friend. A man who habitually copied the notes of others, or who relied on notes taken in a previous year, would have been laughed out of the school, and, worse still, could not have passed the examinations).
\end{footnotes}
cases, it does need a fairly moderate amount of intelligence. I ought also to say that the employment of the “case system” involves a certain amount of time; and although law is, I think, most solidly and permanently acquired in that way, I doubt if it could be used with its full effect in a course of less than two years. The course necessary for a degree at Cambridge is three years.\textsuperscript{135}

The investment does not require extraordinary prior accomplishments and it is not influenced by birthright or privilege.\textsuperscript{136} But its basic form does require going beyond the “letter-worship of authority” and the enumeration of decided points:

Mr. Langdell has insisted, as we all know, on the importance of studying law, at first hand, in the actual authorities. I am not sure whether this is the readiest way to pass examinations; that is as the questions and the examiners may be. I do feel sure it is the best way, if not the only one, to study law. By pointing out that way Mr. Langdell has done excellently well. But the study he has inculcated by precept and example is not a mere letter-worship of authority. No man has been more ready than Mr. Langdell to protest against the treatment of conclusions of law as something to be settled by mere enumeration of decided points.\textsuperscript{137}

It is the habit of critical thought the new 1L might reflect on when the professor asks his or her first question this fall and the anxiety level rises.\textsuperscript{138} The student owns the learning environment

\textsuperscript{135}Gray, \textit{supra} note 24, at 761.  
\textsuperscript{136}\textit{Cf.} ASSOCIATION, \textit{REPORT, supra} note 4, at 14 (but on student investment, as Professor Pollock noted: “If...our traditions, our professional habits of thought, and our judicial practice are not foolishness, it would seem to be because the law is not an affair of bare literal precepts, as the mechanical school would make it, but is the sense of justice taking form in peoples and races”).  
\textsuperscript{137}\textit{Id.} at 17 (Professor Pollock).  
\textsuperscript{138}See \textit{LAW SCHOOL, CENTENNIAL, supra} note 1, at 130 (reducing anxiety is, after all, in large part a matter of demystifying the unknown. However, as Langdell’s Generation noted, developing habits is the work of the student:

There is no doubt that the law man at the School to-day works, but how does he work and what are his methods? How does the case system seem from his viewpoint? He is little interested in its scientific character or its pedagogical value. That is the view of the landlords of the system).
and the product alike. But in a very real sense he begins as something less than an owner, not even a tenant; he or she begins as an invitee with an option to purchase. And anxiety will probably define the experience this year and next for those invitees who inevitably ask, “What’s the law?” For them, Langdell might suggest turning to logic, discipline, and habits for answers to ownership and independence.

The Case System requires each to find the law themselves through a process of systematic study and interaction. With

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139 Id. (as Langdell’s Generation saw the new law student:

He is the invitee upon the case-system premises, who, like the invitee in the reported cases, soon finds himself fallen into a pit. He is given no map carefully charting and laying out all the by-ways and the corners of the legal field, but is left, to a certain extent, to find his way by himself.

140 See id. (many have and will pose this question, and:

His scramble out of difficulties, if successful, leaves [the student] feeling that he has built up a knowledge of the law for himself. The legal content of his mind has a personal nature; he has made it himself. This independence and resulting self-confidence is the biggest thing in his life as a student. Although he cannot merely stick in his thumb to draw out a plum of legal knowledge, the greater effort has its compensation.

141 See id. at 130-131 (as Langdell and his generation saw things unfold:

Indeed, the independence developed is remarkable. Jones, Law I, after a month or so, boldly asserts that the nine Justices of ‘the greatest tribunal in the world’ are absolutely and unanimously wrong, or that his professor, who perchance is the author of a standard text or two, and a number of authoritative monographs and has had years of experience at the bar and in the School, is clearly mistaken in his view of this case or that legal principle).

142 Vold, supra note 9, at 197 (Vold suggested pragmatic ways students might undertake systematic study beginning with reading each case “to get a general impression of its contents,” followed by preparing an abstract not exceeding 50 words, consisting of “the following: (1) The name of the case. (2) The essential facts only. (3) The question involved. (4) The decision. (5) The reason for the decision. [and] (6) Dicta, if they seem important.” Contemporary suggestions on pre-class preparation may differ from this early form, but Vold’s companion advice will not: “Constantly use a law dictionary whenever meeting any word or expression you do not thoroughly understand”).
such investment the student gains a capacity for logical and disciplined thought and lifelong professional habits as lifelong students. ¹⁴⁴ Anxiety about the system was normal in 1870 just as it will be this fall, and will be in 2070.¹⁴⁵ But rather than

¹⁴³ UNIVERSITY, COMMEMORATION, supra note 18, at 66-67 (after saying “[a] law school does not undertake to teach success,” Justice Holmes goes on to say of the educational process: “you cannot make a master by teaching. He makes himself by aid of his natural gifts”).

¹⁴⁴ See ASSOCIATION, REPORT, supra note 4, at 60-61 (Justice Holmes obliquely supported the Case System while imparting a distinct sense of his personal metamorphosis:

As most of those here have graduated from the Law School within the last twenty-five years, I know that I am in the presence of very learned men. For my own part, lately my thoughts have been turned to

“old, unhappy, far-off things,
And battles long ago;”

and when once the ghosts of the dead fifers of thirty years since begin to play in my head, the laws are silent. . .

Learning, my learned brethren, is a very good thing. I should be the last to undervalue it. But it is liable to lead us astray. The law, so far as it depends on learning, is indeed, as it has been called, the government of the living by the dead. To a very considerable extent no doubt it is inevitable that the living should be so governed. The past gives us our vocabulary and fixes the limits of our imagination; we cannot get away from it. There is, too, a peculiar logical pleasure in making manifest the continuity between what we are doing and what has been done before. But the present has a right to govern itself so far as it can; and it ought always to be remembered that historic continuity with the past is not a duty; it is only a necessity).

¹⁴⁵ Compare Keener, supra note 82, at 713 (particularly as each generation considers new facts. Keener supported the inductive value of the Case System:

Now the case is, to the student of law, both a laboratory and a library. The facts of the case correspond to the specimen, and the opinion of the court, announcing the principles of law to be applied to the facts, correspond to the memoir of the discoverer of a great scientific truth, and constitute the library. If I may borrow a simile and change its application, the facts of the case correspond to the apple which suggested to Sir Isaac Newton the law of gravitation, the opinion is his Organon. For the suggested analogy of putting a specimen into the hands of the student of natural science, to be applicable to the case system, one must suppose the student to be given the bare facts of the case, without the opinion of the
intimidate, anxiety can be understood and harnessed as necessary to the metamorphosis the system promotes whenever any semblance of the system materializes. The Case System made the study of law a scientific undertaking. So when some professor takes the podium in your very first law school class this fall, Langdell, as much as that professor, will begin educating lawyers.

The bare facts of cases are given to the student at the end of a course to test his knowledge of the subject. The facts of a case together with the opinion of the court, are given to the student during his course to enable him to prepare himself in advance for the exercise of the lecture room, and to acquire by the study and discussion thereof, together with the aids hereinafter suggested, a scientific and practical working knowledge of the fundamental principles of law).

