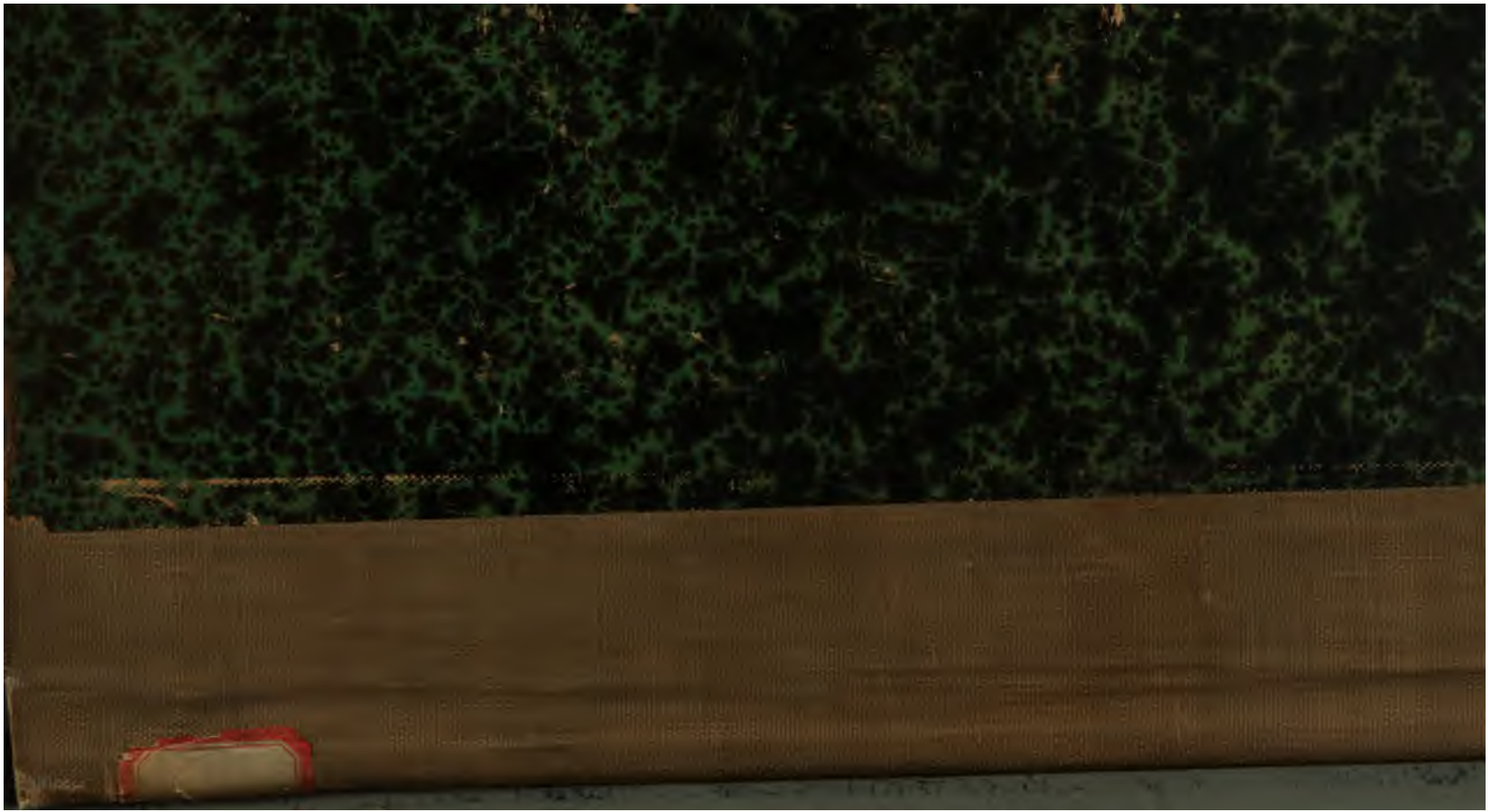

THE

TEACHING OF ENGLISH LAW AT HARVARD.

BY

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THE TEACHING OF ENGLISH LAW AT HARVARD.[1]

CAN English law be taught at the Universities?

This question was, some sixteen years ago, raised in my inaugural lecture at Oxford. The answer then given, on theoretical grounds, was that English law could be effectively taught at the Universities by duly qualified teachers to duly intelligent students. It is now in my power to assert with confidence that my speculative conclusion is proved to be correct by the irrefutable results of American experience. Wherever the law of England prevails throughout the American continent the best instructed and the ablest lawyers have been grounded in its principles by professors. The schools of New York, of Chicago, of Ontario, of Nova Scotia, of Boston, and, above all, of Harvard, establish the fact, or (as our lawyers of the older school might put it) give plausibility to the paradox that English law can be taught at Universities, and be taught by University professors. On the other side the Atlantic, indeed, the truth of this conclusion is treated as established past dispute. It will further be admitted by every competent judge that nowhere throughout America is law taught so thoroughly as at the University of Harvard. The Harvard Law School has, compared with other institutions of the United States, an ancient history. It practically owes its existence to the labors of Story, and it is a matter of interest to any member of a college where lectures were delivered by Blackstone to learn that Mr. Viner's noble endowment,

