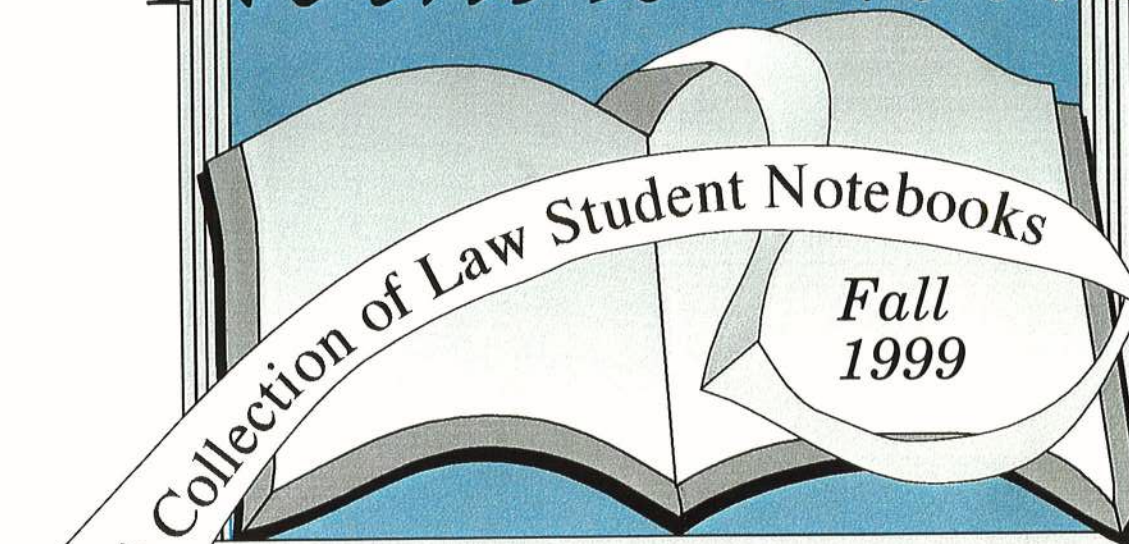


Notable Notes

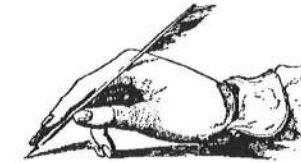


A Collection of Law Student Notebooks

Fall
1999

DANIEL R. COQUILLETTE
RARE BOOK ROOM
BOSTON COLLEGE LAW LIBRARY

Notable Notes



A Collection of Law Student Notebooks

Whether painstakingly copied into an exquisite leather volume, scribbled onto lined tablets, or tapped into a laptop computer, class notes and the notetaking process have always played a significant role in the education and learning process of American law students. Although law student notebooks of today have much in common with the notebooks of the past two centuries, they nevertheless reflect the changes that have occurred in our law schools over the years. As such, they are valuable original resources for librarians and other scholars who collect, preserve, and study the history of American legal education. They provide a microscopic view of the state of legal education and the law itself, as seen through the eyes of a single law student at a particular moment in time. When studied in conjunction with other sources, they bring us one step closer to understanding our legal history.

As legal education in America has evolved over the past two centuries, so has the process of notetaking and the content, arrangement, and purpose of law student notebooks. Likewise, to the extent that the process of legal education has remained the same over time, student notebooks of yesteryear have much in common with the computerized class notes of today.



Reception with Lynne Templeton Brickley


The Boston College Law Library extends its warmest thanks to Lynne Templeton Brickley for providing remarks about the exhibit to the deans and faculty of the Law School, members of the Law Library staff, and invited guests at a reception on December 2, 1999.

Lynne Templeton Brickley graduated from Sarah Lawrence College and received her Master's and Doctorate degrees from the Harvard Graduate School of Education. While studying for her Doctorate, she served on the board of the *Harvard Education Review*. She wrote her doctoral dissertation on Sarah Pierce's Litchfield Female Academy, which coexisted with the Litchfield Law School around the turn of the nineteenth century.

Ms. Brickley continued her research on the Litchfield Female Academy by working as the Project Historian for a 1993 exhibition about the Academy produced by the Litchfield Historical Society. Entitled "To Ornament Their Minds," this exhibition was funded in large part by the National Endowment for the Humanities and won an Award of Merit from the American Association for State and Local History.

For the past five years, Ms. Brickley has traveled up and down the east coast as the Project Historian for another Litchfield Historical Society exhibition, researching the history of the Litchfield Law School. Entitled "The Noblest Study: The Legacy of America's First School of Law," this exhibition recreates the life of a Litchfield Law School student in the early nineteenth century. It won a Wilbur Cross award from the Connecticut Humanities Council for the best humanities project in the state.


Until relocating permanently to Litchfield almost three years ago, Ms. Brickley made her home in Boston, where her husband Richard Brickley practiced law as a member of Brickley, Sears, & Sorett. Ms. Brickley is a Past President of the Litchfield Historical Society and now serves on its Board.



The exhibit was produced by members of the Rare Books Exhibit Committee – Karen S. Beck, Mary Sarah Bilder, Ann McDonald, Sharon Hamby O'Connor, and Joan Shear. Much of the text for this exhibit was adapted from Karen S. Beck, "One Step at a Time: The Research Value of Law Student Notebooks," 91 *Law Library Journal* 29-138 (1999). The catalog was created by Ann McDonald.

The Committee would like to thank the following people and institutions who generously lent items for the exhibit: Professor Daniel R. Coquillette of Boston College Law School; David Warrington and David Ferris of the Harvard Law School Library's Special Collections Department; Catherine Keene Fields of the Litchfield Historical Society; and Morris Cohen, Bonnie Collier, Harvey Hull, and Blair Kauffman of the Yale Law School Lillian Goldman Library.





