

ESSAY

TEACHING LAW IN THE ANTEBELLUM NORTHWEST

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This essay is an examination of the development of law schools in the Northwest Territory between the Revolutionary War and the Civil War. The author outlines the histories of seven schools: Ohio University, Miami University, Indiana University, the University of Cincinnati, Oberlin College, DePauw University, and Case Western Reserve University. In providing these histories, the author delves into the early techniques of legal training and practice throughout the United States.

I. INTRODUCTION: LAW IN THE COLLEGES OF POST-REVOLUTIONARY AMERICA

CITIZENS of the Ohio Valley speak of their region as America's heartland. I am uncertain precisely what heartlanders mean by their use of the term, but it is historically accurate as a depiction of the locus from which nationalist sentiment radiated in the early decades of the republic. While Lexington, or Valley Forge, or Yorktown, or Philadelphia, or other places can lay claim to being the site of America's creation, it was along the Ohio River that Americans first came to see themselves as independent of their European origins. Their culture was distinctive to this continent, and was liberated from the confinements of old colonial boundaries that continued to claim the loyalties of many of their countrymen residing on the Atlantic coast.

Kentucky was the first and for a time the most important state west of the Alleghenies, having been settled during the years of Revolution and before the arrival of settlements in the old Northwest Territory. Of the wave of immigrants who spread through that Territory just across the river from Kentucky, more than a few were second-generation Kentuckians, and those Ohioans and Indianans who were not Kentuckians by birth were prone to bond to them as a people with whom they had elected to share a common fate.

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Kentuckians bonded as well to the people of the state of Louisiana, and of the other states of the old Southwest, Alabama and Mississippi, providing many of the earliest settlers for such downstream states as Missouri. It was, however, the people of the "heartland" states along the Ohio who transmitted a national identity to three eastern states competing for the Western trade: New York, Pennsylvania, and Maryland, and indirectly to other mid-Atlantic states whose people had been accustomed to thinking of themselves as independent of one another. By mid-century, a national identity had spread both east and west from the "heartland" and was shared by many from the Connecticut River to the Missouri.

Among the distinctive features of this emergent national culture was a widely shared preoccupation with law and politics. The novelty of self-government drew many to politics, while the unique bonding of politics to law effected by the Philadelphia Convention of 1787 elevated the visibility of all manner of legal institutions, all of them new or newly recognized as belonging to the people. The observations of such European travelers as Alexis de Tocqueville¹ and Harriet Martineau² merely confirmed the new Americans in their shared sense of themselves as a people entranced by the possibilities of law.

One feature of this preoccupation with law and politics was a widely shared ambition to engage American colleges in teaching public law. Most colleges had been organized to train the protestant clergy and, given the pre-Independence linkage of church and state, were quasi-public institutions often supported (if scantily) by the public fisc.³ It was Thomas Jefferson's idea that these institutions might serve to train a secular clergy—young men in leadership roles in public institutions newly separated from those of God.⁴

Acting on his belief in as early as 1779, Jefferson as Governor of Virginia insisted that the College of William and Mary appoint a law professor. Many others followed Jefferson's lead, including his political rival, Alexander Hamilton, who promoted the appointment of his own political ally, James Kent, as professor of law at Columbia with the same general objective of developing suitable public leadership.⁵ Other colleges that commenced teaching law in the early years of nationhood were Brown, Charleston, Dartmouth, Dickinson, Georgia, Maryland,

1. 2 A. DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 101-60 (Bradley ed. 1946).

2. H. MARTINEAU, *RETROSPECT OF WESTERN TRAVELS* (1838).

3. For a brief account, see F. RUDOLPH, *THE AMERICAN COLLEGE AND UNIVERSITY: A HISTORY* 1-22 (1962).

4. See Carrington, *The Revolutionary Idea of University Legal Education*, 31 WM. & MARY L. REV. 527-532-33 (1990).

5. For the story of Hamilton's involvement, see J. VAN AMRINGHE, *A HISTORY OF COLUMBIA UNIVERSITY 1754-1904* 63-64 (Matthews ed., 1904). Kent's relationship to Hamilton is told in J. HORTON, *JAMES KENT: A STUDY IN CONSERVATISM* (1938). The political aims of Kent are stated in Kent, *Kent's Introductory Lecture*, 3 COLUM. L. REV. 330, 330 n.1 (1903).

Middlebury, North Carolina, Pennsylvania, Princeton, Transylvania, Vermont, and Yale.⁶

In part, this movement to teach public law derived from a widely shared mistrust of unguided democracy. This mistrust was based upon observation of earlier republics that had disintegrated, which also formed the basis of a dour prediction by Montesquieu,⁷ the most widely read political writer in America.⁸ This mistrust had contributed mightily to the formation of the Constitution itself, its idea being to impose legal constraints on democratic politics, and so to cabin the disintegrative tendencies exhibited by popular governments of the past. This concept of government required the existence of a legal-political elite centered in the federal judiciary who were called to impose law on the unruly world of democratic politics, but the role of this elite was not limited to the venue of the federal courts.