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in its effect on the study of English law, has surpassed the hopes or the dreams of its founder. It led directly to the production of the famous "Commentaries on the Laws of England;" it led indirectly to the prosperity of the Harvard Law School, for, under the influence, as it may be supposed, of Viner's example, Dane, who curiously enough was, like Viner, the author of an Abridgment of Law, founded the chair which was first occupied by Story. But though other eminent men aided and followed Story, the restorer, we may almost say the second founder, of legal education at Harvard is Professor Langdell. His labors have been nobly seconded by colleagues such as Thayer, Gray, Ames, and others, all of whom, by their names and by their writings, are known to every educated English lawyer, and have been crowned with complete success. The prosperity and the greatness of the Law School is almost visible. It has, through the fame which has brought to it lavish donations, acquired large pecuniary resources. The Law School forms a sort of University within the University. Its library constitutes the most perfect collection of the legal records of the English people to be found in any part of the English-speaking world. We possess nothing like it in England. In the library at Harvard you will find the works of every English and American writer on law; there stand not only all the American reports — and these include, as well as the reports of the Federal courts, reports from every one of the forty-five States of the Union — but also complete collections of our English reports, of our English statutes, and of the reports and statutes of England's colonies and possessions. Neither in London nor in Oxford, neither at the Privy Council nor at the Colonial Office, can one find a complete collection either of American or even, astounding as the fact sounds, of our Colonial reports. The library meets the wants (which, by the way, are very different) both of trained lawyers and of students. I have dwelt upon the library because it is an outward and visible sign of the spirit of study and enthusiasm which gives life to the Law School. But it is in its students and its professors, in its crowded lecture-rooms and its admirable teaching, that lies the true glory of Harvard. It is a great thing that teachers whose merit is the thoroughness of their instruction should, within the last fifteen years, have raised the number of the students from 150 to about 550, and should find that the one obstacle to further progress — and it is, under the Harvard system, a very real obstacle — lies in the number of their pupils. The crowd of learners for the moment almost exceeds the physical

capacity of the teachers. But the final triumph of the Harvard professoriate is one of which no one but an Englishman well versed in the traditions of English law can appreciate the greatness. The professors of Harvard have, throughout America, finally dispelled the inveterate delusion that law is a handicraft to be practised by rule of thumb and learned only by apprenticeship in chambers or offices; they have convinced the leaders of the Bar that the Common Law of England is a science, that it rests on valid grounds of reason, which can be so explained by men who have mastered its principles as to be thoroughly understood by students whose aim is success in the practice of the law.

My aim is to expound the conditions and the character of the law teaching at Harvard, and thus explain the causes of its success, and then to consider what are the lessons, if any, which can be learned by our Law School at Oxford from the experience of Harvard.

The Harvard Law School is a professional school for the practical teaching of English law, and is conducted by professors.

This statement embodies a fundamental fact, of which the critic of Harvard should never lose sight; it covers two different points, each of which needs separate attention.

The Harvard Law School is a professional school.

Its classes are attended by men who are B.A.s of Harvard or of some other University, where they have already received an adequate general training. They have not necessarily, nor, as I believe, generally, mastered even the elements of law. In this respect they stand in the position of undergraduates beginning to read for our Jurisprudence School at Oxford. But in other respects the student at the Harvard Law School differs from an Oxford undergraduate. He is a man of twenty-two or twenty-three, who, having passed through his University career, wishes to prepare himself for the Bar; he joins the school with the practical object of acquiring knowledge of law. He is to be compared with a student of an Inn of Court who is eating his terms and beginning to read in chambers, or with a young articled clerk who attends classes at the Incorporated Law Society in order to pass his final examination. At the school our student remains for at least three years, and goes through a carefully prepared three-yearly course. In order to obtain the law degree he must have attended at least fifteen sets of lectures. These sets are arranged so as to meet the requirements of men of each year, though in the latter two years a student is allowed free choice of subjects. At the end of each academical year he is ex-

amined in the topics of his lectures by the professor whose classes he has attended, and is not allowed to pass on to the studies of the next year unless he has satisfied the examiner. A degree is obtained by success in each of the yearly examinations, and students who pass with special success have their merits recognized in something like a class list. But, be it noted, the obtaining the degree, and a good degree, is not the student's primary object. What he wants to achieve is to learn English law and to acquire a high reputation for legal knowledge both amongst the professors and amongst his fellow-students.[1]

Any man who has mastered the principles which govern the large departments of law to which the attention of students at Harvard is directed, and many of such students achieve this arduous task, undoubtedly begins his professional life with an amount of knowledge rarely possessed by an able barrister on his call to the Bar, and never, as a rule, acquired by any young Englishman when he begins to read in chambers. Yet, though the advantage of such preliminary knowledge to a person who intends forthwith to begin the practice of the law is obvious, the experience of an English lawyer, imbued with the traditions and habits of the English Bar, inevitably suggests a curious question.