Early Influences on American Legal Education

Until the first American law schools were founded in the late eighteenth century, young men who wished to become lawyers studied at the Inns of Court in England or, more often, apprenticed themselves to established American lawyers. Even through the first half of the nineteenth century, the law office apprenticeship was a common route to gaining entry to the profession.

Apprentices were expected to work in the law office copying writs and other documents, assist with minor legal matters, and observe their masters in court and legal society. They were expected to learn the law by reading classic legal works in their masters' libraries.

Lists of frequently assigned and commonly read works abound; the two mainstays on the lists were *Coke Upon Littleton* and, after around 1770, Blackstone's *Commentaries*. The former seems to have caused unbounded misery among law clerks while the latter was generally praised. On *Coke*, apprentice and future Supreme Court Justice Joseph Story wrote in 1798 that "I confess my heart sunk within me. . . . You may judge how I was surprised and startled on opening [*Coke*] where nothing was presented but dry and technical principles, . . . and the repulsive and almost unintelligible forms of processes and pleadings. . . . I took [*Coke*] up, and after trying it day after day with very little success I set myself down and wept bitterly. . . ."

By contrast, law office apprentice James Iredell wrote his father in 1771, requesting that he procure for him a personal copy of the *Commentaries* because "it is proper I should read them frequently and with great attention. They are books admirably calculated for a young student, and indeed, may interest the most learned. . . . The principles are deduced from their source, and we are not only taught in the clearest manner the general rules of law, but the reasons upon which they are founded." Adopting a decidedly less elevated tone, New York merchant John Watts wrote admiringly of Blackstone in 1762 that "[w]e have a high Character of a Professor at Oxford, who they say has brought that Mysterious Business [the study of law] to some System, besides the System of Confounding other People & picking their Pockets, which most of the Profession understand pretty well. . . ."

SIR EDWARD COKE

THE FIRST PART OF THE INSTITUTES OF THE LAWS OF ENGLAND; OR, A COMMENTARY UPON LITTLETON: NOT THE NAME OF THE AUTHOR ONLY, BUT OF THE LAW ITSELF.

1st American ed., from the 16th European ed. Philadelphia: Johnson and Warner, and Samuel R. Fisher, Jr., 1812. 3 volumes.

In the mid-eighteenth century, Coke's *First Institute*, more popularly known as *Coke upon Littleton*, was the popular legal text of the day in England and the colonies. "Littleton" referred to a fifteenth-century text on land law known as the *Tenures*, written by Thomas Littleton. In 1628, Edward Coke had taken this backbone of property law and added an extensive series of glosses. *Coke upon Littleton* was not easy to understand. Daniel Webster wrote, "A boy of twenty, with no previous knowledge of such subjects, cannot understand Coke. It is folly to set him upon such an author."

ANONYMOUS

AN ANALYSIS OF THE LAWS OF ENGLAND.

To which is prefixed an introductory Discourse on the study of law. Oxford, Printed at the Clarendon Press, 1759. 4th ed.

ANONYMOUS

LECTURE NOTES FROM WILLIAM BLACKSTONE'S LAW LECTURES AT OXFORD.

4 volumes holograph notes, bound in vellum, 1764-1766.

In England, William Blackstone's efforts to lecture on the common law met with much success. A syllabus or outline of his lectures, *An Analysis of the Laws of England*, was published anonymously in 1756. Shortly thereafter, in 1758, Oxford recognized both Blackstone and the possibility of scholarship on English common law by naming him the first holder of a new professorship, the Vinerian Professor of the Laws of England. Blackstone's political savvy here should not be overlooked. Many scholars believe that, as early as 1752, Blackstone was well aware of the Viner bequest's provisions to promote the study of common law through an endowed professorship.

Displayed is the fourth edition of *An Analysis*. The Boston College Law Library is also particularly proud of these notebooks of Blackstone's lectures. The notebooks carefully integrate the *Analysis* with the lectures. Although in the early lectures the student wrote down a great deal of information, in later lectures the student tended to note only the citations that Blackstone provided in his lectures. The *Analysis* and notebooks have been opened to similar sections.

WILLIAM BLACKSTONE

COMMENTARIES ON THE LAWS OF ENGLAND.

Oxford: Clarendon Press, 1765-1769. 4 volumes.

By the 1760s, Blackstone had begun to worry about the circulation of illegal copies of his lectures, much as Tapping Reeve and James Gould did some fifty years later. Blackstone noted that lectures, "in their nature imperfect, if not erroneous . . . have fallen into mercenary hands, and become the object of clandestine sale." Thus in 1765, Blackstone published the first volume of the *Commentaries*. Three volumes followed in 1766, 1768, and 1769. The four volumes that are exhibited here are from the original first edition.

Within these four volumes lay a great intellectual effort. Rather than produce yet another gloss to the already convoluted *Coke Upon Littleton*, Blackstone organized the substantive areas of the common law within the theoretical structure of Roman civil law analysis. English common law suddenly became rational, coherent, systematic, deductive, based on principles — and, perhaps most importantly, eminently readable by lawyers and laypeople alike.

JOHN WILLARD BICKFORD, D. 1866.

LAW STUDENT'S NOTES, 1864-1865.

1 volume. *On loan courtesy of the Harvard Law School Library.*

This notebook contains Bickford's notes before and while a student at Harvard Law School, and reveals Blackstone's ongoing influence on American legal thought nearly 100 years after the *Commentaries* first appeared. The first section, shown here, focuses on Blackstone's *Commentaries* rearranged by Bickford. The next section deals exclusively with moot court trials and briefs held at the law school, and the final section consists of notes of lectures given by Joel Parker on Bailments.