The most important of the earliest programs of American law teaching that aimed to develop republican leadership was the one conducted at the College of William and Mary from 1779 until the eve of the Civil War. It was first conducted by the illustrious George Wythe, who was succeeded in 1790 by his fellow Virginia revolutionary, St. John Tucker. Wythe's own success in training young men for public life was truly astonishing: he was a mentor to Jefferson, to John Marshall, and to Henry Clay, and to many other notables among the 200 or so men he trained in college or in his office during three decades. Those who followed in Wythe's tradition sought to teach law, as Wythe did, as a source of moral standards for the conduct of judges and other public officers.

Clay, at the suggestion of his mentor, went west to join a junto of five William and Mary law graduates who were practicing law in 1800 in the metropolis of the West, Lexington, Kentucky, then a city of 2,000. This group of men included several who would be United States Senators, and one who would shortly serve as Attorney General of the United States.⁹ Among their activities was the establishment of the Transylvania University Law Department, an institution modelled after the department at William

6. Most of these beginnings are briefly described in Carrington, *supra* note 4. Events at Dickinson College are summarized in J. MORGAN, *DICKINSON COLLEGE: THE HISTORY OF ONE AND FIFTY YEARS 1783-1933* (1933). The public aims of Dickinson College were expressed by its founder, Benjamin Rush in Rush, *A Plan for the Establishment of Public Schools and the Diffusion of Knowledge in Pennsylvania*, in 1 *AMERICAN WRITING DURING THE FOUNDING ERA 1760-1805* 684 (1983). For an account of events at the College of Charleston, see J. EASTERBY, *A HISTORY OF THE COLLEGE OF CHARLESTON, FOUNDED 1770* (1935).

7. MONTESQUIEU, *THE SPIRIT OF LAWS* (Nugent trans. 1750). Montesquieu generally feared that republican forms of government would fail unless the powers of the government were separated and subject to checks and balances. Many of Montesquieu's ideas are evidenced in the Constitution of the United States.

8. See P. SPURLIN, *MONTESQUIEU IN AMERICA 1760-1801* (1969).

9. The story is more fully told in Carrington, *Teaching Law and Virtue at Transylvania University: The George Wythe Tradition in the Antebellum Years*, 41 *MERCER L. REV.* 673, 674 (1990).

and Mary and devoted to the preparation of young men for public careers in law. Among the first teachers in that department was Henry Clay.

Clay left law teaching when he was elected to the Senate, but he maintained a lively lifetime interest in the department and in the University, for which he served as Trustee for forty years. In many ways, the law department was the shadow of Clay. It was where young Westerners who planned public careers went. They came from Ohio, Indiana, Illinois, Iowa, Missouri, Arkansas, Louisiana, Mississippi, and Tennessee, as well as Kentucky. As many as thirty law department alumni served in the United States Senate, mostly in antebellum years, perhaps twelve at one time although the Senate was then half its present size. The common bond of the Transylvania law department gave Clay an additional hold on Senate colleagues that may have made the margin of difference in his success in achieving the compromises of 1820, 1833, and 1850.

In 1830, Transylvania was the largest university in America, and included the largest number of law students and law teachers. Indeed, by 1818, the flagship of American law teaching was no longer William and Mary, but its Kentucky offspring. This article is the story of similar institutions north of the Ohio and the service they gave to the Jeffersonian aim of developing democratic leadership in the decades preceding the Civil War while Transylvania flourished under its "Star of the West," Senator Clay.¹⁰

To contemplate, much less to pass judgment upon, antebellum higher education requires a substantial scaling down of expectations. All American colleges, never mind those on the frontier, were incredibly small by contemporary standards. It is doubtful that Transylvania ever enrolled as many as 500 students in a single antebellum year; Dartmouth, Harvard and Yale attracted somewhat larger numbers in the 1840's and 1850's. Oberlin enrollment may have reached 1,000 in the decade preceding war. If so, it was the only American college to do so.

Incredibly small, the colleges were also incredibly weak in regard to financial resources. Church groups, especially Presbyterians, created colleges, but seldom gave them financial support in exchange for the control that they proposed to exercise over them. In a few states, there were crumbs of public financial support, but this was very meager indeed for the separation of church and state resulted in a termination of public support of higher education for some institutions such as Harvard and Yale. Kentucky's support of Transylvania was sporadic, partly because of competition within its governing board between those who thought of the school as a public institution and those who thought of it as a Presbyterian institution. The Transylvania library was supported by a tax on tobacco auctions imposed by the City of Lexington. Here and there were

10. This was the title awarded Clay by the press in 1811 when he was elevated, without opposition, to Speaker of the United States House of Representatives at the age of 31. It was also the name of the Navy vessel christened in his honor. M. PETERSON, *THE GREAT TRIUMVIRATE* 18, 495 (1987).

benefactions; Transylvania received a whopping gift of \$20,000 from one of Clay's clients, but no other institution west of the Alleghenies appears to have received a gift on so enormous a scale.