How is it that young Americans, who are keenly enough alive to the importance of actual success in the battle of life, are willing,

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[1] The studies followed may be best understood by giving a brief synopsis of the curriculum pursued by a very distinguished student: —

Year I.

(1) Contracts.
(2) Torts.
(3) Property. (Real and Personal Estates; Landlord and Tenant, etc.)
(4) Criminal Law.
(5) Civil Procedure at Common Law.

Year II.

(1) Evidence.
(2) Property. (Conveyances, Wills, Exors., etc.)
(3) Bills and Notes.
(4) Trusts.
(5) Jurisdiction and Procedure in Equity. (General principles of unreformed English Chancery Procedure, etc.)

Year III.

(1) Constitutional Law.
(2) Corporations.
(3) Partnership.
(4) Property. (Conditional Limitations, Perpetuities, etc.)
(5) Equity, Jurisdiction and Procedure. (Specific Performance, etc.)

or even eager, to spend three or four of the best years of their lives, say from twenty-two to twenty-five or twenty-six, in a course of preparatory professional study which no young man aspiring to eminence at the English Bar would dream of pursuing? How is it, to put the same problem in another form, that study at a law school is to a young American to a great extent the equivalent of what reading in chambers is to a young Englishman?

It is possible to offer a partial, though not a complete, explanation of what must always to an English critic seem a paradox.

A high law degree, or, indeed, any degree obtained at a University, may be in the United States, as it is in England, of little worth by way of an introduction to business. But a reputation gained at Harvard for extensive and accurate knowledge of law and for dexterity in legal argument may well in America promote a young man's success as a lawyer in a way in which no University reputation whatever can in England foster his success at the Bar. In the United States there exists no distinction between barristers and solicitors, and the combined business of a barrister and of a solicitor is carried on by firms. The number, further, of lawyers is immense: it were hardly an exaggeration to say that every man who is not in business or a minister of religion is a lawyer. Hence, a student who at Harvard has acquired reputation for legal talent finds that in one way or another his fame among his University contemporaries is of actual value to him in his profession.[1] And his name, spread far and wide by his fellow-students, who are many of them practically in the position of what we should call country solicitors, must, I conjecture, when he becomes an actual member of a firm, or, as is often the case, sets up in business for himself, tend to bring work to him. In any case I am convinced that the fusion of the two branches of the legal profession, whatever its other good or bad results, facilitates the acquisition of business by young men of ability and of repute among their contemporaries to an extent which is not easily realized by the practising lawyers of England. If you think the matter out, the truth of this conclu-

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[1] A friend, who is thoroughly well-informed upon this matter, writes to me from Harvard as follows: "Our young Honor Graduates are recognized as desirable men because of their ability to deal with legal problems, and, as a rule, secure positions in offices where they receive a small salary from the first. I receive letters every year from lawyers in Boston, New York, Chicago, and other cities asking me for the names of some men about to graduate *cum laude* whom I can recommend for a position in their offices. The *cum laude* men form from one-eighth to one-fifth of the class."

sion becomes pretty clear. Clients need in the lawyer whom they consult both experience and ability, and, of the two, experience is the more important. Now, in the system prevailing in England, a barrister beginning his career cannot, even should he possess the legal knowledge of Eldon or the rhetorical genius of Erskine, lay claim to experience. But if the same young barrister could be taken into a firm of repute, the firm would supply experience in the persons of the elder and leading partners, whilst the young man of special talent would import his new or peculiar genius into the firm. This is in reality the state of things in the United States. The client who comes to a firm cannot be expected to entrust his business to young Mr. Jones, though he may know Mr. Jones to be one of the cleverest fellows of his year at Harvard; but he may well trust Mr. Jones when Jones's inexperience is corrected by the mature prudence of the senior partners, Brown and Robinson. To this it must be added that a firm has, from the nature of things, an interest in attaching to themselves a young man of ability, whether as a clerk or a partner. This rule works, though in a way which does not arouse attention, among English lawyers. A distinguished firm of solicitors will assuredly at times take as a partner a man recommended only by his talent and character, and the habit which, only within a very recent period, has become recognized among barristers of employing "devils," apparently marks the growth of a system of legal partnership. However this may be, it is certain that a University reputation tells professionally far more in America than in England. Those who have read the charming biography of Lord Bowen may have noted that his success at the Bar was for some years doubtful, and it seemed at one moment to be on the cards that he might be drawn away from ill-remunerative labors as a counsel by the brilliancy of an assured success in literature. If a man gifted with such genius as Bowen were to appear in the Law School at Harvard, he would not, I am convinced, after a call to the Bar, be compelled to wait for some years before his legal talents became known and were acknowledged in the practical form of business. The value, then, of reputation gained in the Law School is one reason why young men are willing to devote to its courses three of the best years of their early manhood. A second reason, however, is that the teaching they receive exactly meets their intellectual needs.

The Harvard Law School is a professorial school.

This statement means much more than the enunciation of the

truism that the teaching of Harvard is carried on by professors: it means that the aim of this teaching is to exhibit English law to students as a science, and to impress upon them the knowledge of its fundamental principles.