See LAW SCHOOL, CENTENNIAL, supra note 1, at 67 (a learning outcome imperative:)

The perfection of technique in teaching which has been progressing at the Harvard Law School since 1870 has made it possible to instruct in a most difficult science classes of students of a size undreamed of, even a generation ago, and to give them such mastery of that science that they are at once prepared to cope with the greatest lawyers at the bar in the discussion of all questions involving intellectual knowledge of the law).

Id. at 47 (Langdell’s Generation: “[l]earned lawyers there have always been; scientific lawyers before Langdell but a few. It is hardly too much to say of him that he found the profession of law a trade, and left it a science”).

Id. (Langdell’s Generation: “[b]ut in Langdell’s case, as has been said, it was overshadowed by the even more striking success of his method of study, and the consequent change in the attitude of students toward their profession”).
PART FOUR

CUR PETERE FONTES?

By elevating our focus above the educational outcomes Langdell’s Generation suggested the Case System promotes, it is possible to see broader implications: the system promotes a metamorphosis important to the student, the profession, and the community. As the student comes to feel the living growth of the law there is anticipation the metamorphosis will expand outward to yield positive results in many unforeseeable ways. The striking metamorphosis Langdell crafted distinguishes the 1L experience as never before distinguished: the discernable first phase of a professional life cycle. As one might have noted, Langdell’s generation has been clear and direct, the absence of concern over grades suggesting a more subtle, “Cur petere fontes?” Why should one drink from the fountain?

Seven - Metamorphosis

The anxiety colored transformation the 1L experiences is a matter of becoming whose rapidity surpasses even the most forward thinking example of earlier methods. The experience is something of a right of

149 See UNIVERSITY, COMMEMORATION, supra note 18, at 67 (Justice Holmes suggested subtlety itself may be a key to effective education:

Education, other than self-education, lies mainly in the shaping of men’s interests and aims. If you convince a man that another way of looking at things is more profound, another form of pleasure more subtle than that to which he has been accustomed, —if you make him really see it, —the very nature of man is such that he will desire the profounder thought and the subtler joy).

150 See Reinhard, supra note 43, at 168 (in describing how he saw different professors employ the Case System, Reinhard noted how free expression promoted the transformative objective:

All these [different Case System teaching styles] have the advantage of keeping alive the interest of the students in the work and of encouraging independence of thought and free criticism. If the views uttered happen to come in conflict with those of the court whose judgment is undergoing
passage\textsuperscript{151} in and of itself: “[w]e are bound to give all men an equal chance to become lawyers; but it is in our power to make that equal chance so difficult that only the determined and able can come through it alive….for thoroughness and severity there is nothing equal to the case system.”\textsuperscript{152} Its basic form converges on and literally forces an intellectual metamorphosis\textsuperscript{153} as significant as when Abridgement writing supplanted

review, such views are not, on that account, either frowned upon or treated with levity, but are freely encouraged; for in all law schools it is understood to be the prerogative of both teacher and student to criticize the courts and excoriate their decisions whenever it is deemed necessary. One benefit accruing to the student from this, is to learn the importance and desirability of consistency in judicial decisions, and of the establishment of fixed rules and adherence to them rather than to avoid temporary hardships and inconveniences in individual cases).

\textsuperscript{151} LAW SCHOOL, CENTENNIAL, supra note 1, at 39 (as in Langdell’s day:

The test of the new régime came in the years between 1876 and 1886. The country was passing through a period of financial stress…[a]s Langdell’s reforms all went into effect they cut down the number of students, both by keeping out unqualified persons and also by repelling many who feared to face the higher standard).

\textsuperscript{152} Fisher, supra note 34, at 421 (the idealized Case System emphasized educational usefulness through inductive learning, but it became, in part, a professional gate. I understand Fisher as next speaking to the relationship between the American Republic and the student in relation to that gate. However the system is applied today, this book has striven to oil the hinges for those who would champion the Republic’s defense as lawyers promoting expressions of goodwill that became America’s 21\textsuperscript{st} century brand:

I am afraid nothing can prevent the overcrowding of the professions; nothing, I am afraid, will ever prevent young men from becoming lawyers, as a polite amusement or in the hope of improving their social position…Certain it is that we cannot abolish the evil by enacting a law that only a limited number of persons shall become lawyers; that would be unreppublican. But [the Case System] is a method which may perhaps check the evil, and is at the same time entirely republican).

\textsuperscript{153} See Reinhard, supra note 43, at 167 (in part, requiring one to master a new language:

The great majority of law students, however, especially those just beginning the work in the law school, have not received the benefits of that preliminary mental discipline which is essential to an understanding of the involved language and legal terminology contained in the average judicial opinion, and instruction to these students must be given in a way which they may be able to comprehend more readily).
observing ancient court proceedings. Where earlier forms leaned on external learning environments to meet the practical needs of the student on their first day of legal practice, Langdell recognized that focusing on the internal environment would better serve that day, and the professional life cycle. The metamorphosis Langdell promoted was not necessarily something that was new, as much as it was something

154 Fisher, supra note 34, at 421 (at least as significant:

It is astonishing how the naturalness of the system deprives the subject of a great deal of its dullness. The students feel that they have something real and tangible, that they can accomplish something by their own exertions; they become interested and excited, need no encouragement or driving, and form their own moot courts and clubs for debate).

155 LAW SCHOOL, CENTENNIAL, supra note 1, at 232 (on Langdell:

In the classroom what most impressed Langdell’s pupils was his single-minded desire to get at the root of the matter. To this end, in the earlier years of his teaching, he welcomed their suggestions and criticisms, and they, knowing that their views would be received and measured by the same tests by which he wished his own views to stand or fall, entered into the discussion with the keenest enthusiasm).

156 See Redlich, supra note 22, at 13 (beginning in the classroom:

Or, in other words, in the method of legal instruction developed by Langdell law is conceived as the expression of social order in judicial form, which begins its separate existence all over again in every single case. Teacher and pupil approach it in the same way, the learner discovering it, under the guidance of the teacher, as a new and original joint creation).

157 See Fisher, supra note 34, at 419 (or transitory. Fisher:

[A law degree] is valuable chiefly to the trustees of colleges, who fondly suppose that by its means they can attract to themselves the sinews of war. Still, however, the degree is in some respects allowable, for doctor means teacher, and it is possible for a man to teach law. But no young man can possible be a Master of Laws, and as for a Bachelor of Laws, it is out of the question. No young man should be a bachelor to the law. The law is said to be a jealous mistress; and if that be so, the only safe way is to marry her).
needed by those who were new: an ability to think and to feel the living growth of the law. An ability to think and to feel the living growth of the law.

What is more important, because he has learned each little part of the whole, not merely as something which is the law but as something which ought, or ought not to be the law as he himself feels it, the body of the law is to him something living. His future professional work is to be no mere skillful piecing together of static precedents, —in fact precedents, if anything, are too lightly regarded. Legal problems are to be viewed rather in the light of reason and justice. Learning to go to original sources is part of the right of passage, but not a haphazard one, the student has guides, And each will adapt

158 See LAW SCHOOL. CENTENNIAL, supra note 1, at 210 (a state of mind modeled by Professor John Chipman Gray:

He understood men, —no doubt because of his own direct and manly nature. And he had a wonderfully swift and smoothly working mind. Among the teacher’s pitfalls is the danger that after long reflection he can see the thing in only one way. His thought thus hardens into a rigid outline, and his very learning may increase his difficulty in dealing with a beginner who comes at the matter from an unexpected and unlawyer-like angle. The flexibility with which Gray met his questioner’s mind, his interest in doing so, the ease and directness with which he followed out a new line of reasoning to a fruitful conclusion, make him a unique figure in the memory of thousands of grateful pupils).

