1999

Langdell Laughs Forum: That Impecunious Introvert from New Hampshire: Re-Imagining Langdell: Comment

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Recommended Citation
Langdell Laughs

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The amount of ink spilled in consideration of the life, thought, accomplishments, and legacy of Christopher Columbus Langdell is eloquent testimony to the critical role he plays in the self-image of the American law teaching profession. It is both wonderful and astounding, therefore, to find that critical primary sources remained unread and unused at the very end of the twentieth century. Now that Bruce Kimball has brought them to light, we have a more complete view of the man and his thought, one that, not surprisingly, reveals to us someone quite different from the cruelly and crudely caricatured inventor of those twin devices for stifling young minds, the case and Socratic methods.

Most damaging to the traditional view of Langdell as a rigid dogmatist are the statements in his own notes on partnerships and commercial paper. What constitutes a partnership is a question answered by observing mercantile practice. What the law “ought to be in respect to any feature of negotiable paper” (70) can only be answered by asking what merchants do.¹ This sensitivity to business practice highlights the importance of Langdell’s ten years at the New York bar and his resulting familiarity with the “real” world, a familiarity that seems to have been more influential than previously imagined. We now have a Langdell who thinks and teaches, at least when the subject is partnerships and bills and notes, like a legal realist, finding what law should be in what society needs law to do. Perhaps Langdell should be counted among the realists’ predecessors, not only because he helped to break the hold of a priori principles on the legal mind, but also because of the approach to the law of business associations and practices revealed in these notebooks.²


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On the other hand, Langdell did not do much more in these two areas of business law beyond what is recorded in the notebooks. According to Kimball’s careful reconstruction of Langdell’s teaching, he taught partnership only in his first two years on the Harvard faculty (1869–1871) when he also taught negotiable paper. After 1871 he taught a course in bills of exchange and promissory notes only in 1878–1879 and 1879–1880, both times using James Barr Ames’s casebook on bills and notes. Ames built his academic reputation in the areas of partnership and bills and notes. As Langdell’s first and most famous student, Ames may have absorbed some of Langdell’s approach to these subjects. In 1902 Ames was asked to prepare the first draft of what would become the Uniform Partnership Act and incorporated into his work the “entity” theory of the nature of a partnership. He died before the work was completed and was succeeded by William Draper Lewis who rejected the entity theory in favor of the common law or “aggregate” concept. Lewis noted that advocates of the entity approach called it the “mercantile” approach because they believed, wrongly, in Lewis’s view, that business people acted in accord with the entity theory. It is certainly possible that Ames’s adherence to the entity theory owes something to Langdell.

The heavily annotated case books upon which most of Kimball’s article is based are far more difficult to interpret and incorporate into a story about Langdell as a teacher and scholar. While some will disagree with Kimball’s use of the reconstructed classroom dialogues as a way to extract meaning from these notes and glosses, they are only a means, after all. Kimball offers them as the best way to illustrate what he believes this evidence tells us about Langdell—that the Dean was not “dogmatic, rigid, and closeminded” (76). One can certainly concede the point, even without resorting to the reconstructed discussions.

There is, however, another way to look at this new evidence—what does it tell us about what Langdell actually taught and thought? While the notebooks give tantalizing glimpses of Langdell the proto-realist, the annotat-


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ed casebooks can also be seen as evidence that Langdell's classroom was dominated by the type of instruction that was the target of criticism by his contemporaries. A few months before he took up his teaching duties at Harvard Law School in the fall of 1874, James Bradley Thayer discussed the situation at Cambridge with Richard Henry Dana, Jr. and found himself in agreement with the older man's criticism of the case method as an inefficient way of imparting knowledge. Thayer believed that "all the advantage that is practicable to be gained from the method of studying cases and a minute examination, comparison & sifting of them" can be had in moot court and through the investigation of particular points. Boston University's law school was founded by disaffected Boston practitioners who found instruction at Harvard "particularly technical and historical" and insufficient preparation for practice. Kimball cites another contemporary criticism that described the cases on forbearance in the contracts case book as having been collected "with an over-scrupulous minuteness" (116, n. 145). In short, this new evidence can certainly be interpreted to show that contemporary criticisms of Langdell's teaching were not baseless. Langdell did spend a great deal of time closely examining judicial opinions. Of course, his contemporary critics misunderstood his reasons for doing so. He wanted his students to learn law from the sources, not secondhand from treatises. They would eventually learn what they needed by finding it themselves; and what they did not learn in school about the mechanics of practice they would learn by working for established lawyers.

Later criticisms of Langdell were very different. Langdell was excoriated for omitting life from legal education, for concentrating, in Holmes's famous phrase, on logic rather than experience. The case method became synonymous not with rigorous instruction in analysis by working through primary sources, but with indoctrination in a bloodless view of law that was a short step from an amoral view of law, which, in turn, lived next door to a view of the lawyer as the hired gun for the wealthy and powerful. In our own day, of course, Langdell and everything he is assumed to have stood for is set in opposition to a legal education based on skills and the experience of "lawyering." The Langdell revealed in the annotations is deeply concerned with the technical details of pleading and in that way looks a bit like the Langdell of legend.

Consider the colloquy about accounts annexed and Langdell's laughter. There does appear to have been a New England custom involving annexing accounts to pleadings, which may have also involved the use of the


common counts. Perhaps both of the comments attributed to students in the reconstruction (97) were correct. Why then did Langdell laugh? Was he amused by students who knew only part of the story and confidently asserted they knew it all? Was he so pleased at his students' enthusiasm that he laughed out of pure pleasure? We shall never know.

More challenging is the larger question. What did Langdell think he would accomplish by spending so much time on the historical development of equity practice? He believed that there were "true" theories. For example, he maintained that "allowing indebitatus assumpsit for money had and received to lie upon an obligation to account, involves one of two false assumptions" about the pleading system. He devoted most of his article on the Circuit Court opinion in the Northern Securities Case and the Sherman Act to illustrating the iniquity of the court's decree, unsanctioned by principles of equity or the statute itself. Surely Langdell believed his studies were important to the working of law, but the importance is not as clear to us as it was to him and his contemporaries.

In recent years, scholars have attempted to find a more balanced and sophisticated view of Langdell and his relationship to American legal thought and legal education. As that task continues, the sources Kimball has uncovered and his meticulous work in assembling Langdell's bibliography and reconstructing the chronology of his career will play an indispensable role.


10. At least one student of the subject believed that Langdell's theory "that equity is only a system of remedies" led to pernicious results. Charles Andrew Huston, The Enforcement of Decrees in Equity; Harvard Studies in Jurisprudence (Cambridge, 1915), 1:152.