Professor Langdell has, in a well-known address, admirably defined the lines on which the Harvard system has, under his guidance, been built up: —

"I have tried to do my part towards making the teaching and the study of law [at Harvard] worthy of a University; towards making the venerable institution of which we are celebrating the two hundred and fiftieth anniversary a true University, and the Law School not the least creditable of its departments; in short, towards placing the Law School, so far as differences of circumstances would permit, in the position occupied by the Law Faculties in the Universities of continental Europe. . . .

"To accomplish these objects, . . . it was indispensable to establish at least two things: first, that law is a science; secondly, that all the available materials of that science are contained in printed books. If law be not a science, a University will best consult its own dignity in declining to teach it. If it be not a science, it is a species of handicraft, and may best be learned by serving an apprenticeship to one who practises it. If it be a science, it will scarcely be disputed that it is one of the greatest and most difficult of sciences, and that it needs all the light that the most enlightened seat of learning can throw upon it. Again, law can only be learned and taught in a University by means of printed books. If, therefore, there are other and better means of teaching and learning law than printed books, or if printed books can only be used to the best advantage in connection with other means — for instance, the work of a lawyer's office, or attendance upon the proceedings of courts of justice — it must be confessed that such means cannot be provided by a University. But if printed books are the ultimate sources of all legal knowledge; if every student who would obtain any mastery of law as a science must resort to these ultimate sources; and if the only assistance which it is possible for the learner to receive is such as can be afforded by teachers who have travelled the same road before him — then a University, and a University alone, can furnish every possible facility for teaching and learning law. 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 travelled 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 prætor, still less of the Roman procurator, but the experience of the Roman jurisconsult.

"My associates and myself, therefore, have constantly acted upon the view that law is a science, and that it must be learned from books."[1]

The essential doctrine, therefore, of the school may be summed up in two statements — first, that English law is no mere handicraft or art, but a science to be deduced from a limited number of principles; and, secondly, that the nature and the application of these principles are to be learned from books, or in effect, as this maxim is interpreted at Harvard, from law reports.

By the strictest adherence to this doctrine, Professor Langdell and his eminent colleagues have given to their teaching a character which is at once scientific (*i. e.* logical) and practical.

Their teaching is scientific because their whole aim is to elucidate the principles of English law.

They rate low — a lawyer brought up under our English system is inclined to say too low — the advantage to be gained from reading in chambers.[2] They appear slightly inclined to forget that law must always be partially a handicraft, and that even a scientific knowledge thereof is increased by the intimate acquaintance with the actual working of law which is gained from apprenticeship; if practice needs theory in order that it may be intelligent, scientific theory stands in need of practice in order that it may escape unreality. Still, in substance the masters of the Law School are right. The merely empirical acquisition of legal maxims and the practice of law by rule of thumb have been so much overrated that teachers do well to thrust into prominence the logical aspect of a great legal system.

The teaching, moreover, of the Harvard professoriate, though scientific, is as far removed as possible from being abstract, and is, in the best sense of the word, practical.

The teachers at Harvard are saved from the unreality and vagueness which are apt to infect speculative jurists, not only by their knowledge that they are educating their students for a definite professional purpose — namely, success as lawyers — but also by their intense enthusiasm for the Common Law of England, or rather of the English people. They are apostles of English law. They

[1] "Harvard College: a Record of the Commemoration, November 5th to 8th, 1886, on the two hundred and fiftieth Anniversary of the Founding." — Professor Langdell's Address, pp. 84–86.

[2] The conjecture may be hazarded that reading in a lawyer's office, which resembles the office of a solicitor, is not the intellectual equivalent to reading in the chambers of a leading barrister or (what is now to the great loss of students impossible) to reading in the chambers of a Special Pleader.

possess, indeed, far too much liberality of spirit to underrate the instruction to be gained from the comparison of different legal systems. But topics such as Jurisprudence or Roman Law play after all a subordinate part in the Harvard curriculum. It is towards the elucidation of the principles of the law of England that the attention of the teachers of Harvard is directed; their constant effort is to impress upon the minds of their pupils the history and the full meaning of these principles, as developed in the United States. And this insistence upon the fundamental conceptions of English law has given a peculiar turn to the very mode of thought prevalent in the Law School. Holmes's "Common Law," Langdell's "Summary of the Law of Contracts," Gray's "Rule against Perpetuities," Thayer's "Preliminary Treatise on Evidence in the Common Law," Professor Ames's most interesting essays on various legal topics, as, for example, on "Consideration," prove (if proof were needed) that their authors are thinkers of no common power. But these works also prove that the theoretical speculations of the writers have grown out of their profound study of the law of England. In truth, the thinking no less than the teaching of the Law School has received an unmistakable impress from the genius of Professor Langdell. Turn to his book on the "Law of Contract." It is full of acute logical thought, which is often expressed in the clearest language, though sometimes with a terseness and concision which perplex trained lawyers who are less skilled than the professor in legal reasoning, and cannot pretend to his minute and unrivalled acquaintance with the history of English case law. It is emphatically the work of a thinker, but every line of the book shows that the study of the law of England has both stimulated and trained Professor Langdell's own immense analytical power, and that upon the study of the law of England by his pupils he relies, and not in vain, as the means for teaching them the most important of all lessons — to think for themselves.