159 Id. at 131-132.

160 McClain, supra note 50, at 405 (the key to the system:

Legal judgment, in order that it may be reliable, involves not only an acquired capacity, but also a habit or characteristic of the mind, to be attained only by persistent exercise under proper direction and guidance in thinking law; and my proposition now is, that the best attainable exercise in this direction is by the study of reported cases, decided in appellate courts).

161 Pepper, supra note 78, at 695-696 (as Pepper noted:

I prefer to emphasize the fact that it is the student himself who is the actor under this system. Something more is required of him than that he shall put himself in a receptive state. He himself takes the field and actually plunges into the wilderness of the law. If there is a mountain to
Langdell’s system both to their personal teaching style and the needs of their students to promote process usefulness. The Case climb, and if he desires to become an expert climber, the student becomes like one who is not content with studying the admirably clear treatise on mountain climbing contained in the Badminton Library—or even with ascending the peak by a route that has become familiar. He sallies forth with his guide, determined himself to experience the sensations of the explorer, not unmindful of the fact that his ultimate object is not to reach the top of this particular peak but to learn to climb that he may climb hereafter (original emphasis).

162 LAW SCHOOL, CENTENNIAL, supra note 1, at 222 (his students might have also held this impression of Professor William Albert Keener’s teaching style:

Keener was a natural teacher. He was, perhaps, at his best with first-year men, who began by hating him, presently admired him grudgingly, and by the middle of the year swore by him. He had a remarkable power of forcing even the dullest to see a point or follow a train of reasoning by sheer weight of argument. He was a persistent and relentless cross-examiner, catching up everything the student said and compelling him to justify it, ruthlessly exposing all fallacies, dragging the student out of all bypaths of argument, and making him tread the straight and narrow path of dialectic whether he would or not).

163 See Ashley, supra note 5, at 258 (“[i]n law, as in other matters, every teacher has his own methods, determined by his personal gifts, or his lack of gifts—methods as incommunicable as his temperament, his looks, or his manners”); see also LAW SCHOOL, CENTENNIAL, supra note 1, at 37-38 (on Professor Thayer:

James Bradley Thayer was essentially a scholar…. [but] a scholar turned lawyer…. [and] he saw too keenly considerations on both sides of a question to teach dogmatically…. [l]ater he prepared case books, and conformed more to the methods of his colleagues, but always he was the delight of the better men. His fine mind, his delicious shades of thought, his gentle strength, his elegant scholarship, were the admiration and the despair of the pupils he most cared to influence. And while not every pupil understood him, all loved him).

164 LAW SCHOOL, CENTENNIAL, supra note 1, at 37 (Ames, who championed the Case System, modeled independence:

Ames as a teacher had the good qualities which Langdell lacked. His mind was broadly trained, full, and ready, and moved rapidly enough to keep the interest of the class alive. His logical sense was under control, and could bend to political or social necessity; he was a thoroughly trained historian, but he used his historical knowledge only as a means of
System can easily be described as an antiquated “hide the ball” experience with little usefulness in this modern day. But equal time should be given to its systematic emphasis on promoting positive change by requiring students to do their own critical thinking as a matter of educational design. This shift engendered much resistance as the Case System was being considered, rejected, and then broadly accepted in America’s 19th century post-Civil War decades, and then in the nation’s most active and continuous period of democratic nation building, the 20th century. To some degree, Langdell is now looking to the 22nd century.

judging the law of the present and the future. He was intensely alive to the problems of the day, concerned for justice rather than for precedent, though insistent on reaching his results by legal principles; forceful in presentation, patient in argument, convincing in his conclusions).

165 Compare Reinhard, supra note 43, at 167-168 (absent an understanding of the system and its flexibility. Reinhard noted that the Case System will be used differently: “[o]ne professor who has a strong predilection for extemporaneous exposition uses the system largely as a means of illustrating the points in his lectures.... Another teacher does the greater portion of his work in the class room by asking questions and seems to succeed in obtaining a large variety of answers, which generally lead to satisfactory conclusions.... Still another, while asking questions sufficient to direct and keep the trend of discussion in the proper channel, encourages a yet wider scope of discussions, thereby evoking the free expression of a great variety of views”).

166 LAW SCHOOL, CENTENNIAL, supra note 1, at 66 (for the Case System “must be employed by professional teachers chosen, not for their skill in the practice of law or even on the bench or in writing treatises, but for legal scholarship and the ability to make men think”); see also Reinhard, supra note 43, at 167-168 (also by design:

Often the same student is called upon to report as many as two or more cases...and is required to state his impressions as to the agreement or conflict between them, whether the one may be distinguished from the other in principle, and whether in the one or in the other or in all three there is room for adverse criticism as to the correctness of the conclusion reached and the soundness of reasoning upon which it is based).

167 Cf. David Dudley Field, Annual Address Of The President Of The American Bar Association, 23 AM. L. REV. 946, 948 (1889)(Field was speaking to a different matter, but the system’s currently broad acceptance suggests it struck at this sense as an educational outcome:

The true place, then, of the lawyer in an American commonwealth, is as a minister of justice. Upon him and his brethren, more than upon any other equal number of citizens, depends the good order of the State. As the soldier is first in a warlike nation, so the lawyer is, and must always be, first in a free and peaceful one. Of the committee which framed the
It was Langdell’s insistence on going first hand to the sources of knowledge that gives the system its greatest student, professional, and community power:

There are results of the modern system which I do most heartily approve. It sends out to the great cities of this Union young men annually, far better equipped with legal knowledge, far better equipped with the fundamental principles which are to prepare them for the practice of the law, than any of their predecessors enjoyed. And I think we may safely say that we practitioners at the New York bar welcome all we can get of them. There is only one trouble, Professor Langdell, and that is that they know altogether too much. They know it all. And there are none of us old men in the law who cannot learn a great deal from them.168

Such praise was only realized after Langdell’s students themselves took charge of their metamorphosis and interacted with the body of knowledge to a greater degree than students had before the study of cases began.169 Langdell envisioned a pragmatic metamorphosis that focused on the internal environment where anxiety is expected, must be recognized, and must be harnessed to reach greater ends:

Declaration of Independence all were lawyers except Franklin. The convention which framed the Federal Constitution consisted chiefly of lawyers).