ANONYMOUS

EXTRACTS FROM THE COMMENTARIES ON THE LAWS OF ENGLAND.

4 volumes holograph notes, bound in vellum. *Gift to Boston College Law School from BCLS faculty member and former dean, Daniel R. Coquillette, J. Donald Monan, S.J. University Professor.*

The Law School is not aware of any similar volumes held in area law schools and is especially pleased to include these volumes in the exhibit. The four volumes were created by an anonymous individual copying large sections of Blackstone's *Commentaries* into notebooks for personal use. Each notebook correlates to a volume of the *Commentaries*.

The volumes appear to have been intended to reduce Blackstone to a set of rules or principles. Indeed, the writer has almost always deleted history and theory in copying passages. Thus the writer has often copied only the first sentence of the paragraph. The writer also favored certainty in the extracts. The writer often chose to begin Blackstone's comments midway through a sentence after deleting any tentative or qualifying words in Blackstone's claim about a particular area of the law.

We do not know whether the author copied the books as a cheaper way of obtaining the *Commentaries* or whether they served as a working set of notes on the important points within the volumes. Nonetheless, at least in the beginning volumes, the writer appears to be learning the law. One example appears in the discussion of the rights of the person. The writer ignores the passages about the introductory theory and moves immediately to discuss a person under duress of imprisonment. The writer inserts the etymology of duress apparently taken from another source. The writer then inserts the definition of habeas corpus from 16 Car. 1 c. 10. The writer then returns to Blackstone for a few sentences.

In the beginning of the copying exercise, the writer was not yet sure of how to arrange the materials. The first volume begins with an index on the opening three pages and has a list of notes at the end as well as a set of definitions of certain words. The words include difficult ones — “court leet,” and easy ones — “esquire.” The writer continued to place the index at the beginning of each of the remaining volumes. However, the writer chose in the second volume to copy on the left side of the volume and include the cites on the right side. The fourth volume (20 cm. high) is smaller than the other three (23 cm.), which indicates that it may have been purchased separately.

Many questions remain about these volumes. Continuing research into the provenance of these volumes and ongoing searches for similar volumes will help Boston College Law School learn more about these rare treasures.

When were these volumes written?

No date appears on the outside cover or inside flyleaves of the volumes. The date 1784 appears in volume 1 on page 64. Two different watermarks appear on the pages: a crown pattern and a seated Britannia with the initials G.R. Some of the sheets with the crown pattern also display what may be the countermark of the papermaker: J D—anshaw.

Which edition of the *Commentaries* served as the primary text?

The title page lists Blackstone as “Vinerian professor of Law at Oxford, and Solicitor General to Her Majesty.” This listing suggests one of the early editions because editions after 1771 favored listing Blackstone as one of the justices of the Court of Common Pleas. However, the words “at Oxford” do not occur in the first edition. Also, the inclusion of the 1784 date may suggest one of the later editions.

Who wrote these volumes?

The writer was most likely American or English. The selection of material does not seem to provide a clear clue. For example, the writer chose to begin Volume One midway through Blackstone's introduction with the comment: “Democracies are best calculated to direct the end of a law; aristocracies to invent the means by which that end shall be obtained; & monarchies to carry those means into execution.” Similarly, in the section discussing the countries subject to the laws of England, the author includes the section in which Blackstone wrote that the colonies are subject to the crown of Great Britain “in all cases whatsoever.” (p.10). And the author does not recopy any of the text from the last chapter of the fourth book “Of the Rise, Progress, and Gradual Improvements, of the Laws of England.”

Although these passages would seem to suggest that an American copied them in the years surrounding the establishment of the state and federal governments, the choice of material is often idiosyncratic. For example, the author deletes discussions of the life estate and estates for years and at will, but copies those on curtesy and dower, and tenancy at sufferance. Moreover, a substantial amount of material seems only interesting to those within English society.

Spelling often allows one to ascertain the writer's origin. Here, the spelling choices are ambiguous. For example, although the writer uses the typically American “judgment,” the *Commentaries* also used this spelling.



The Litchfield Law School

In 1782 Tapping Reeve, a successful and enterprising lawyer in Litchfield, Connecticut, decided to systematize the instruction he had been providing his law office apprentices. He prepared a series of lectures on law, which became so popular that in 1784 Reeve built a small school building adjacent to his house to accommodate his growing classes, and to house his law library. This was the Litchfield Law School. The course consisted of 139 lectures and covered approximately fourteen months. Reeve taught the law “as science, and not merely nor principally as a mechanical business; nor as a collection of loose independent fragments but as a regular and well-compacted system.” [Timothy Dwight, *Travels in New England and New York*. London: 1823.] Reeve explained the reasons for rules of law, and supported them by citations to cases — mostly English — and by frequent references to Blackstone's *Commentaries*. Lectures at the Litchfield Law School were read slowly enough so that students could copy them down verbatim (a common method of teaching at that time). Most of the time, students took preliminary notes from the lectures, and then

recopied them into a revised, legible version called a "fair copy." Most Litchfield students prepared an index for their notes and had them bound in three or four volumes. Preparation of such compendia, revising them from first drafts, reading the authorities cited in the lectures, discussing the material with other students, all were planned parts of the instruction at Litchfield. Students were "examined" every Saturday, probably orally.