Mostly, colleges were run on "gate receipts," and these, too, were spare. The amount of hard cash in circulation, especially in the agricultural West, was never great. And no student reckoned higher education to be a necessity for any purpose save that of entering the clergies of the more pretentious protestant sects. The idea of human capitalism was unknown, and could scarcely be made to fit the circumstance. How much could a young man be expected to pay to acquire the traits of public virtue in order better to serve the public? For many years, the annual tuition of the Transylvania Law Department was thirty dollars or less.

Perhaps the most valuable resource of the colleges was the dedication of a few teachers who invested their careers in these fragile institutions. Very few persons teaching law in American colleges before the Civil War did so as full-time teachers. Much of the instruction in law was provided by sitting judges,¹¹ as seemed appropriate to reflect the aim of developing a legal-political elite. These judges seemed often to have been selected as exemplars of public virtue. Thus, Transylvania in its hey-day featured the services of the Chief Justice of Kentucky and one of his judicial colleagues: Chief Justice George Robertson taught Constitutional law for a quarter century to more than 1,200 Transylvanians. He received very little pay in addition to his annual judicial salary.¹² Other resources were sometimes added by a diversion from other needs of impecunious colleges, often in the coin of teaching efforts by the college president to whom the role of moral leader naturally fell.¹³

Legislative support for these efforts of colleges sometimes came in the form of an exemption from licensing examinations or other requirements of admission to the bar for those persons who had studied law in a university program. By such means, some legislatures expressed a preference for university legal education as at least a partial displacement of apprenticeship training.¹⁴

11. Among the judge-teachers were Judges Nathaniel Chipman (Supreme Court of Vermont, Middlebury), James Kent (New York Court of Appeals, Columbia), Thomas Marshall (Kentucky Court of Appeals, Transylvania), George Robertson (Kentucky Court of Appeals, Transylvania), George Sharswood (Pennsylvania Superior Court, Pennsylvania), Joseph Story (U.S. Supreme Court, Harvard), St. John Tucker (Virginia Supreme Court, William and Mary), Royall Tyler (Supreme Court of Vermont, University of Vermont); James Wilson (U.S. Supreme Court, Pennsylvania), George Wythe (Chancellor of Virginia, William and Mary).

12. G. ROBERTSON, *An Outline of the Life of George Robertson*, in *SCRAP BOOK ON LAW AND POLITICS*, MEN AND TIMES 64 (1876).

13. Such college presidents were Horace Holley (Transylvania), Joseph Meigs (Georgia), Charles Nisbet (Dickinson), Samuel Stanhope Smith (Princeton), Ezra Stiles (Yale), Francis Wayland (Brown), and Eleazer Wheelock (Dartmouth).

14. See A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* 243-53 (1921). Reed describes this "diploma privilege" as a form of political favoritism. This it was; however, it was not an irrational or corrupt favoritism, but a manifestation of a legislative judgment that university law teaching had a benign effect on important public institutions. *Id.* at 249.

Among the obstacles to be overcome by law teachers was a shortage of suitable literature. As the reports of judicial opinions were made available, they were often assigned reading. The concept of the opinion of the court had been invented by John Marshall as a response to the unique political position of his Court and was quickly embraced by all American courts, with the result that court reporting soon flourished in America as it never had elsewhere.¹⁵ *The Federalist* was read and discussed. Princeton students were even required to recite the text of the Constitution from memory.¹⁶ The most important piece of legal scholarship in the early years was St. George Tucker's edition of Blackstone's *Commentaries*.¹⁷ It was substantially replaced by Kent's four-volume work.¹⁸

Public international law was often taught, usually based on the historic work of Vattel,¹⁹ or later, on American authors such as Kent or Wheaton.²⁰ Also used were works of Francis Lieber, a teacher at the University of South Carolina. His *Manual of Political Ethics*²¹ and *Legal Hermeneutics*²² appeared in 1838 and were widely read and discussed.²³ His *On Self-Government and Civil Liberty*²⁴ appeared during the following decade. Public law was often taught in connection with political economy; the most popular work for some time was that of Francis Wayland, a cleric who taught law and economics as President of Brown.²⁵ Law and economics were then reckoned to be separate branches from the common trunk of moral philosophy.²⁶ A few of the more resourceful colleges, such as Transylvania, were able to teach comparative law in the manner of George Wythe,²⁷ but most curricula were necessarily more confined even than the foregoing might suggest.

II. EARLY OHIO AND INDIANA

Appreciating law teaching in the old Northwest requires at least a glancing acquaintance with the social and political environment in which

15. See Carrington, *Aftermath*, in *ESSAYS ON JURISPRUDENCE* (1991).

16. 2 S. SMITH, *THE LECTURES CORRECTED AND IMPROVED, WHICH HAVE BEEN DELIVERED FOR A SERIES OF YEARS IN THE COLLEGE OF NEW JERSEY ON THE SUBJECTS OF MORAL AND POLITICAL PHILOSOPHY* 329 (1812).