168 ASSOCIATION, REPORT, supra note 4, at 65 (Hon. Joseph H. Choate).
169 See LAW SCHOOL, CENTENNIAL, supra note 1, at 222-223 (Professor Keener embodied this idea by standing the system up against established conventions:

No account of [Professor William Albert] Keener would be complete which omitted mention of his valiant and successful fight for the establishment of Landgell’s method of teaching. Only his vigorous personality and ability as a teacher could have established this method at Columbia in the face of the Dwight tradition. Where Langdell and Ames remained silent under attacks and misrepresentations, Keener took up the cudgels and fought stoutly in print and before bar associations. His controversial writings were a chief factor for a better understanding of instruction through cases and accelerated the general acceptance of Langdell’s system which came later).
I may say, also, that [Langdell] looks at the law of our country, as it must necessarily be looked at, in the double aspect of a science to teach principles, and of a practical rule to govern affairs.\textsuperscript{170}

Regardless of where one studies the law, the challenge will be much as it was in Langdell’s day – to produce lawyers who are thinking citizens equipped with the logic, discipline, and habits that can un-bundle and resolve the complexities of human relations as they unfold.\textsuperscript{171} To meet this challenge today we use technical phraseology packed with nuances like, “set clear and high expectations” for the analysis, design, development, and application of educational experiences. An antique tint exists in the voices of Langdell’s Generation, one as packed with nuance; but it is as clear, as direct, and as compelling:

So I say the business of a law school is not sufficiently described when you merely say that it is to teach law, or to make lawyers. It is to teach law in the grand manner, and to make great lawyers.\textsuperscript{172}

Eight - Life Cycle

By promoting an individual metamorphosis the Case System also promoted, possibly in its clearest form ever, the idea that the profession unfolds in terms of life cycle phases.\textsuperscript{173} This issues along three lines.

\textsuperscript{170} ASSOCIATION, \textit{REPORT, supra} note 4, at 50 (Justice Gray).
\textsuperscript{171} See LAW SCHOOL, \textit{CENENNIAL, supra} note 1, at 136 (just as in Langdell’s day: What is more important, the graduate finds himself the possessor of a legal mind, developed to a considerable extent, the content of which is not a store of cut-and-dried rules, learned by rote, but a living body of principles, each of which has passed the test of his own reason and sense of justice. With the increasing emphasis placed upon modern social and economic conditions and their relation to law, the graduates must be far between who are on the road to becoming lid-sitters or technical pettifoggers.

It is with some confidence and considerable joy that the graduates set out upon their future work, not merely as lawyers, but also as citizens).

\textsuperscript{172} UNIVERSITY, \textit{COMMEMORATION supra} note 18, at 67 (Justice Holmes).
\textsuperscript{173} See Redlich, \textit{supra} note 22, at 40 (Redlich did not seem to hold any doubt or question on this point: “the American student gains in the modern law school of his country all the
First, the Case System cleanly divides the law school experience into two distinctly discernable phases where an unquestioning whole once sat listening to lectures.\textsuperscript{174} The Case System assumes the 1L requires a different approach from the “filling of the vessel” applied to more advanced students; an approach that would create the vessel to be filled, one with a receptive and refined internal environment.\textsuperscript{175} But the system also assumes that once the metamorphosis is complete, lecturing retains its longstanding utility, but only to the degree the student has discerned\textsuperscript{176} how to find the rules and principles for himself or herself.\textsuperscript{177}

\begin{itemize}
\item[174] See Dennis, supra note 40, at 228 (in promoting the use of visual aids in the classroom, a literal merging of the external and internal learning environments, Dennis paints a bleak picture of 19th century lecturing: “[t]he law is taught as if it were abstract and metaphysical, needing only the spoken word to convey it to the understanding, and disdaining physical surroundings as hindrances rather than helps. On the contrary, law is practical and concrete, dealing with corporal objects, animate and inanimate, and devoted to every-day affairs”).
\item[175] McClain, supra note 50, at 407 (as McClain noted:

It would seem wise, therefore, that at first the student’s attention be directed to the very fundamentals of the law, the elementary principles of torts, contracts, property, pleading, evidence, criminal law, and like subjects, and that the knowledge of these subjects be acquired largely by the study of actual cases under the constant and skillful guidance of an experienced teacher).
\item[176] See Redlich, supra note 22, at 29 (Redlich noted the Case System’s effects in this regard:

I visited particularly classes of the third year, in which difficult cases, as for example cases involving a “conflict of laws,” were analyzed by the students with great readiness and grasp of the subject-matter; classes in which there stood out strongly not only excellent logical training, capacity for independent study, and especially for quick comprehension of the actual point of law involved, but also indisputable knowledge of positive law. I gained the impression that law students of the third year in our European law schools would hardly ever be found competent for such work).
\item[177] See McClain, supra note 50, at 407-408 (as McClain noted:

Afterwards those branches of the law which are merely applications of these elementary doctrines may be taught by lecture or text-book, without so much pains being taken to present special cases leading to each proposition, for it will be evident to any one who has tried it, that

\end{itemize}
Langdell’s Generation estimated that the essential distinguishing measurement in the crossing to be made was environmental, recognition inculcating legal education with the idea that two separate and distinct student life cycle phases should exist, and that each presumed the student was accepting of, and desiring to, embrace the deliberate process\textsuperscript{178} of becoming:

It must be admitted, furthermore, that the progress of the student in the school [under the Case System] appears to be slower than under other systems of instruction, for the reason that the attempt is made not merely to convey information but to stimulate thought, to correct mental habits and to create in the mind of the student the mental equipment and modes of thought of the sound lawyer.\textsuperscript{179}

By imagining the 1L experience as requiring a separate and distinct approach, Langdell segmented legal education in a way that did not elevate one experience over the other, but recognized each as indivisible parts of a continuum —albeit separate and distinct life cycle phases that would extend well beyond the walls of the school\textsuperscript{180} while never fully departing the school.\textsuperscript{181}

the study of cases is a slow and laborious, though a thorough and, in the end, satisfactory means of acquiring legal knowledge. [Although] [t]o cover each subject of the law in this way will not be practicable within the ordinary limits of a law course. Rather than to omit, on the one hand, the discipline involved in the use of cases, or, on the other hand, to turn out students lacking any definite information as to considerable branches of the law as practically applied, it would seem better to adopt a compromise course, which, while preserving the study of cases for its disciplinary value, recognizes other means of imparting information for the sake of giving a more extended knowledge).

\textsuperscript{178} See UNIVERSITY, COMMEMORATION supra note 18, at 87 (Langdell broadly framed the basis for his pedagogical views:

From what I have already said it easily follows, first, that a good academic training, especially in the study of language, is a necessary qualification for the successful study of law; secondly, that the study of law should be regular, systematic, and earnest, not intermittent, desultory, or perfunctory; thirdly, that the study should be prosecuted for a length of time bearing some reasonable proportion to the magnitude and difficulty of the subject).

\textsuperscript{179} LAW SCHOOL, CENTENNIAL, supra note 1, at 66-67.
\textsuperscript{180} See Keener, supra note 82, at 718(carrying the science of the law, however inexact, with him or her:
Secondly, although one’s professional experiences will be segmented into many different life cycle phases, a student thread not only extends through the continuum but also, to some degree, may be a stronger binding force than any other phase or sequence of phases. Of course, the day one graduates the law school experience becomes a distinct phase of one’s personal life cycle, one that eventually blends with

The truth is that one of the great arguments in favor of the case system is that it deals with both the scientific and the practical side of law. In so far as it deals with the scientific side of law, compelling the student to search for and apply the great and fundamental principles of law to the actual affairs of life, it prevents his becoming a mere case lawyer, a case lawyer being one who has a great memory for cases and their facts, but little apprehension of the principles governing the decisions. While the study of principles, which is the essential feature of the case system, is inconsistent with the production of a case lawyer, the fact that the student in studying a principle is required to study it in its growth and development as found in its application to the actual affairs of life, furnishes a complete check upon any tendency to become speculative and visionary, or academically learned, as distinguished from a scientific lawyer capable of applying the principles of law as they exist, and suggesting improvements therein).