Reeve operated the school single-handedly until 1798, when he was appointed to the Connecticut Supreme Court (of which he was later appointed Chief Justice). He then invited James Gould, a recent Litchfield graduate, to join him in managing the school. Reeve resigned in 1820 and Gould carried on alone. Attendance gradually declined in the 1830s. Facing declining enrollment and competition from other law schools, Litchfield closed its doors in 1833.

During its tenure, the Litchfield Law School attracted more than one thousand students from almost every state in the Union. Alumni include two Vice Presidents, nearly 130 members of the United States Congress, three United States Supreme Court justices and thirteen justices of state supreme courts, fourteen governors, and numerous holders of state and local offices. At least fourteen Litchfield graduates went on to open other law schools.

For those who study the history of American legal education, Litchfield is significant in part because it bridged the gap between the law office apprenticeship system and the law colleges and universities of today.

Note-Taking & Treatise-Making at Litchfield

Why did Litchfield law students expend the time and effort to recopy the working drafts of their lecture notes into well-indexed "fair copies" and have them beautifully bound? The answer is that Litchfield students regarded their notebooks somewhat differently from law students of today. At Litchfield, a major goal of the program was to enable students to create their own permanent copies of the lectures. When students completed their fourteen months of notetaking, their notes comprised a complete legal treatise that they took with them into law practice and passed down to future generations of lawyers, as can be seen in some of the examples here. An 1828 advertisement to the first edition of the Litchfield Law School Catalogue shows how central treatise-making was to the Litchfield program: "These notes, thus written out, when complete, are comprised in five large volumes, which constitute books of reference, the great advantages of which must be apparent to everyone of the slightest acquaintance with the comprehensive and abstruse science of the Law."

CHARLES SAMUEL STEWART, 1795-1870.
LECTURES OF REEVE AND GOULD, 1818.

2 volumes. *On loan courtesy of the Harvard Law School Library.*

Charles Samuel Stewart enjoyed a varied and peripatetic existence. Born in Flemington, New Jersey, he received his A.B. from Princeton in 1815 and an advanced degree from the Princeton Theological Seminary in 1818. In between, he attended Litchfield in 1817. He served as a missionary to the Sandwich Islands and was appointed Chaplain in the United States Navy. He served on several ships and also worked as a writer. He died in Cooperstown, New York.

A provenance note in the first volume states: "Notes taken from the lectures of the honorable judge Reeve and Gould delivered at their offices in Litchfield, Conn. in 1818 and presented to Fanard Stewart Shanahan by his cousin Charles Samuel Stewart at the time of his departure for the Sandwich Islands, August 1822."

NATHANIEL MATHER, 1788-1837.
NOTEBOOKS. 1811-1812.

6 volumes; volume 2 is exhibited here. *On loan courtesy of the Litchfield Historical Society.*

Nathaniel Mather was born and died in Windsor, Connecticut. He graduated from Yale College in 1810 and began his law study in 1811. He married Sarah Jones Mills in 1820. He practiced law in Ohio and later back in Windsor.

These volumes are significant because their bindings display the handiwork of a leatherworker who lived in Litchfield during the time Mather studied there. This unknown craftsman created the bindings for many sets of Litchfield notebooks. The Litchfield Historical Society has the tools used by the leatherworker to decorate these bindings.

DANIEL SHELDON, JR., 1780-1828.
LITCHFIELD LAW SCHOOL LECTURE NOTES. 1798-1799.

1 volume. *On loan courtesy of the Litchfield Historical Society.*

This notebook is an example of an unusually large and beautiful folio format; most Litchfield notebooks were considerably smaller and more portable. Even more significant is the three-page typewritten memorial to Sheldon in the front of the notebook. It was written by none other than James Gould, who remarked upon Sheldon's intellect and character as follows: "Nothing was left to be desired, in the constitution of his mind. . . . He was a 'finished man.' . . . His intellectual treasures were collected for use - not for exhibition. . . . Seldom, indeed, has a purer spirit left the earth: and seldom have the purest left it, so entirely without reproach."

A native of Washington, Connecticut, Daniel Sheldon, Jr. began his studies at Litchfield in 1798. He later clerked in the Treasury Department and served as Secretary of Legation in France. His funeral in Marseilles was attended by every American living there, and American ships in French ports flew their flags at half mast in his honor.

The Purloined Notebooks

Like any research source, law student notebooks should not always be taken at face value. Trafficking in lecture notes and class outlines is not a new phenomenon, and students have long swapped and swiped their classmates' notes in lieu of going to class. For example, Litchfield students — and worse, people who had never even attended Litchfield — eagerly bought and sold copies of Reeve's and Gould's lecture notes. This practice was anathema to Reeve and Gould, who attempted to keep enrollment figures — and revenue — high by jealously guarding their lecture notes and refusing to publish them. Litchfield students were very much aware of their teachers' feelings on this subject, as evidenced by Litchfield student Augustus Hand's 1829 letter to his father:

My Dear Father:—

. . . Let me tell you how I spend my time. I rise between 7 and 8, make a fire and scrub for breakfast, from thence to lecture, where I remain until between 10 and 11. Thence to my room and copy lectures till 5 p.m. (Save dinner time at 1 p.m.) thence to O[rigen] S[torrs] Seymour's office with whom I read law until half past 9 p.m., then again to my room, write till between 12 and 1 o'clock, then draw on my night-cap and turn in. . . . As to the lectures . . . I can only say that their daily practical use to a lawyer can only be appreciated by those who enjoy them. . . . The whole is comprised in between 2500 and 3000 pages. Of these I have written about 1200 and 1300 and should I remain here till May and enjoy my present excellent health there will be no difficulty in copying the whole, having access to Seymour's volumes . . . who has attended two courses and has them complete. This is, however, business between ourselves for these lectures are secured to the Judge [Gould], being the labor of his life in the same manner as a patent right. . . .