17. W. BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* (Tucker ed. 1804).

18. J. KENT, *COMMENTARIES ON AMERICAN LAW* (1860).

19. E. VATTTEL, *THE LAW OF NATIONS* (1805).

20. H. WHEATON, *ELEMENTS OF INTERNATIONAL LAW* (1836).

21. 2 F. LIEBER, *MANUAL OF POLITICAL ETHICS* (1838).

22. F. LIEBER, *LEGAL AND POLITICAL HERMENEUTICS, OR PRINCIPLES OF INTERPRETATION AND CONSTRUCTION IN LAW AND POLITICS, WITH REMARKS ON PRECEDENTS AND AUTHORITIES* (2d ed. 1838).

23. See Carrington, *Republican Virtue and the Patriotism of Francis Lieber* (1991) (unpublished article manuscript).

24. F. LIEBER, *ON SELF-GOVERNMENT AND CIVIL LIBERTY* (1853).

25. F. WAYLAND, *ELEMENTS OF POLITICAL ECONOMY* (1837).

26. The relation between law and economics in American colleges had English antecedents. William Blackstone and Adam Smith were contemporaneous students of moral philosophy at Oxford. See Carrington, *Book Review* 1974 U. ILL. L.F. 187.

27. Wythe had been regarded as the foremost civil law scholar of his generation. See W. WIRT, *SKETCHES OF THE LIFE AND CHARACTER OF PATRICK HENRY* (1841). Justice Thomas Marshall gave instruction in comparative law at Transylvania.

the few teachers sought to instill public morality. In Ohio and Indiana, law teaching came almost with the first settlers.

In accordance with British policy, the area between the Ohio River and the Great Lakes had not been settled when the Revolution began. The area was part of Virginia, or at times Quebec, and was a reserve for the native population, much as Oklahoma was later to be.

The natives had troubles enough among themselves without European intervention. The resident Erie Indians were exterminated by the Iroquois in 1660. The area was then occupied by immigrant Miami Indians, who had been driven from Wisconsin by the Sioux. French fur traders were known to the area, but they became more scarce after the British ousted the French from Canada in 1763. Threatened by the settlement of Fort Pitt at the fork of the Ohio, the Indians in 1765 united momentarily to stage a serious uprising under the leadership of the Pontiac Indians, but failed to drive the settlers away.²⁸

The Revolutionary War was conducted in the Ohio region between Indians supplied by the British at Detroit, and American frontiersmen supplied at Fort Pitt. When the Treaty of 1783 established the American claim to national sovereignty, Virginia and Connecticut were induced to surrender claims of state sovereignty over parts of the territory in exchange for specified lands used to pay the claims of war veterans or of those whose property had been destroyed by the British during the War. This left the area to the disposal of the federal government as public domain.

Among the first federal enactments was the Northwest Ordinance of 1787 establishing territorial government. The Ordinance numbered among its provisions one forbidding the practice of slavery in the area. An American campaign to clear Indians from the area was launched in 1794. An army led by Anthony Wayne prevailed at Fallen Timbers near the present location of Toledo, opening Ohio, Indiana, and Michigan to settlement.

By 1800, there were 45,000 citizens of Ohio, most of them in the southeastern region of the Territory. The state of Ohio was established and its present boundaries set in 1803. Many of the early settlers came from western Virginia and Kentucky, the children of frontier parents. It would be another decade before northern Ohio would begin to settle. That region, still known as the Western Reserve, its name when formerly claimed by Connecticut, was generally populated by descendants of New York frontiersmen or by New Englanders. The beginning of substantial immigration into northern Ohio was marked in 1818 by the launching of *Walk-in-the-Water*, a vessel equipped with steam power that brought people from Buffalo to Cleveland.²⁹

28. For a full account of Indian resistance to European encroachment, especially by the Shawnee in Ohio and Indiana in the early 19th century see B. GILBERT GOD GAVE US THIS COUNTRY: TEKAMTHI AND THE FIRST AMERICAN CIVIL WAR (1989).

29. 1 R. FLETCHER, A HISTORY OF OBERLIN COLLEGE: FROM ITS FOUNDATIONS THROUGH THE CIVIL WAR 71 (1943).

Statehood came to Indiana in 1816. At that time, less than a fourth of the state had been surveyed, and most of it was occupied only by the few remaining Indians. The customary medium of exchange was coon skins; in the best locations, the mail was delivered as frequently as once a week.³⁰ Most of the men in the state were occupied in clean-cutting the heavy forests. As with Ohio, settlement moved from the south with many of the early settlers along the Ohio River coming from Kentucky and southern states. Many, but by no means all, retained southern sympathies. Part of eastern Indiana was populated by Quakers who had left Virginia in protest against the failure of that state to achieve emancipation of slaves.