181 See UNIVERSITY, COMMEMORATION, supra note 18, at 114 (Judge E.R. Hoar suggests such a continuum in closing the 1886 tribute to Professor Langdell:

If I am to close the meeting, I think I prefer to do it, instead of in the ordinary phrase of a crier, by pronouncing a benediction in words which have frequently, through my long professional career, experience, and acquaintance, been brought to my mind as the chief consolation and reward of lawyers, —“Blessed are the peacemakers”).

182 See LAW SCHOOL, CENTENNIAL, supra note 1, at 169 (a synergistic binding force taking form in the student phase:

[M]ore solidity will be given to the work of research and to graduate instruction. The one will grow naturally out of problems raised by study and teaching of the everyday law; the other will be given definiteness by the connection with concrete applications. Again, the teacher and investigator will be under the pressure of having to argue out his theories with students thoroughly trained in the dogmatic law, and this will make for clearer and better thinking in the purely theoretical courses. Above all, however, the teaching of the ordinary professional courses will be fertilized. The theoretical courses will make themselves felt in each dogmatic course. Each set will react upon the other, so that if the one will be rendered more exact and solid, the other will be made more scientific and liberal).
other experiences into a unitary memory.\textsuperscript{183} But as Langdell’s students recognized: “we must always remain students of the law, and our truest pleasures are found in the devoted study of it for the sake of excellence alone.”\textsuperscript{184} For every generation of lawyers alive today, it was the Case System that breathed life into every life cycle phase that followed.\textsuperscript{185} It was the Case System that began systematically promoting the development of life-long students as a natural stepping stone in a long evolutionary process:

Let it be repeated: the Law School is not to abandon all that has been learned since Langdell and give way to the idea that there must be a formal course in everything. Rather it will continue to seek to train a body of men who have so mastered the art of legal reasoning and have secured so solid a foundation in legal science and so firm a grasp of the materials of our legal system that they may approach new problems in new fields and old problems in unfamiliar fields with assurance and achieve results of real value. But this does not mean that the significant movements in legal science that have related it to the other social sciences and are making it over are to be ignored. It means rather that these movements are to be treated, not as revolutionary but as evolutionary.\textsuperscript{186}

\textsuperscript{183} See \textit{Id.} at 212 (refining perception. Professor John C. Gray:

\begin{quote}
I have never been able to share the feeling of those who regard the law as simple, who say that if you can only get hold of a few fundamental principles all is easy. Law is as complex as life. However often I may have been over a subject, I never go over it again without coming across questions, analogies, that I never saw before).
\end{quote}

\textsuperscript{184} \textit{University, Commemoration, supra} note 18, at 64 (Association President James C. Carter).

\textsuperscript{185} See \textit{id.} (President Carter again: “The mightiest of those names which adorn the earliest annals of our profession...won their proud pre-eminence only by climbing that same steep and toilsome ascent, beset with difficulty and conquered only by struggle, which lies before —or behind —each one of you”).

\textsuperscript{186} \textit{Law School, Centennial, supra} note 1, at 170 (law students today will see the objectives embodied in this model for the evolution of any law school unfolding slowly wherever they study).
Finally, the life cycle phases Langdell’s system revealed might also be thought of as a microcosm of the continually evolving national life-cycle. The system initially draws a distinct dividing line between students, but once that line is crossed the system has the (probably intended) effect of blurring the dividing line between the student and practitioner. With an ability to find a principle, the more advanced student is free to apply that learning to new facts, and new issues, in new roles.

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187 UNIVERSITY, COMMEMORATION, supra note 18, at 67-68 (Justice Holmes, on legal education in their post-Civil War and pre-20th century, era, speaks to the unfolding national life-cycle phases:)

Our country needs such teaching very much. I think we should all agree that the passion for equality has passed far beyond the political or even the social sphere. We are not only unwilling to admit that any class or society is better than that in which we move, but our customary attitude towards every one in authority of any kind is that he is only the lucky recipient of honor or salary above the average which any average man might as well receive as he. When the effervescence of democratic negation extends its workings beyond the abolition of external distinctions of rank to spiritual things; when the passion for equality is not content with founding social intercourse upon universal human sympathy and a community of interests in which all may share, but attacks the lines of Nature which establish orders and degrees among the souls of men, —they are not only wrong, but ignobly wrong. Modesty and reverence are no less virtues of freemen than the democratic feeling which will submit neither to arrogance nor to servility).

188 See LAW SCHOOL, CENTENNIAL, supra note 1, at 131 (just as Langdell’s generation tells us):

No doubt the student’s ideas of the law are often as verdant as the green eyeshades he affects in the law library. A particular course he receives at first merely in blocks. But later in the year these blocks seem to fit together into a whole. So the separate courses likewise, at the end of three years, are seen more or less as parts of a greater legal structure).

189 See ASSOCIATION, REPORT, supra note 4, at 50 (Justice Gray begins his remarks honoring Langdell: “[f]or you see before you today in the president of the Association, in the eminent professors of jurisprudence on either side of him, and in all the distinguished magistrates who sit at this board, that we are all but fellow-students from the beginning to the end”).

190 See Reinhard, supra note 43, at 170 (Reinhard: “[t]hat every additional year in the life of the Republic will bring new and gratifying reforms can not be doubted, in view of
Like the individual transformation the Case System urges, and its deliberate application in other endeavors, the nation is constantly in a process of becoming.\textsuperscript{191} This is realized both in terms of reaching for new levels of understanding, as well as in logically and deliberately applying that understanding in the face of changing facts, conditions, and realities.\textsuperscript{192} In a related sense, the Case System did not necessarily invent a new student or professional phase or phases as much as it solidified the form of something that was already there: “It must be granted that in order to insure its success, [the Case System] must be used in a school which purports to teach the law not of a particular state, but of the entire United States.”\textsuperscript{193} Such form waits and even needs to be what has already been accomplished; but they can come only through the untiring efforts of the American lawyer who has at heart the good of his profession”\textsuperscript{191}).

\textsuperscript{191} See Roscoe Pound, \textit{Law in Books and Law in Action}, 44 AM. L. REV. 12, 22 (1910)(Pound was of the generation that carried Langdell’s inspiration a step forward with the idea of \textit{Law in Action}, a concept reflected at least in part in many law school clinical offerings. Here, Pound quotes Wundt, \textit{Ethik}, 2 ed., at 556, to suggest that a gulf exists between the law in books, and the law in the street. It is possible that truly understanding that gulf, as these generations understood it, required the Case System as an indispensable foundation, the main supporting pillar:

Law has always been and no doubt will always continue to be, “in a process of becoming.” It must be “as variable as man himself.” “Social life,” says Wundt, “like all life, is change and development. Law would be neglecting one of its most important functions if it ceased to meet the demands of this ceaseless evolution”\textsuperscript{191}).