Consider again carefully the latest and most perfect product of legal speculation sent us from Harvard by Professor Thayer. His "Preliminary Treatise on Evidence" is almost oppressive in the weight of its legal erudition, and a captious or indolent critic may regret that a writer who, on the topic he has made his own, can speak with decisive authority, should trouble himself with the explanation or reconciliation of dicta delivered by judges or text writers, many of whom possess not half Professor Thayer's intellectual power, and none of whom have explored the foundations of

the law of evidence with half his thoroughness. His elaborate account of the development of the rules of evidence in connection with trial by jury shows his mastery of legal history; his logical exhibition of the principles of evidence exhibits a capacity for subtle analysis which is likely to be underrated because of the very clearness with which its results are expressed; but the point upon which for my present purpose it is most necessary to dwell is that Thayer, like Langdell, is immersed in the Common Law; they are both of them such thorough lawyers that they have been compelled to work out for themselves a system of legal philosophy. Thus, while jurists — such, for example, as Sir Henry Maine — have been impelled by their interest in legal theory or the problems of history to study the principles of English law, the body of American teachers and thinkers, of whom Langdell and Thayer are typical examples, have been impelled by their passion for the law of England to become masters of the philosophy and history of law.

It is worth while insisting upon this special attachment exhibited by the leaders of the Harvard Law School to the concrete law of the English people, because it specially qualifies them to maintain that peculiar form of teaching which is at once scientific and professional. They train a student in the study of elementary principles and in the rigid application of logic to the solution of legal problems. But they keep him close to legal facts. They never forget, or suffer him to forget, the Reports; they have always before their minds the necessity for explaining and harmonizing the recorded judgments of American tribunals. Hence their pupils are taught not only to think, but to think, if the expression may be used, legally; and gain an invaluable knowledge, not only of cases, but of the proper use of cases as the basis of argument.

Here we touch upon the most salient and original feature in the Harvard method of instruction. This characteristic or peculiarity is that tuition is in the Law School grounded upon the study of cases, and is in its form catechetical. The way in which this system works is curious. Suppose a student utterly unacquainted with law, as are most young men when they enter the Harvard Law School, to be an attendant, as the present writer had the happiness to be, at Professor Ames's lectures on the Law of Contract. From the first moment he joins the class he has placed in his hands the huge collection of contract cases edited by Langdell. The cases are placed under different heads, as, for example, under "Offer and Acceptance," and under each head are arranged in historical order.

Our student is neither assisted nor confused by printed comments. He is left without the aid even of head-notes; he knows that he must prepare for the lecture, or, as it is sometimes aptly called, "exercise," say the first nine or ten cases in the book. He must, if he can, see their point. He reads, I presume, in some book on the Law of Contract the chapters bearing on the topic in hand. He then comes with from 100 to 200 companions to the lecture. Professor Ames has the names of the students before him. He calls now upon one, now upon another, to state the result of a definite case. He asks questions about it; he raises every point that the case contains; he suggests, in the way of question, variations on the case; he states, in the form of observation, its real gist. This plan of plunging a pupil at once into a mass of cases seems, when one first hears of it, a hopeless one. As a matter of fact its success in the hands of a master such as Professor Ames is patent. It is the Socratic method applied to law and is infinitely stimulating. The whole class are kept alive. Foolish answers or impertinent answers — and of the latter I heard none whatever — are checked by the capacity of the teacher and the opinion of the class. No man willingly plays the fool before his class-mates. What to me was more surprising was the way in which skilful catechetics not only exhausted every case, but brought out the general principle which the cases, or set of cases, illustrate. If there be a case which every teacher of the Law of Contract thinks he knows thoroughly, it is Williams *v.* Carwardine, and over Williams *v.* Carwardine Professor Ames and his students were lingering lovingly when I first joined the class. The discussion is unforgettable. It was perfectly orderly; it was filled with animation. The principle involved was impressed upon me as it never had been before, and, well worn as is Williams *v.* Carwardine, it was shown to hold more of law than I had hitherto suspected that it contained.

Some branches of the law, such, for example, as the Law of Contract or the Law of Torts, lend themselves with special facility to the catechetical method, whilst others, such as the Law of Real Property, are less suited for it. The proportion, therefore, in which current dissertation ought to be mingled with questions must be regulated by the nature of the topic to be taught and in accordance with the judgment of the teacher. Still, though the degree to which the system of question and answer is relied upon varies considerably in different courses of lectures, the catechetical method based on the study of cases is applied at Harvard more or

less to all branches of English law, and this system, as conducted by lawyers of eminence, has two special merits.