The bar in Ohio and Indiana in 1820, and for some decades thereafter, was populated by a few trained immigrants and many self-instructed persons: "Blackstone's *Commentaries* are considered the great medium of instruction. The young man who has carefully read these, and who has for a short time written for a practicing attorney, is admitted to the bar."³¹ It was in this environment that the first law teachers were called to their trade.

III. OHIO UNIVERSITY

Early Ohioans proved to be overwhelmingly Jeffersonian. In 1804, they elected a Democratic General Assembly. As one of its first acts, the Assembly established a university to be located in the town of Athens.³² Athens is located on the bank of the Hocking River, a minor tributary of the Ohio; it was, in 1804, centrally located among the citizens of the new state. Athens consisted of perhaps a dozen cabins.³³

The University opened under the tutelage of Jacob Lindly, a Princeton alumnus and a Presbyterian minister who presided over the institution until 1822. Lindly was instructed by the Trustees to present his students for degrees when they "shall have made adequate proficiency in Virgil, Horace, Cicero, Xenophon, Homer, the Greek Testament, Geography, Logic, Arithmetic, Algebra, Surveying, Navigation, Conic sections, Natural Philosophy, the general principles of History, Jurisprudence, English Grammar, Rhetoric, Belles Lettres, and Criticism."³⁴

By 1812, Lindly had fourteen students, none old enough to fight in a War that was very popular in the area.³⁵ But neither he nor his successors

30. J. WOODBURN, *HISTORY OF INDIANA UNIVERSITY 1820-1902* 39 (1940).

31. HARRIS, *The Frontier Lawyer's Library: Southern Indiana, 1800-1850, As A Test Case*, 16 AM. J. LEG. HIST. 239, 241 (1972) (quoting Flint, *Letters from America*, in 9 EARLY WESTERN TRAVELS, 1748-1846 195 (1904)).

32. T. HOOVER, *THE HISTORY OF OHIO UNIVERSITY* 18 (1954).

33. *Id.* at 21.

34. *Id.* at 26.

35. *Id.* at 26-27. Two were in fact awarded degrees in 1815. One, Thomas Ewing, was twice elected Senator serving as Secretary of the Treasury between terms. The other died in 1816. *Id.* at 30.

ever succeeded in the antebellum years in attracting enough students to make the institution viable. This was so despite the burgeoning population of the state, which exceeded 1,500,000 in 1840, making it then by far the most populous west of the Alleghenies.³⁶ Perhaps the chief distinction of Ohio University in its first decades was that it graduated an African-American in 1828, a year before the state excluded Negro children from public schools.³⁷

Daniel Read, an 1824 graduate at Ohio, was kept on as a preceptor³⁸ While tutoring the classics, he read law and was admitted to the Ohio Bar in 1826. In 1836, he was appointed Professor of Ancient Languages, Political Economy, and Constitutional Law, a position he held for seven years. At the time of his appointment, enrollment at Ohio University was only thirty

The location of the University was unfortunate with respect to its capacity to provide law teaching comparable to that available in Kentucky. Sitting on the Ohio Supreme Court were several men whose instruction in law and public affairs would have been valuable support for the efforts of Read. Peter Hitchcock, a Yale alumnus with experience in Congress, sat on the Ohio Court from 1819 until 1852. Ebenezer Lane, a native of Connecticut, had studied law for a time at Harvard. And Frederick Grimke, a Yale graduate who had commenced practicing law in his native Charleston before moving to Ohio in 1818, was a man of considerable intellectual stature. Grimke published a widely read book in 1848, *The Nature and Tendency of Free Institutions*.³⁹ His book undertook to explain the characteristics of American law as expressions of American culture.⁴⁰ He gave a highly realistic explanation of the judicial role, and made perhaps the best argument available in English for the election of judges.⁴¹ Had Athens been closer to Grimke's home in Chillicothe, the story of law at Ohio University might have been very different.

As things were, however, not much developed. William H. McGuffey was appointed President of the University in 1839. He was the author of the famed *McGuffey Eclectic Readers*,⁴² first published in 1836. He had already proven himself an ill-tempered controversialist in earlier roles at

36. The population according to the United States Census was almost double that of Tennessee, the second western state in population.

37. J. FRANKLIN & A. MOSS, *FROM SLAVERY TO FREEDOM: A HISTORY OF NEGRO AMERICANS* 147 (6th ed. 1988).

38. Read had grown up on the Ohio frontier, studied at Ohio University, and gained admission to the Ohio bar. He was yet only 19 in 1825 when he was appointed a Professor of Classics.

39. F. GRIMKE, *THE NATURE AND TENDENCY OF FREE INSTITUTIONS* (Ward ed. 1968).

40. *Id.*

41. For a biographical treatment of Grimke, see M. BLOOMFIELD, *AMERICAN LAWYERS IN A CHANGING SOCIETY* 235-270 (1976). The suggestion that Grimke might have been an effective law teacher should not be taken as an endorsement of his views, especially with respect to matters of race. On the latter question, his South Carolina origins are manifest.