\textsuperscript{192} See Vance, \textit{supra} note 47, at 5-6 (an ongoing process. While Langdell’s Generation might have been considered revolutionaries, the Case System they championed promotes forward leaning progress with the law considered in an evolutionary, not a revolutionary, state of being. Here, Vance brushes against Law in Action:

That there is widespread discontent with the state of our law is beyond question.... Our law has lagged too far behind our business —is too little suited to the needs of an advanced society. In some of our states there exists in a flourishing condition in this year of grace 1911 rules of law five hundred years out of date —as, for instance, the rule in Shelley’s Case (or the legal theory of rents, which has, however, been so covered over with a statutory crazy quilt, that we get on with it very comfortably). There exists in our law rules that were unreasonable at the time of their origin, and are even more so now.... The call for law reform is heard from every corner of the land).

\textsuperscript{193} LAW SCHOOL, \textit{CENTENNIAL, supra note 1, at 66.}
questioned,\textsuperscript{194} discovered,\textsuperscript{195} and released\textsuperscript{196} by each generation as it comes forward, and begins following its forward leaning roadmap into the future, just as earlier generations have done:

\textsuperscript{194} See Keener, \textit{supra} note 82, at 711 (Professor Keener: “[i]t is for the reason that it does best enable one to think vividly, analyze accurately, to reason and express himself clearly, and, in the case of applied sciences, to apply effectually the knowledge that he has gained, that the inductive method [found in the Case System] has obtained such a hold to-day); see also \textit{id.} at 723 (Professor Keener, one of the Case System’s champions, begins his summary for today’s law student:

To summarize, the reasons that I would urge for the adoption of the case system of instruction, are: 1. That law like other applied sciences should be studied in its application, if one is to acquire a working knowledge thereof. 2. That this is entirely feasible for the reason that while the adjudged cases are numerous the principles controlling them are comparatively few. 3. That it is by the study of cases, that one is to acquire the power of legal reasoning, discrimination, and judgment, qualities indispensable to the practicing lawyer. 4. That the study of cases best develops the power to analyze and to state clearly and concisely a complicated state of facts, a power which, in no small degree, distinguishes the good from the poor and indifferent lawyer).

\textsuperscript{195} UNIVERSITY, \textit{COMMEMORATION, supra} note 18 at 67 (Justice Holmes: The main part of intellectual education is not the acquisition of facts, but learning how to make facts live. Culture, in the sense of fruitless knowledge, I for one abhor. The mark of a master is, that facts which before lay scattered in an inorganic mass, when he shoots through them the magnetic current of his thought, leap into an organic order and live and bear fruit).

\textsuperscript{196} Keener, \textit{supra} note 82, at 723-724 (Professor Keener completes his summary for today’s law student:

5. That the system, because of the study of fundamental principles, avoids the danger of producing a mere case lawyer, while it furnishes, because the principles are studied in their application to facts, an effectual preventive of any tendency to mere academic learning. 6. That the student, by the study of cases, not only follows the law in its growth and development, but thereby acquires the habit of legal thought, which can be acquired only by the study of cases, and which must be acquired by him either as a student, or after he has become a practitioner, if he is to attain any success as a lawyer. 7. That it is the best adapted to exciting and holding the interest of the student, and is, therefore, best adapted to making a lasting impression upon his mind. 8. That it is a method distinctly productive of individuality in teaching and of a scientific spirit of investigation, independence and self-reliance on the part of the student).
[T]he foundations of the law ought to be scientific, and, if our civilization does not collapse, I feel pretty sure that the regiment or division that follows us will carry that flag. Our own word seems the last always; yet the change of emphasis from an argument in Plowden to one in the time of Lord Ellenborough, or even from that to one in our own day, is as marked as the difference between Cowley’s poetry and Shelly’s. Other changes as great will happen. And so the eternal procession moves on, we in the front for the moment; and, stretching away against the unattainable sky, the black spearheads of the army that has been passing in unbroken line already for near a thousand years.\textsuperscript{197}

There was a legal profession before Langdell took the podium, but introducing his Case System may have been the strongest expression to that point that a multi-dimensional life cycle\textsuperscript{198} parsed into distinct student phases\textsuperscript{199} and extending to

\textsuperscript{197} ASSOCIATION, REPORT, supra note 4, at 61-62 (Justice Holmes).
\textsuperscript{198} See LAW SCHOOL, CENTENNIAL, supra note 1, at 116 (a robust life-cycle; Justice Holmes:

For whatever reason, the Professors of this School have said to themselves more definitely than ever before, ‘We will not be contented to send forth students with nothing but a rag-bag full of general principles, — a throng of glittering generalities, like a swarm of little bodiless cherubs fluttering at the top of one of Correggio’s pictures.’ They have said that to make a general principle worth anything you must give it a body; you must show in what way and how far it would be applied actually in an actual system; you must show how it has gradually emerged as the felt reconciliation of concrete instances, no one of which established it in terms. Finally, you must show its historic relations to other principles, often of very different date and origin, and thus set it in the perspective without which its proportions will never be truly judged. It is perfectly proper...to regard and study the law simply as a great anthropological document. It is proper to resort to it to discover what ideals of society have been strong enough to reach that final form of expression or what have been the changes in dominant ideals from century to century).

\textsuperscript{199} Compare ASSOCIATION, REPORT, supra note 4 at 37-38 (flowing from professional inspirations. Association President Carter:
other, indeterminable, \( ^{200} \) phases thereafter, \( ^{201} \) begins unfolding the day each student \( ^{202} \) walks into his or her very first law school classroom:

We come to this ancient seat of learning to-day because we belong to a profession which has no honors except those which spring from learning. We come back to this spot where we received our first professional inspirations, to meet the companions with whom we shared them. We come to this School because it is devoted to the science in which our lives are so much interested. We come to see how it continues to fulfill its lofty mission; we come to encourage those who have its destinies in charge; we come to look for a moment over the present condition of our common profession, and to glance for another moment over its prospects for the future).

\( ^{200} \) See Scott, *supra* note 8, at 10 (facing complex problems in unpredictable circumstances that cannot be foreseen:

Take a single instance. Dr. Franklin would have made American Independence the result of treaty with Great Britain, thereby sacrificing the advantage of a negotiation on the footing of equality, while John Jay, trained in the law, made the treaty the result of independence — its recognition a fact, not an advantage to be bartered for. It is true that Franklin said to Oswald, the British negotiator: “Mr. Jay was a lawyer, and might possibly think of some things that did not occur to those who were not lawyers.” And to the last he spoke as though he did not see much difference. The trained mind of the lawyer saw and noted the difference, and independence was recognized as a fact, not given as a concession for a concession).

\( ^{201} \) See *University, Commemoration, supra* note 18, at 76-77 (Justice Holmes:

[Y]oung men, even more inspired by their example than instructed by their teaching, go forth in their turn, not to imitate what their masters have done, but to live their own lives more freely for the ferment imparted to them here. The men trained in this school may not always be the most knowing in the ways of getting on. The noblest of them must often feel that they are committed to lives of proud dependence, —the dependence of men who command no factious aids to success, but rely upon unadvertised knowledge and silent devotion; dependence upon finding an appreciation which they cannot seek, but dependence proud in the conviction that the knowledge to which their lives are consecrated is of things which it concerns the world to know. It is the dependence of abstract thought, of science, of beauty, of poetry and art, of every flower of civilization…).