Your affectionate son,

Augustus Hand.

HIRAM GOULD GOODWIN, 1808-1885.

LITCHFIELD LAW SCHOOL LECTURE NOTES. 1828-1829.

1 volume. *On loan courtesy of the Litchfield Historical Society.*

A native of New Hartford, Connecticut, Goodwin attended Andover in 1822 and matriculated at Litchfield in 1829, where he set about copying William G. Williams' 1799 Litchfield lecture notes into the volume displayed here. Goodwin was admitted to the bar in 1830 and practiced law before joining the Connecticut House of Representatives. He married Caroline Abernethy and later became Judge of Litchfield County Court and a member of the Connecticut Senate.

ORIGEN STORRS SEYMOUR, 1804-1881.

LITCHFIELD LAW SCHOOL LECTURE NOTES. 1824-1825.

6 volumes; volumes 2 & 4 are exhibited here. *On loan courtesy of the Litchfield Historical Society.*

Origen Storrs Seymour, son of the sheriff of Litchfield County, spent nearly his entire life in Litchfield. After graduating from Yale in 1824, Seymour enrolled immediately in the Litchfield Law School. He passed the bar in 1826 and assisted Judge Gould at the law school. Gould was almost certainly unaware that Seymour allowed Augustus Hand to copy his lecture notes!

Gould and Seymour attempted to keep the school open, but declining enrollments and competition from other schools forced its closure in 1833. Seymour went on to serve in the Connecticut State House of Representatives and the United States Congress. He practiced law with his son in Litchfield and served on the Connecticut Superior Court and Supreme Court, and was Chief Justice from 1873-1874.

Tapping Reeve as Scholar

TAPPING REEVE

THE LAW OF BARON AND FEMME; OF PARENT AND CHILD; OF GUARDIAN AND WARD; OF MASTER AND SERVANT; AND OF THE POWERS OF COURTS OF CHANCERY.

With an Essay on the Terms, Heir, Heirs, and Heirs of the Body. New Haven, Printed by Oliver Steele: 1816.

ULYSSES SELDEN [AKA SELDON], 1780-1812.
LITCHFIELD LAW SCHOOL NOTEBOOKS. 1802-1809.

3 volumes. *Gift to Boston College Law School from Edward R. Leahy, BCLS '71.*

Ulysses Selden's notebooks show us what the law was, or at least what Tapping Reeve thought it should be. Judge Reeve lectured on the law of Baron and Femme, the legal relationship of husband and wife. Volume One of Selden's 1802 notebooks contains these lectures at pages 3-64. Volume Three, pages 233-56, contains a separate essay by Judge Reeve entitled "An Essay Upon the Question Whether a Feme [sic] Covert by the Laws of Connecticut Can Devise Her Real Estate?" This essay is particularly interesting because it appears to be an early version of two chapters in Reeve's 1816 book, *The Law of Baron and Femme*. In both the lecture notes and the book versions, Reeve reviews the English and American authorities, but in his book, he does so only after discussing the issues "independent of any authorities . . . but what is reasonable and right." [*Baron and Femme*, page 137]. Both sources reveal a man who respected women's rights. This statement in the earlier essay:

"What is there in the nature of Marriage that should prevent a woman from devising her real estate? Does it reduce her to a state of Idiocy, or in any manner impair her understanding, so that she who before Marriage was sufficiently discreet to devise her estate is by this rendered incapable. If any such magical effect is produced by Marriage, upon what principle is it to be accounted for, that Husbands are not rendered equally incapable?" [Notebook volume 3, page 237] became this in the book:

"Surely there is nothing in the nature of marriage, that should prevent a woman from devising. Her understanding is not impaired thereby; and she, who was sufficiently discreet to devise, when unmarried, is not, by marriage, rendered less discreet. Some maxims in use would lead us to believe, that she was destitute of volition. If this be indeed true, a devise by her ought not to have an effect, any more than a devise by a fool or a madman: but surely the English law does not recognize such a principle." [*Baron and Femme*, page 138].

Tapping Reeve as Teacher

AARON BURR REEVE, 1780-1809.
MANUSCRIPT NOTES OF LECTURES BY TAPPING REEVE AT THE LITCHFIELD LAW SCHOOL
TAKEN DOWN BY A.B. REEVE. 1802-1803.

7 volumes, many autographed by Aaron Burr Reeve and Tapping Reeve. *On loan courtesy of the Yale University Law Library.*

Afflicted with consumption throughout most of his brief life, Tapping Reeve's son Aaron Burr Reeve graduated from Yale College in 1802 and enrolled at Litchfield.

This set of notebooks is especially significant because it appears to be a working copy of the notes from which Tapping Reeve lectured in class. Marginal notes that appear to be in Tapping Reeve's hand are sprinkled throughout the notebooks. At the Yale Law Library, librarian Tracy L. Thompson (with the guidance of professor John Langbein) is transcribing and publishing this set of Litchfield Law School notes. When this work is finished, we will know much more about how Tapping Reeve taught and thought about the law.

The Legacy of James Gould

JAMES GOULD, 1770-1838.
LECTURE NOTES, c. 1798-1833.

On loan courtesy of the Litchfield Historical Society.

Two volumes of many similar volumes are exhibited here: Connecticut Practice and Pleadings & Chancery.

JAMES GOULD
A TREATISE ON THE PRINCIPLES OF PLEADING, IN CIVIL ACTIONS.