42. T. HOOVER, *supra* note 32, at 70. One hundred twenty million copies of the McGuffey Readers have been sold. *Id.*

Miami University and the University of Cincinnati. He was yet another Presbyterian minister. Relations with the faculty soon soured, Read and another leaving for Indiana University in 1843.

McGuffey's departure followed soon; a rumor survived that he had been stoned on the streets of Athens.⁴³ As a result of McGuffey's absence, Methodists were able to infiltrate governance of the institution in 1852. In 1856, Governor Salmon Chase chaired a Trustee committee that studied the possible creation of a law department, but the committee failed to find funds to support an appropriate appointment.⁴⁴

The Methodist influence attracted more students, chiefly from the Methodist congregations flourishing across the state. Because Methodists were generally in the vanguard of abolitionism behind the Quakers, the Ohio student body became embroiled in the great public issue of their time. In defiance of the heavy hand of federal law, their dormitory became a stop on the Underground Railway leading fugitive slaves to Canada.⁴⁵ But except for the seven years that Daniel Read served as a professor, there is no evidence that Ohio University sought, in its teaching, to enhance in any direct way the life of its state or nation.

IV MIAMI UNIVERSITY

Miami University was chartered by the Ohio General Assembly in 1809 to serve the western half of the state. The next year, its site was designated as the proposed town of Oxford, and was laid out not far from the existing village of Hamilton.⁴⁶ One of its Trustees was Dr Daniel Drake, who was formerly a colleague of Henry Clay when Dr Drake was a professor of Medicine at Transylvania. In 1809, Dr Drake practiced medicine in Cincinnati.

The state appropriated no funds for the college. The Trustees set out to raise an endowment, but met with the usual resistance. One benefactor was John Pope, a sometime law professor at Transylvania, who contributed a five-volume work to the library.⁴⁷ Another was a former President of the United States, John Adams, who contributed two books and ten dollars. With the help of Yale President Timothy Dwight, \$161 was raised in New Haven.⁴⁸ Progress was delayed when several of the Trustees volunteered for military service, and another took a load of flour and whiskey to New Orleans on a flatboat, leaving the board without a quorum.⁴⁹

43. *Id.* at 83.

44. *Id.* at 114.

45. *Id.* at 116-18.

46. W. HAVIGHURST, *THE MIAMI YEARS 1809-1869* 15 (rev. ed. 1969).

47. The work was F. PLOWDEN, *HISTORY OF IRELAND* (1809). See W. HAVIGHURST, *supra* note 46, at 17.

48. W. HAVIGHURST, *supra* note 46, at 19.

49. *Id.* at 21.

Despite many obstacles, the Trustees resisted the persistent efforts of booming Cincinnati to capture their institution; Cincinnatians had referred to Miami as "our college in the gloom of the beechwood flats, where the footsteps of enlightenment and liberal patronage cannot penetrate, and from whence not a ray of science will be reflected for a century."⁵⁰ The prevailing argument in the Ohio legislature for the Oxford location was that "[i]t is not in the dust of a merchant's shop, or amidst the din of mechanics' hammers, much less at a theater, a tavern, or a grog-shop that the classics can be read with most advantage."⁵¹

By 1818, the Trustees had erected a substantial building, and the ubiquitous Presbyterians had undertaken to conduct a preparatory school. In 1824, Robert Hamilton Bishop was elected President and opened the college. Bishop was a native of Scotland and a Presbyterian minister. The Presbyterian Education Society provided scholarship money, for a time contributing as much as two thousand dollars a year in tuition. As a result, "[t]hough Miami University was created by the Federal Congress and established by the State of Ohio, it could not have been more Presbyterian if founded by John Knox."⁵²

Bishop came to Miami from Transylvania, where he, too, had been a colleague of Clay's. He was, at the time of his move, Vice President to Horace Holley, a clergyman who himself undertook to teach Constitutional law at Transylvania. Bishop had taught moral philosophy and belles lettres for twenty years, and had made a strong impression on Transylvania students for his intellect, magnetism, and humanity.⁵³ He had published a volume of sermons⁵⁴ and a church history,⁵⁵ and had edited a journal for clergymen.⁵⁶ He was described as argumentative but tolerant, unpretentious, and the subject of esteem of the students. That made him a good man for dealing with the ubiquitous student disorder that plagued most 19th century American colleges.⁵⁷ Transylvanians accorded him the (for them) ultimate compliment of comparing his words from the pulpit to Henry Clay's at the bar.⁵⁸

In 1827, the Miami Trustees sought to establish a law professorship, but found no funds with which to do so.⁵⁹ They were surely handicapped by the small size and remoteness of Oxford: it was a long ride to the

50. *Id.* at 31 (quoting *Western Spy*).