In the first place, it forces young men to rely on their own efforts to learn rather than let themselves be taught, and must be a great preservative against cramming. It gives the students at Harvard much the same kind of stimulus which is felt by a young man when he begins to read for the Bar, and, having entered chambers, is called upon for the first time to draft a claim or to write an opinion. The claim is drawn wrong and the opinion is worthless, but the student's effort to obtain knowledge by applying his mind to the solution of a given case is worth more than scores of lectures.

The Harvard system, in the next place, calls into play the disputatious instincts of the whole class. Great, indeed, is the value of the art of contradiction. Young men learn more from wrangling than from reading. The problems of the lecture-room turn into the disputes of the boarding-house, and points of law are discussed with the eagerness and with the ignorance with which in Oxford, some forty years or more ago, young men used to discuss, as I trust they still do discuss, problems raised by the Ethics or the Politics of Aristotle. Even from an educational point of view the Harvard B. A. may gain as much from wrangling as does the Oxford undergraduate. It is intellectually as stimulating to determine whether an agreement falls within the fourth section of the Statute of Frauds, or whether the true basis of contractual obligation be actual agreement of minds or merely the expression thereof, as to decide whether the benefactor loves the object of his benevolence more than he is loved in return, or whether the good citizen must of necessity be the good man. From the professional point of view the B. A. of Harvard has certainly the best of it. The Aristotelian questions which vague memory still recalls to me have their interest, but the answers thereto have no importance in the conduct of life. To the practising lawyer the interpretation of the Statute of Frauds or thorough mastery of the essentials of a contract may turn out of great utility.

It is what a student thinks and talks about outside the classroom far more than what he hears in lecture which gives him his true education; and for the success of the Harvard method it is essential that students should be perpetually engaged in the examination and discussion of cases.

This end is achieved by the encouragement of two institutions, both characteristic of Harvard.

First — The Law Clubs and the Moot Courts.

Take as the type of a Law Club the Pow Wow, which did me the honor to invite me to one of its sittings. It is a club formed and conducted by students, and is much such a body as might meet of an evening at Oxford to read essays on religion, morals, politics, or art. But it is a club which means business, and does it; it exists for the sake of holding legal arguments, carried on, as far as may be, subject to the formalities and to the conditions under which they would be carried on in a real court. It is, in fact, the elaborate imitation of a court, or rather of a body of courts. The intricate constitution of the Pow Wow is difficult to master, and its details, if accurately given, might not interest readers. Two or three facts are worth mentioning, as giving some idea of the nature of the society. The club elects three courts: eight members from the men of the first year form the superior court, eight from the men of the second year the supreme court, and eight from the men of the third year the court of appeals. Every arrangement about these courts is carried out with the utmost seriousness, and the object aimed at and attained is that argument should be carried on by members of the club before a court which, from the standing of the judges, should have greater knowledge than, and therefore carry authority with, the men arguing before it. Everything is done to give solidity and seriousness to the argument. First, a case is made up with great care, which may take the form either of an agreed statement of facts or of a special verdict, or of a demurrer. It is "settled" by the person who is to preside over the court during the argument, and who in general would be a member of the tribunal immediately above the court in which the case is heard. Two members of the club are assigned to argue the case (which always raises some difficult point) as counsel. A week before the argument the counsel hand in to the court a list of all the authorities they are going to cite. Hence, before the court meets the whole bearing of the case is known to the presiding judge and his colleagues, and he is able to guide the argument with intelligence.[1] Before the day for argument the case is well

[1] *Example of Club Court Case.* — Story *v.* Townsend. Story was possessed of a piece of land, and Townsend, being desirous that his friend Eaton should get title to said land, agreed to pay Story $1000 on Story's making a conveyance to Eaton of the land. Both parties to the contract promised to perform. After a reasonable time had elapsed, Story offered to execute and deliver a conveyance of the land, when Townsend discharged him from making any conveyance. Townsend refuses to pay the $1000, and Story brings this action for damages from non-performance of the contract.

known to most of the club. The members attend in a thoroughly critical spirit. The case is most carefully argued before the court; when it ends, each judge delivers a judgment or, as Americans would say, an opinion, and the chief is expected in the course of a week or so to hand in to the club a written judgment. All this may sound like child's play. It is nothing of the sort. American students, whether at Harvard or Princeton, take themselves very seriously. The counsel and the audience are all in earnest. The counsel wish to gain a reputation for legal knowledge and skill in argument; the hearers come to sharpen their power of legal criticism and discernment. The result is pre-eminently satisfactory. At the hearing at which it was my good fortune to be present everything went on with the utmost order. A stranger might have fancied he was listening to the proceedings of a court. Nothing, indeed, was said of any marked brilliancy, but the audience showed unmistakable interest, and the reasoning was sound and business-like. The arguments, indeed, were just of the kind to which an English judge would have given attention if presented by a youthful barrister. The full merit of the proceedings was appreciated by a critic only when he learned that the youths who argued were young men of the first year. It was astonishing to see how soon, under good training, young men could acquire the legal habit of mind.