Boston: Lilly and Wait, 1832.

James Gould was born in Branford, Connecticut and graduated from Yale in 1791. He tutored at Yale before enrolling at Litchfield in 1795. He married Sally McCurdy Tracy in 1798. From 1798-1820, he assisted Tapping Reeve in the management of the Litchfield Law School, and assumed its leadership from 1820 until the school's demise in 1833. During this time he also served as Judge of the Superior Court of Connecticut and President of Phoenix Branch Bank of Litchfield. Three of Judge Gould's sons attended Litchfield: William Tracy Gould in 1818, James Reeve Gould in 1824, and George Gould in 1827. Around 1830, two events took Judge Gould's attention away from the law school and perhaps contributed to its demise: the untimely death of his son James Reeve Gould in 1830 at the age of 27, and the publication of the first edition of his *Treatise on the Principles of Pleading, in Civil Actions*.

Note the meticulous handwriting in the two volumes of teaching notes. Gould delivered his classroom lectures from these notebooks. He read slowly, pausing often, and repeated each sentence twice so students could copy his lectures word for word.

FREDERICK CHITTENDEN, 1804-1869.

NOTES OF LECTURES ON LAW BY THE HON. JAMES GOULD AT THE LITCHFIELD LAW SCHOOL,
TAKEN DOWN BY FREDERICK CHITTENDEN, 1824-1825.

3 volumes. *On loan courtesy of the Yale University Law Library.*

Frederick Chittenden was born in Kent, Connecticut and lived in various Connecticut towns throughout his life, including Woodville, where he owned an iron works.

The title-pages of these volumes are elaborately decorated with calligraphy in pen and ink. The volumes also contain bookplates and autographs of Frederick Chittenden as well as his presentation inscription to Charles B. Andrews. That Chittenden valued these notebooks can be seen both by the care with which he created them and by the fact that he presented them to Charles Andrews (presumably a lawyer) to use in his law practice.



American Legal Education in the Nineteenth Century

During the century following Litchfield's founding, the strict lecture-and-copying format of early law school classes was supplanted — gradually and with much overlap — by the recitation system. Early proponents of the recitation system were Seth P. Staples and the team of E. H. Mills and Samuel Howe, who created new law schools in the 1820s. The Law Institution of Harvard University also employed the recitation system in 1840. Law teachers who used the recitation system assigned readings from treatises such as Blackstone's *Commentaries* and *Coke upon Littleton*, lectured, and gave oral quizzes on the readings in class. These quizzes were called "recitations."

Gradually, this system in turn was replaced by the case method, made famous by Christopher Columbus Langdell at Harvard during the 1870s and still widely used today. Despite being widely credited (and blamed) for bringing the case method into legal curricula, Langdell was not the first to use it. John Pomeroy was said to have taught Equity from cases at New York University in the 1860s.

The Northampton Law School

During its six-year existence, the law school in Northampton, Massachusetts, enjoyed a reputation as one of the most influential of the early private law schools in America. The law school was founded in 1823 by Litchfield alumnus Samuel Howe (1785-1828) and his law partner Elijah Hunt Mills (1776-1829). Howe and Mills soon enlisted the aid of John Hooker Ashmun, who had graduated from Harvard College in 1818 and already showed much promise as a legal scholar.

Each year, ten to fifteen students attended the school. Unlike other early private New England schools, a significant number of Northampton students came from the south. Northampton was the only early law school to have among its students a future President of the United States: Franklin Pierce, who entered Northampton in 1825.

Although the school blossomed and plans were underway for a new building, its success was short-lived. Judge Howe died in 1828 and Mills died the next year. At the same time, the Harvard Law School was being reorganized and John Ashmun was offered the Royall professorship. The Northampton school closed its doors, although one could say that it was merged into the Harvard Law School, since a group of Northampton students followed Ashmun to Harvard.

NATHANIEL J. LORD, 1805-1869.

MANUSCRIPT NOTES OF LECTURES BY SAMUEL HOWE AND JOHN HOOKER ASHMUN AT THE
NORTHAMPTON LAW SCHOOL TAKEN DOWN BY NATHANIEL J. LORD, 1825-1827.

4 volumes. These volumes contain autographs of N.J. Lord and Leverett S. Tuckerman. *On loan courtesy of the Yale University Law Library.*

GEORGE LORY ODELL

LECTURES OF PRACTICE DELIVERED AT NORTHAMPTON, MASS., 1826.

1 volume. *On loan courtesy of the Harvard Law School Library.*

These notes likely formed the basis of Northampton Law School instructor Samuel Howe's posthumous publication, *The Practice in Civil Actions and Proceedings at Law, in Massachusetts.*

JOSEPH STORY

A DISCOURSE PRONOUNCED AT THE FUNERAL OBSEQUIES OF JOHN HOOKER ASHMUN,
ESQ., ROYALL PROFESSOR OF LAW IN HARVARD UNIVERSITY, BEFORE THE PRESIDENT,
FELLOWS, AND FACULTY, IN THE CHAPEL OF THE UNIVERSITY, APRIL 5, 1833.

Cambridge: Brown, Shattuck, and Company, 1833. *On loan courtesy of Daniel R. Coquillette.*

JOSIAH QUINCY

AN ADDRESS DELIVERED AT THE DEDICATION OF DANE LAW COLLEGE IN HARVARD UNIVERSITY, OCTOBER 23, 1832.

Cambridge: E.W. Metcalf and Company, 1832. *On loan courtesy of Daniel R. Coquillette.*

Sylvester Gilbert's Law School at Hebron, Connecticut

The Litchfield Law School was the best-known, but not the only, private law school in Connecticut during the early years of the nineteenth century. Seth P. Staples conducted a school at New Haven which later became the Yale Law School; Zephaniah Swift had a school at Windham; and Sylvester Gilbert founded a law school at Hebron.