51. *Id.* at 33.

52. *Id.* at 46.

53. *Id.* at 36. W. JENNINGS, *TRANSYLVANIA. PIONEER UNIVERSITY OF THE WEST* (1955).

54. R. BISHOP, *SERMONS ON PLAIN AND PRACTICAL SUBJECTS* (1809).

55. R. BISHOP, *AN OUTLINE OF THE HISTORY OF THE CHURCH IN THE STATE OF KENTUCKY* (1824).

56. This journal was the *EVANGELICAL RECORD AND WESTERN REVIEW*.

57. W. HAVIGHURST, *supra* note 46, at 52.

58. Rodabaugh, *Robert Hamilton Bishop*, in 21 *DICTIONARY OF AMERICAN BIBLIOGRAPHY* 83 (Supp. 1 1944).

59. *Id.* at 45.

nearest judge, and a very long ride to the Supreme Court of Ohio sitting in Columbus.⁶⁰ In 1830, an effort was made to establish a medical department, but it failed.⁶¹

For a college faculty, Bishop was able to recruit other Presbyterian ministers, one being the then-young William Holmes McGuffey, who came to Miami in 1826. In 1833, Albert Bledsoe, the brother of Bishop's former Transylvania Law Department colleague, Jesse, and a West Point graduate, came to Miami to teach mathematics.

Bishop compensated for the absence of a law professor by lecturing on political morality. As President, he held a chair as Professor of the History and Philosophy of Social Relations. He published a book on logic in 1830,⁶² and another on government in 1839,⁶³ both apparently based on his lectures to Miami seniors. He was especially interested in the idea advanced by Montesquieu that political ideas are the product of social and political environments. "[T]he core of his teaching interest" was "the progress of civil liberty."⁶⁴ He actively trained the students' attentions on the moral issue of slavery, a problem that many would have preferred to ignore.

Bishop served the cause of emancipation not only in his teaching, but also in his church and public activities. He had manifested his concern in as early as 1815, in Lexington, when he had organized a Sunday School for Negroes. He was a leader of the American Colonization Society in Ohio. He had also edited the memoirs of David Rice, the first chairman of the Transylvania Board, who had been an early advocate of emancipation in Kentucky. Bishop was also heavily engaged in church politics, seeking to prevent the division of the Presbyterian Church between hard-line Calvinists and those who favored his own softened views of predestination; among his associates in church politics were Lyman and Henry Ward Beecher.

Bishop's college attracted students. By 1840, there were 250, making it, for the moment, Transylvania's chief competitor in the West. Miami students, like those at Transylvania, came from most of the western states, being divided between northerners and southerners. For a time, the group included some Osage Indians from Arkansas for whom Bishop had made special arrangements in an early example of "affirmative

60. If remote from the courts, Oxford was nevertheless on the trail west to central Indiana and Illinois; as many as thirty families a day migrated down the wagon trail within sight of the university building. *Id.* at 42.

61. The department was established in Cincinnati, and Drake was named as its dean; but the department never served a student. The leadership of Cincinnati resisted this intrusion from the beechwood flats and secured state funds with which to reorganize the Cincinnati medical college. With state funds, they hired away Drake and his colleagues on the Miami medical faculty. *Id.* at 45.

62. R. BISHOP, *A MANUAL OF LOGIC* (1830).

63. R. BISHOP, *ELEMENTS OF THE SCIENCE OF GOVERNMENT* (1839).

64. Rodabaugh, *supra* note 58, at 83.

action.”⁶⁵ By 1827, Miami students had established a literary journal of their own.⁶⁶ In 1832, they organized an Anti-Slavery Society.⁶⁷ Bishop supported their several organizations as miniature legislatures, and thus as training for public life. Several alumni did in fact become prominent Governors, including James Birney, wartime Governor of Michigan and son of James Birney, Sr., the abolitionist student of Henry Clay.

Student conduct was, however, not always better than the deplorable norm of the time: in 1840, the Trustees directed Bishop to brick up the windows of the dormitory if the students did not cease urinating out of them.⁶⁸ Gambling was an endemic vice. One alumnus who later served as Ambassador to Great Britain is perhaps best remembered as the man who introduced poker to England, and who, while there, penned a widely circulated if undiplomatic couplet: “Put not your trust in Kings and Princes, Three of a kind will take them both.”⁶⁹

Professor Albert Bledsoe, like his brother Jesse, was identified with the cause of slavery, and devoted some of his teaching to an effort to counteract the politics and moral philosophy of Bishop.⁷⁰ In 1835, Bledsoe and McGuffey attempted to overthrow Bishop, ostensibly for his weakness in disciplining students, but more likely because both were defenders of slavery. When their revolt failed, both left; McGuffey to become President of the University of Cincinnati, and Bledsoe to migrate to Springfield, Illinois, where he apparently commenced the practice of law in competition with Abraham Lincoln.⁷¹

Despite the departures of his critics, Bledsoe and McGuffey, Bishop was unable to maintain his position. In 1839, the Trustees, some of whom were immigrants from the South and all of whom seemed concerned about Southern sensitivities, directed that no sectional or sectarian doctrines should be taught at the university.⁷² Despite the reality that Miami was a rare success, the President who had brought distinction to the institution in “the beechwood flats” was dismissed as President in 1840. He was allowed to remain as a professor.⁷³

Bishop was replaced by George Junkin, who came to Miami from Lafayette College. Junkin was described by a professor who was supportive of Bishop as a “pygmy” compared to the Sampson, Bishop.