\( ^{202} \) See *Association, Report, supra* note 4, at 24 (after a lengthy argument supporting the Case System, Professor Pollock said:
The training of the law school reaches beyond the classroom and pile of brick and stone. It steadies the man of affairs, and by teaching him his rights imposes upon him the duty to respect the rights of others. It taxes him with notice and teaches him responsibility. The law of evidence does not merely benefit the lawyer. Its principles broaden out and force us to weigh all things, holding fast that which is good and true. Training in law makes us saner, because more balanced, men, and cultivates the power of judgment, without which learning is a useless thing. It makes us better citizens, because it necessarily teaches us where private rights end and public duties begin. . . . The law not only defines our relation to our fellow man, but points out the relation of the citizen of the state to the nation, and enables us to weigh in the balance the effect of the law upon nation, state, and citizen.  

Let us dare to be true to ourselves, and even if the first steps seem less easy (for everybody thinks he knows by the light of nature what ownership is, and resents being undeceived), we shall find increasing light instead of gathering darkness as we go farther on the way. We may smile at our mediaeval ancestors’ anxiety to keep something tangible to hold on to...).

203 See Scott, supra note 8, at 9.
Nine - The WHY of It

The voices of the professors, lawyers, and jurists who adopted and adapted the Case System over a century ago illuminate our understanding of the system with language that is clear, direct, and forceful. While each would have considered the question from slightly different angles, I think each would have suggested that any why of it one might search for is as much about our past as their future. The span of time it took for the profession to discover that something like the Case System was not only necessary, but practically essential, will again compress itself into a very short year as the 1L experience begins anew this fall. As hundreds of professors pose their first questions the full weight of that compression will compel as much anxiety as Langdell’s first question, “Ms. Fox, will you state the facts in the case of Payne v. Cave?” Eventually, a level of confidence will be reached as student after student looks up from their desk to confront the question full face. When this occurs the student will wrest a small measure of ownership in the system, and the profession, from the professor. Langdell was noted for standing silent in the face of criticism about his system leaving its defense to others. So whether one’s transformation occurs in a contracts or property class, or on any other ground where only the 1L treads, Langdell would remain silent on the why of it. The grades are important. But the shift in intellectual activity that Langdell wrought, and urges yet today, suggests a subtler, much less obvious, why of it, each must discover independently. Langdell would probably say it is right there. But one must search for it, one must feel it. Melius est petere fontes quam sectari rivulos.
CONCLUDING REMARKS

Professor Langdell will again begin challenging a new generation when that first class begins this fall. His system emerged as the result of centuries, not decades, of deliberate evolution. Student anxiety is normal, but that anxiety should be understood and embraced as the bridge one must cross pursuing the logic, discipline, and habits needed by life-long students and stakeholders. Motivation for the journey includes present and future interests lending a sense of purpose to the experience. But the *why* of the *Case System* is as much about the past as it is about the present or future. And it must be found alone. As his generation insisted, to reach Langdell’s peaks each must read and think and speak for themselves.

The final words are those Langdell wrote shortly after Charles W. Eliot appointed him to teach. What follows is the introduction to his *Cases on Contracts* as first read by his first seven students. These were the first words, and may well be the most, Professor Langdell ever personally offered to explain the idea that changed legal education in America. I think the *why* of it, the principle that is still living, is deeper, submerged in idealized form:

I cannot better explain the design of this volume than by stating the circumstances which led me to undertake its preparation.

I entered upon the duties of my present position, a year and a half ago, with a settled conviction that law could only be taught or learned effectively by means of cases in some form. I had entertained such an opinion ever since I knew anything of the nature of law or of legal study; but it was chiefly through my experience as a learner that it was first formed, as well as subsequently strengthened and confirmed. Of teaching indeed, as a business, I was entirely without experience; nor had I given much consideration to that subject, except so far as proper methods of teaching are involved in proper methods of study.
Now, however, I was called upon to consider directly the subject of teaching, not theoretically but practically, in connection with a large school, with its more or less complicated organization, its daily routine, and daily duties. I was expected to take a large class of pupils, meet them regularly from day to day, and give them systematic instruction in such branches of law as had been assigned to me. To accomplish this successfully, it was necessary, first, 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; secondly, that the study thus required of them should be of the kind from which they might reap the greatest and most lasting benefit; thirdly, that the instruction should be of such a character that the pupils might at least derive a greater advantage from attending it than from devoting the same time to private study. How could this threefold object be accomplished? Only one mode occurred to me which seemed to hold out any reasonable prospect of success; and that was, to make a series of cases, carefully selected from the books of reports, the subject alike of study and instruction. But here I was met by what seemed at first to be an insuperable practical difficulty, namely, the want of books; for though it might be practicable, in case of private pupils having free access to a complete library, to refer them directly to the books of reports, such a course was quite out of the question with a large class, all of whom would want the same books at the same time. Nor would such a course be without great drawbacks and inconveniences, even in the case of a single pupil. As he would always have to go where the books were, and could only have access to them there during certain prescribed hours, it would be impossible for him to economize his time or work to the best advantage; and he would be liable to be constantly haunted by the apprehension that he was spending time, labor and money in studying cases which would be inaccessible to him in after life.

It was with a view to removing these obstacles that I was first led to inquire into the feasibility of preparing and publishing such a selection of cases as would be adapted to my purpose as a teacher. The most important element in that inquiry was the great and rapidly growing number of cases in every department of law. In view of this fact, was there any satisfactory principle upon which such a selection could be made? It seemed to me that there was.
Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied. But the cases which are useful and necessary for this purpose at the present day bear an exceedingly small proportion to all that have been reported. The vast majority are useless and worse than useless for any purpose of systematic study. Moreover, the number of fundamental legal doctrines is much less than is commonly supposed; the many different guises in which the same doctrine is constantly making its appearance, and the great extent to which legal treatises are a repetition of each other, being the cause of much misapprehension. If these doctrines could be so classified and arranged that each should be found in its proper place, and nowhere else, they would cease to be formidable from their number. It seemed to me, therefore, to be possible to take such a branch of the law as Contracts, for example, and, without exceeding comparatively moderate limits, to select, classify, and arrange all the cases which had contributed in any important degree to the growth, development, or establishment of any of its essential doctrines; and that such a work could not fail to be of material service to all who desire to study that branch of law systematically and in its original sources.

It is upon this principle that the present volume has been prepared. It begins the subject of Contracts, and embraces the important topics of Mutual Consent, Consideration, and Conditional Contracts. Though complete in itself, it is my expectation that it will be followed by other volumes upon the same plan; but I have as yet formed no definite opinion as to how far the design will be carried. A volume upon Sales of Personal Property is more than half completed, and will be published within a few months.204

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AFTERWORD

My summary is for those preparing for law school this fall. I’ll try to be as clear as Langdell’s Generation.

First, when I re-worked the original essay I added and deleted or refined the text and footnotes in some way, but always with the purpose in mind to keep the best of the original essence unchanged. I think I succeeded, and this book is more focused on promoting a student ability to feel the Case System of Legal Study the moment that first question is posed, rather than later. So if something clicks during the first hour of your first law school class after reading this book, and I think it will, I believe Professor Langdell would be pleased. Langdell gave us the Case System. If you can feel it, it belongs to you.