Situated near Hartford, Hebron was a thriving community which boasted a population of around 2,000 in Gilbert's time. Sylvester Gilbert (1755-1846) belonged to a prominent Hebron family. He read law under future Chief Justice Jesse Root, who also taught Litchfield's Tapping Reeve. Gilbert was admitted to practice in 1777. He quickly developed a thriving law practice and rose to prominence, holding a variety of elected and judicial offices over the course of his long life.

Gilbert always had one or two student apprentices in his law office. Beginning in 1810, he read a course of lectures to his pupils, who numbered six to ten per year. Benjamin Pomeroy's notebook reveals that the course of law at Hebron ran about eighty lectures. Gilbert stressed Connecticut law, but included copious references to English authorities as did Reeve and Gould at Litchfield. Tuition was \$50. Due to Gilbert's pressing professional commitments, the school did not last long; it closed sometime between 1816 and 1818, when he was elected to Congress and moved to the nation's capital.

During its brief existence, Gilbert's school hosted 56 students, of whom eight represented their states in Congress. Many other Hebron alumni became members of their state legislatures, and most held local judgeships and other offices.

BENJAMIN POMEROY, 1787-1855.

MANUSCRIPT NOTES OF LECTURES BY SYLVESTER GILBERT AT HIS LAW SCHOOL IN HEBRON, CONNECTICUT TAKEN DOWN BY BENJAMIN POMEROY. 1811-1813?

1 volume. *On loan courtesy of the Yale University Law Library.*

Benjamin Pomeroy was born in Tolland County. In addition to his law practice in North Stonington, he served at various times as postmaster, collector of customs for the port of Stonington, and judge of the county court of New London. He later moved to Providence, Rhode Island.



Noteworthy Professors & Students

Blackstone's *Commentaries* had inspired James Kent to become a lawyer and he would later repay the favor by using the *Commentaries* as the model for the first systematic survey of American law, *Commentaries on American Law*.

In 1793, Kent was appointed the first law professor at Columbia College. Kent was to be paid 200 pounds a year to give lectures to the young college men and visiting practitioners. Kent's lectures followed the outline of Blackstone's *Commentaries*; however, Kent oversimplified and popularized the material. In essence, one scholar notes, he "aimed too low." He started with seven students and thirty-six lawyers. By his second year of teaching, Kent was lecturing to two students in his office. In his third year, with "no students offering to attend," Kent "dismissed the business" and resigned. Columbia did not bother to replace Kent with another law professor.

In 1823, at the age of sixty, Kent faced mandatory retirement from an impressive career culminating in his appointment as Chancellor of New York. Columbia invited him back to teach in his old position which had remained empty. These lectures proved more popular and several years later, Kent heeded the request of his son and printed his revised lectures as the *Commentaries on American Law*.

Kent's *Commentaries* were a huge commercial success. Kent received royalties of \$5,000 each year and made the list of New York's wealthiest citizens. Kent's *Commentaries* proved once again that the common law could provide both change and stability. On the secure foundations of hundreds of years of English tradition, Kent rebuilt English law for American nineteenth-century society. This combination led Chief Justice Hughes to call Kent "the father of American jurisprudence." The great legal minds of the nineteenth century were enamored of Kent's *Commentaries*; indeed, Oliver Wendell Holmes edited the twelfth edition. And Kent's *Commentaries* continued to be a crucial element of American legal education until 1896 when the fourteenth and final edition was printed.

JAMES KENT, 1763-1847.

A LECTURE, INTRODUCTORY TO A COURSE OF LAW LECTURES IN COLUMBIA COLLEGE.
DELIVERED FEBRUARY 2, 1824.

New York: Printed by Clayton and Van Norden, 1824. *On loan courtesy of Daniel R. Coquillette.*

JAMES KENT, 1763-1847.

COMMENTARIES ON AMERICAN LAW, 4TH ED.

4 volumes; volume 2 is exhibited here. New York: Printed for the Author, 1840.

CHARLES RICHARD ALSOP, 1802-1865.

CHARLES R. ALSOP'S PRELIMINARY DRAFTS, IN MANUSCRIPT, OF NOTES OF LECTURES DELIVERED BY CHANCELLOR JAMES KENT, IN COLUMBIA COLLEGE, NEW YORK, 1824-25.

One pamphlet of many is exhibited here. *On loan courtesy of the Yale University Law Library.*

Not surprisingly, the student notebooks of many U.S. Supreme Court Justices have survived. Also, it is not surprising that before or after joining the bench, Justices often taught the law to others. Displayed here are just two examples.

WINTHROP HOWLAND WADE

CLASS NOTES ON EVIDENCE TAUGHT AT HARVARD LAW SCHOOL, 1882-1883.

On loan courtesy of the Harvard Law School Library.

This volume contains Wade's notes on Louis Brandeis' course on Evidence at Harvard Law School. An exceptionally diligent student, Wade prepared for class by tabulating the cases cited during lectures as well as references to all the treatises mentioned in the lectures; the volume contains 275 pages of class notes followed by 205 pages of annotations to all these references. A close study of these notes would reveal much about Justice Brandeis' understanding of the law of evidence.

THURGOOD MARSHALL, 1908-1993.

CLASS NOTES FROM HOWARD UNIVERSITY LAW SCHOOL, CA. 1930-1933.