Law Clubs are the creation of students though they are favored by professors. The Moot Court is a University institution. It is a meeting at which the whole Law School is assembled, and whilst a Law Professor sits as judge, young men, generally in their third year, argue some difficult point of law in the manner which would be required of a barrister when appearing, for instance, before the Supreme Court of the United States. In the Law Schools throughout the Union these Moot Courts exist, and care is taken to train young men in every kind of argument in which, when they begin to practise, they may be called upon to take part. At the Boston Law School, for example — which, though its objects are more immediately practical than those aimed at by the School at Harvard, is an excellent institution — I heard two young gentlemen make an application for an amendment of pleadings. Nothing in its way could be better. The truth is that whether in the clubs or in the Moot Courts young men gain an amount of practical training which must be invaluable, and the want whereof hampers every English barrister, however able or learned, when, for the

first time, he has to address a real jury or argue before a real judge. But the practical advantages obtained from the Law Clubs and Moot Courts sink into nothing compared with the benefit which these institutions confer upon students by kindling ardent interest in legal problems.

Secondly — The Harvard Law Review.

If the Law Clubs stimulate debate, the 'REVIEW encourages learning. Its pages contain admirable work by the ornaments of the American Bar and the American Professoriate. But while the REVIEW is known to all Englishmen interested in legal speculation, few of us are aware that this important periodical is managed by the students of the Law School. Admission to the editorial body, consisting of some sixteen or seventeen persons, is an object of natural ambition to the elder students. To take part in the work of editing is one of the best occupations of men in their third year who, having reached the age of about twenty-four or twenty-five, have advanced far on the road towards the acquisition of sound legal knowledge.

The constant and scientific study of cases under the guidance of eminent lawyers, practice in the Law Clubs or Moot Courts, assiduous labor in the editing of the LAW REVIEW — these are the means by which the teachers of Harvard keep alive the vivid interest of students in the problems presented by the living law of England and of America. Hence their splendid and undoubted success.

"Mr. Brandeis describes 'the ardor of the students.' Professor Ames, writing of the School ten years ago, said: 'Indeed, one speaks far within bounds in saying that the spirit of work and enthusiasm which now prevails is without parallel in the history of any department of the University.' What was true then is at least equally true now. The students live in an atmosphere of legal thought. Their interest is at fever heat. One of the professors informed me that nine out of ten of his pupils study hard. If they had had a period of idleness at the University it was in their Arts course. The entrance into the Law School they looked upon as the entrance into the real work of life."[1]

What, then, are the lessons to be learned by Oxford from the example of Harvard?

To some observers, and notably to my friend Dr. Birkbeck Hill, who, in his "Harvard College by an Oxonian," has given the best description with which I am acquainted of an American University,

[1] Birkbeck Hill, Harvard College by an Oxonian (1894), p. 261.

and who, like myself, has been captivated by the charm and the life of the Law School, the one conclusion which appears to suggest itself is this: that the teachers of law at Oxford should note what has been achieved in the United States and go and do likewise, and, by changes which appear to him comparatively slight, raise up an institution which may rival the fame and share the prosperity of the Harvard Law School.[1] This view is one naturally taken by an outsider, and it is one, I may add, which the teachers at Oxford, who, whether they be termed professors, tutors, readers, or lecturers, are, I may venture to assure our critic, zealously devoted to their work, would be glad, were it possible, to accept. But Dr. Hill's doctrine, though natural, could not be accepted by any lawyer, either from the United States or from England, who had examined from the inside the working of the American and the English law schools. There exists, as has been pointed out in these pages, an essential difference in their position. The aim, indeed, of the Law School at Harvard is the promotion of scientific legal education, and such is also the aim of the Law School at Oxford. But the aim of the Law School at Harvard is professional; its pupils are men reading for the Bar. The aim of the Law School at Oxford is, and ought to be, to a great extent, educational; most of the men who attend it are youths going through a course of University training. Hence the stimulus to work in the one case is, in the main, the desire to master the principles of law with a view to professional success; the stimulus to work in the other case is the desire, and the perfectly legitimate desire, to obtain a good place in the class list; and, let it be added, the desire to gain real knowledge with a view to professional eminence is, on the whole, a much stronger, as also a much wholesomer, kind of stimulus than an ardent wish for a First Class. These differences are essential; they cannot, whatever our wishes, be overlooked. They determine, to a great extent, the course of instruction; they explain, for instance, the far greater prominence given at Oxford than at Harvard to speculative subjects, such as Roman Law, Jurisprudence, International Law, which have a high educational value, but will in general not greatly aid a barrister in the discharge of his professional duties; he may assuredly be fortunate enough to acquire a large practice, and yet not once in the course of ten years come across a case requiring for its solution a knowledge either of Roman or of International Law. The differences pointed out fur-

[1] Harvard College by an Oxonian, pp. 264, 265.

ther explain and amply justify the great stress laid at Oxford upon examinations and class lists, and the comparatively slight stress laid upon them in the United States. There is no need to compel or induce a youth to work by the hope of a First Class, or the fear of being plucked when he is urged to labor by incipient and ardent professional ambition. Every teacher who keeps his eyes open must have been struck by the way in which not only the industry but the intellectual energy of many a young man is increased when he passes from the University to a barrister's chambers or a solicitor's office.