Like the Case System itself, this book assumes dusting off linkages to the past will sharpen the edges of understanding and refresh experience relevance. But differences exist between their legal system and legal education, and ours. One difference is that the Case System was ultimately determined to be insufficient by itself, so the idea of Law in Action arose to fill the void neither lecturing nor the Case System could fill independently. Generally, the Case System strives to develop logical, disciplined, independent, thought. Lecturing imparts essential but potentially transitory information and knowledge. Law in Action exposes students to the inevitable gulf between law on the books and law in the street. A rough example is a law clinic where students learn practice skills, but may also note and evaluate the impact of the statutory law as it manifests itself in daily life, and might even identify recommendations for reform. But here is a dust free constant for those asking today, “What’s the law?” The idealized Case System still invites each student to interact with it as a system, not as a method or technique, a system. You can do this.

The major change between the original essay and this book is the increased number of voices that I did not think I could work into a law review article of limited size. Even for this book I trimmed the quotes as closely as I could to maintain a sharp focus, but my sense remains that new students should hear as much of these voices as possible to really feel the Case System. My sense was that part of what Langdell’s Generation was trying to
accomplish and convey was related to our Civil War which was easily in their living memory and influencing their views. I would have liked to have been there when Lawton and Holmes spoke. Each were graduates, but they had fought on opposing sides. And while each may have carried heavy loads from their experiences, that Lawton probably displayed the greater courage, not just in his words, but in the example of his presence. Here is the constant I perceived: each of their voices held hope for the future, mutual respect, and a firm belief that together they, and their profession, would restore the Union. That is my impression.

Langdell’s Generation, like ours, had challenges to resolve. While most think of the late 19th and early 20th centuries as simpler times, this is again a matter of perspective: the nation had undergone a terrible Civil War, was transitioning from an agricultural economy to an industrial one, its culture was absorbing an extraordinary influx of immigrants and efforts were underway to replace whale blubber and hay as energy sources. I perceived the voices you heard in this book as taking all of this in stride, as challenges that not only could, but would, be addressed and resolved through the law under our founding precepts. As we look around us today, the challenges are at least as imposing as in that simpler day.

So when any new law student begins to despair of the reading and whether there is not some easier way to do all this, seek advice from Langdell’s Generation. Talk to Gray or Thayer or Ames or Keener or even Langdell himself. I never hesitated to leverage technology to improve military education and training where it made sense, and saw this happen in my own legal education. But the law students beginning their legal education this fall, wherever that is, will influence America at the end of this century. So I think the question is: “After listening to Langdell’s Generation, are you absolutely certain their entreaty to purposefully develop thought, using the Case System, is a thing of the past?”

The genesis of my original essay had nothing to do with helping students prepare for law school. When I was a Hastie Fellow I read broadly and came across the Centennial History of the Harvard Law School referenced in the first footnote. Professor Cliff Thompson lent me his copy and it drew me into Langdell’s world. In Langdell and his generation I saw many personalities I have
known during my lifetime. In the Case System I recognized educational design fundamentals that I have seen applied successfully in many settings regardless of their austerity. I drew on Langdell in that work, and an essay on veteran education as well—both were stepping stones to this work for new law students. I just took the long way around to get back where I began, leaving me this: I'm not certain anyone knows how far the system or its derivatives have traveled by now, or how far you might take them.

Professor Lee, my friend who helped me publish the original essay, mentioned that it seemed a bit romantic, a description I consider a compliment. He also said there is a lot packed into the title. If any romanticism is involved it is probably there. The why of it is, of course, personal. I first came to think of it as mostly a matter of national defense, but not in the conventional way we think of this. Lawyers do all sorts of things; they are an indispensable binding agent keeping society together. They, and most importantly the education they receive, are not only charged to keep the country strong, but to set the conditions for broad expressions of goodwill. And not only will any knowledge of the original, idealized, Case System of legal study, make legal education, the profession, and thus society, stronger in this context, it grounds everything one undertakes in their professional pursuits in something that not only must be felt, but will influence the present as well as the future: the past. The thing is, while we speak about our debt to past generations, I think America’s Greatest Generation is yet to come, so a large part of any debt we hold is to them. Find the best models. And continue, daily, to try to feel it. And when you succeed, just like when you fail, pick yourself up and try again.

I paused a long while here wondering whether I have made all of this clear, and this is difficult. One of the ideas I hope you saw in the Case System is that individuals can rise above themselves using thought. Because I was a soldier first, and cannot deny being influenced by that experience, my sense of Professor Lee’s characterization includes this: the soldiers I know do what they do with a belief that if they go one more tour, a month, a week, take just one more step, someone will have a little more time to think up a way to make things better. I heard this in the dusty pages of many old law books, noted the same sense in my own law school classes, and caught a glimpse of it in a quiet forest I once visited after cresting what was really a very small hill, turning, and
then glancing back. It is my sense that farmers, moms, factory workers, truckers, coal miners, nurses, firemen, salesmen, dads, roofers, doctors, cops, politicians, baseball players, waitresses, EMTs, bankers, and many others think this. I have met many lawyers who think this. *We all do.* People everywhere do. And that someone, in large measure, is going to be you. So maybe voices describing their *idealized* Case System will help ensure the *why of it*, no longer waiting silently in the dusty pages of old law books, but breathing deeply, is refreshed again this fall. I think it is not only possible to say this within the borders of remorseless logic, but necessary. And I think Langdell’s Generation would agree.

They would also agree that you should be just finishing this book, without skipping around, as I requested of you in the Introduction. If this is not the case, this *Afterword* is not going to make much sense, and you’ll probably find yourself asking, “What do hay, methods, systems, borders, and roofers have to do with anything? What I want to know is: What’s the Law?” If this happens to you just head on back to the beginning and start reading; slow is better. For everyone else, it took me some time to get my arms around many of the quotes, so you might find yourself browsing these pages again. Go ahead. As an observation exercise to augment your legal research and writing classes this fall you can look for technical errors if you like; missing parentheses, *Id.* versus *Id.*, whether I got the reference page numbers correct, whether you think I used *See* and *Cf.* and *infra* correctly, anything at all. But aside from all this, I hope you’ll browse this book again in your second or third year to see whether you hear Langdell’s Generation telling you new things, maybe better things. You just might be surprised.

Finally, wherever you study the law, you will probably be able to annotate the margins of this book with stories relating similar experiences unfolding in front of you. I selected many of the quotes because I saw events resembling them during my law school experience, or at other times. If you want to make sure this happens raise your hand when you sense your professor is forming his or her next question. Go ahead. Be the student embracing this century-old learning system: engage, interact, challenge, question, dissect, learn. Make your generation Langdell’s Generation.

—DSD
Appendix A

Langdell’s Generation

John Chipman Gray

William Albert Keener

C.C. Langdell

James Bradley Thayer

James Barr Ames

(From *The Centennial History of the Harvard Law School 1817-1917*)
Appendix B

Classrooms & Laboratories

Austin North

Dane Hall-The Working Library

Austin Hall – The Stacks

(From The Centennial History of the Harvard Law School 1817-1917)
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