These pages of Marshall's typewritten class notes, addressing witness examination and exceptions to the hearsay rule, reveal the care with which they were compiled. Marshall's diligent work paid off: he graduated first in his law class.

These pages were reproduced from a microfilm set that includes Marshall's personal correspondence and notes of his work with the NAACP. Although it is nobody's favorite format, microfilm is useful because it allows library users to read the student notebooks of eminent legal figures such as Marshall without having to travel across the country to view the notebooks, and without causing damage to the original and often fragile materials.

Frankfurter's Evidence Notebooks

Besides providing a glimpse of the early legal life of a future Supreme Court Justice, these Evidence notebooks of Harvard Law School student Felix Frankfurter are interesting because they reveal the changing nature of American legal education at the dawn of the twentieth century. With the arrival of the case method, the Litchfield Law School concept of notebook as treatise was dead, as can be seen in this 1918 account of an anonymous Harvard Law School graduate who had learned law by the case method:

"The notebook is the principal 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 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 . . . [b]ut more often the notebook is a servant and not a master."

Even the scholarly legal textbook or treatise, a linchpin of the recitation system as taught at the Northampton and New Haven law schools nearly a century before, was by now "disdained" as an intellectual prop. Gone were the beautifully written and meticulously indexed notebooks of the Litchfield era. Instead, twentieth-century law students such as Frankfurter used their notebooks as workbooks to aid their understanding. The process of notetaking was key; notebooks were the means to an end, but for the most part were no longer ends in themselves.

FELIX FRANKFURTER, 1882-1965.

THE CLASS NOTES OF FELIX FRANKFURTER, 1903-1906.

2 boxes; approx. 9 volumes; 3 are exhibited here. *On loan courtesy of the Harvard Law School Library.*

On display are three volumes of future U.S. Supreme Court Justice Frankfurter's student notes: Evidence ca. 1903-06, was taught by Professor John Chipman Gray, LL.D and Royall Professor of Law. The classroom text was James Bradley Thayer's *Cases on Evidence*, 2d ed. In 1903, Frankfurter studied Property with Professor Eugene Wambaugh, LL.D. The class used John Chipman Gray's *Cases on Property*, volumes 1 & 2, as the text. The final notebook on display is Torts, which Frankfurter studied in 1903 with Professor Jeremiah Smith, LL.D and Story Professor of Law. The classroom text was *Cases on Torts*, written by James Barr Ames (volume 1) and Jeremiah Smith (volume 2).

SAMUEL WILLISTON, 1861-1963.

CLASS NOTES OF LECTURES BY JAMES BARR AMES ON LEGAL HISTORY TAKEN AT HARVARD LAW SCHOOL, 1887-1888.

1 volume. *On loan courtesy of the Harvard Law School Library.*

Williston took these notes in Dean James Barr Ames' class. They are exceptional for three reasons: they are a rare example of notes taken in shorthand, they comprise the manuscript from which Ames' lectures on legal history were printed, and their author later became renowned among every first-year law student in the country for his treatise on the law of contracts.

SAMUEL WILLISTON, 1861-1963.

THE LAW OF CONTRACTS.

4 volumes. New York: Baker, Voorhis, 1920-1926.



Hidden Treasures

Like other old or rare books, law student notebooks may include a wealth of treasures hidden within their pages. Pressed flowers, bills, law school exams, letters, maps, and marginalia ranging from the sublime to the ridiculous all live within these volumes. Shown here are just a few hidden treasures.

FREDERIC DODGE, 1847-1927.

CLASS NOTES OF FREDERIC DODGE, 1868-1869.

3 volumes. *On loan courtesy of the Harvard Law School Library.*

In his notebooks, Frederic Dodge preserved his artistic talents for posterity by scribbling doodles of his professors and fellow students, transcripts of bars of popular music, and a vignette of a young man and woman dancing. Dodge was not the only doodling law student. Even the legal luminary John Marshall peppered his law commonplace book with "Polly Ambler," the name of his bride-to-be.

ANSON BATES, 1799-1869.

LITCHFIELD LAW SCHOOL LECTURE NOTES. 1820.

2 volumes; 1 volume at Connecticut Historical Society; 1 volume at Litchfield Historical Society. *On loan courtesy of the Litchfield Historical Society.*

Anson Bates was born and died in East Granby, Connecticut. He attended Litchfield in 1820 and was admitted to the bar that same year. He practiced law in Connecticut and married Louise Garnett of Virginia.

In the nineteenth century, people often covered their books with wallpaper, homemade calico cloth, or whatever material was at hand. In this unusual Litchfield law student notebook, Bates chose wallpaper as his cover of choice. Wallpaper and other decorated papers often were used to line hatboxes as well as to cover books. In the Civil War south when paper was scarce, newspapers were printed on the backs of wallpaper.

ALBION A. PERRY

NOTEBOOKS, 1884-1892.

12 volumes; 3 are exhibited here. *Gift to Boston College Law School from E. Clinton Bamberger.*

This twelve-volume set of notebooks is a gold mine of information about the practice of law in late nineteenth-century Boston. Included with Perry's student notebooks are two volumes of account ledgers from his practice. They contain a list of clients, the nature of the work he did for them, and his accounts payable and receivable. Perry charged \$5 to write a will, and was paid \$200 for "services in aid of modification of milk law."

Perry's notebooks reveal one more treasure whose meaning may forever remain a mystery. After his notes of Professor John Wetherbee's last lecture on Real Property, Perry wrote:

And here the thread of my notes is broken by a tragedy, mysterious,
appalling, irremediable.

Ah! who shall lift that wand of magic power,

The unfinished window in Aladdin's tower

Unfinished must remain.