To say that an English University cannot, as regards the teaching of the law, copy Harvard is a very different thing from saying that the experience of the great American Law School does not contain valuable lessons for us at Oxford.

The experiment set on foot by Professor Langdell and carried out by himself and his colleagues, establishes the pre-eminent value of the catechetical system as applied to the study of cases. The most that can be said against the scheme of instruction pursued at Harvard is that its merits would be increased if it were supplemented to a greater extent than it is by the kind of lectures which are to be heard at English and at Continental Universities. The teachers of Harvard are admirable expositors of legal theories: there is no reason why they should confine themselves to the practice of catechetics; a friend may also be allowed to add that the teaching of law, as probably of other subjects, at Harvard might gain a good deal as an instrument of education if it were possible to introduce more than appears to exist of the personal relation between teacher and pupil; this intimate personal relation is the great merit of the tutorial system which itself may be looked upon as the fruit of life in college. Still, subject to these reservations, the Harvard method, where it can be applied, is in itself simply admirable. Where the pupils can be induced to perform their part by giving oral answers to questions asked in class, and by carefully getting up cases before attendance at lecture, no plan of legal teaching is so stimulating or so full of instruction. Nor ought it to be impossible, though the difficulties of achieving the end desired are considerable, for Oxford undergraduates to create for themselves societies for the formal conduct of legal argument. To extend the use of catechetics and to encourage the formation of law clubs are objects of which the zealous body of law-teachers existing at both our Universities should never lose sight.

American experience, in the second place, shows the expediency of creating, if possible, a course of post-graduate legal study, in which the teaching may be at once scientific and professional. The condition of things at Oxford suggests, at any rate, one of the means by which this end may be in part attained. The undergraduates who go into the jurisprudence school are many of them most promising pupils. Still they are undergraduates going through a University curriculum, and not men who, having taken a degree, are about to enter upon the profession of law. The B.A.s who read for the B.C.L. examination are men who have passed through the University course and for the most part, like the students at Harvard, are about to become lawyers. The B.C.L. examination, owing to the labors of my friends Mr. Bryce and Professor Holland, is an admirable one. The men who read for it pursue a course of study as well planned for laying the foundation of sound legal knowledge as can be recommended to a student earnestly bent on mastering the principles of law. The one defect, as far as the University is concerned, of the aspirants for a B.C.L. degree is that from the necessity for reading in chambers they rarely stay in Oxford, and thus do not provide, as they would otherwise do, a class of men to whom could be given serious post-graduate instruction. Every teacher of law at the University should therefore carefully consider how best to induce men reading for the B.C.L. degree to continue their studies, at any rate for a year, at the University. We may, it is to be hoped, at any rate when a legal University is founded in London, make good the claim, to the recognition of which we have already a reasonable and a moral right, that the holder of a B.C.L. degree should be exempted from the need of going through any examination as a condition for entering the profession of the law. This result we cannot, however, obtain by our own efforts: the more immediate question for the University is whether persons who have received a liberal education elsewhere, and many of whom would highly value the degree of B.C.L. of Oxford, may not by slight alterations in our arrangements be induced to reside and study at Oxford. This, however, is not the occasion for discussing details. All that can certainly be asserted is that the University and its teachers ought to do everything possible to foster study for the B.C.L. degree, and thus create, if possible, the serious study of law at Oxford by persons who have passed through their University curriculum.

The best result, however, of the experience of Harvard is that,

to every person engaged in the earnest teaching of the law in England, this experience gives immense encouragement. We learn from it that, under favorable circumstances, English law can be taught with unlimited success by the professors and teachers of a University. Nor, when the matter is fairly considered, is there any real ground for being disheartened by the fact that the numbers of our law students are fewer and the success of the Law School less than at Harvard. As I have insisted, the conditions under which law is taught in England and in the United States are different; and we are all of us too apt to forget how very recent has been the revival of the active study of law at our English seats of learning. By a curious paradox, it is of older date in the United States than in England. On the other side of the Atlantic the revival dates back at least from the days of Story. The condition of things there is much what it might now have been with us had Blackstone been followed by a line of successors as eminent and as zealous as the Commentator. Even as it is, the change produced within little more than thirty years is great. Within about that period the teaching of law both at Oxford and at Cambridge has become a reality, and is now an important part of University life. The energy of its teachers has been turned, and most wisely turned, towards the improvement of institutional works. The monumental "History of English Law," commenced by Pollock and Maitland; Digby's "History of the Law of Real Property;" Holland's "Jurisprudence;" Moyle's edition of the "Institutes" — books the merit whereof is acknowledged not only in England, but throughout the length and breadth of the United States — are signs of the movement which is making law a part of English literature. This shows the spirit of the time. The annals of Harvard conclusively attest the influence of such a spirit. A Law School in England can never be a copy of a Law School in America; but there is no reason whatever why serious students of law at Oxford should not, like the best students at Harvard, attain what is the true end of legal education, and be taught to "live in an atmosphere of legal thought."