65. W. HAVIGHURST, *supra* note 46, at 51.

66. *Id.* at 43.

67. *Id.* at 52.

68. *Id.* at 58.

69. *Id.* at 81.

70. *Id.* at 52.

71. After practicing law in Illinois, Bledsoe moved on to the University of Mississippi, and later to the University of Virginia. While at Virginia, he published his essay on *Liberty and Slavery* (1856), making the argument that slavery was essential to support individual liberty for those who deserved it. He was a Confederate agent in London during the War.

72. W. HAVIGHURST, *supra* note 46, at 58.

73. *Id.* at 59. He was allowed to remain for a year at a salary that was lower than that of his colleagues. *Id.*

Politically, Junkin was opposed equally to both abolition and secession. Among Presbyterian ministers, he was a primitive Calvinist, full of doom for those who opposed his views. Among his achievements was to drive many Methodist students from the university.⁷⁴ By his sternness, he evoked disorder; one of his rules was to require students at all times to treat faculty members with "profound respect."⁷⁵ The curriculum was retrenched to the classics. When Junkin resigned under fire in 1844, the Trustees fired Bishop just to restore the balance. Bishop, then seventy and with "no property whatever,"⁷⁶ found employment at another college and taught for another decade.

Junkin was replaced by Erasmus McMaster, an ardent abolitionist with a phenomenal memory of everything except the names of his students. After a few years under McMaster, the college enrollment declined to sixty-eight. His successor, with the help of a religious revival and the presence of a prosperous Female College, restored peace and enrollment, which again reached 266 in 1854.⁷⁷

The college then called as President a minister from Alabama, John W. Hall, who was best remembered for his venture in organized athletics: he hired a German gymnastics coach from Cincinnati to give lessons and conduct an annual "festival" in the hope that the expenditure of energy would deplete the students' hormonally derived capacity for destruction and disorder. The idea seemed to work, and may have been the inspiration for inter-collegiate athletics.

On April 13, 1861, while the guns were firing at Fort Sumter, Hall prayed for peace.⁷⁸ The next day, his students commenced to organize the University Rifles, a group of 160 Miami students. Professor David Swing, another Presbyterian minister, sent them off to war proclaiming that they were about to die in a noble cause, that of saving the Union.⁷⁹ Their Southern classmates went home.

V INDIANA UNIVERSITY

Indiana University was established in 1820, the second year of Indiana's statehood. Bloomington, a town of 300 persons, was selected as the site for the college. A building was built "on the plan of Princeton," a teacher was engaged to give instruction in Greek and Latin, and the school opened in 1824.⁸⁰

The college was beset with political difficulties in 1826 when it was suspected, by Methodists and others, of Presbyterian leanings. The suspicion was apparently grounded on the hard fact that both its professors were

74. *Id.* at 82.

75. *Id.* at 83.

76. *Id.* at 60.

77. *Id.* at 103.

78. *Id.* at 113.

79. *Id.* at 116.

80. J. WOODBURN, *supra* note 30, at 3-18.

Presbyterians. The controversy was temporarily laid to rest when the legislature forbade them to teach any faith or to discriminate against any student on the basis of his religious beliefs.⁸¹

In 1830, the college acquired its first books, and its first President, Andrew Wylie, yet a third Presbyterian.⁸² Wylie assumed responsibility for the senior year of study. He lectured on "evidences of Christianity, constitutional law, political economy, and literary criticism."⁸³ Wylie was an earnest student of Scottish philosophy and he probably sought to impart to his students the liberal Calvinism and utilitarianism of Dugald Stewart.⁸⁴

Wylie "was not given to persuasion but to command."⁸⁵ As a result, the faculty fell into a serious feud in 1832, resulting in the departure of the two members other than Wylie.⁸⁶ The college closed for a year. When it reopened, the state legislature proposed that both faculty and students be required to engage in manual labor, such as the state pastime of tree cutting, as a corrective for their patrician leanings.

In 1834, religious controversy again flared. In what may have been the first demand for affirmative action to be made on an American university, the Methodists demanded the appointment of a Methodist professor. This brought forth the comment of a Presbyterian Trustee that "there was not one Methodist in America with sufficient learning to fill a professor's chair if it were tendered to him."⁸⁷ The most numerous sect in Indiana, the Methodists reacted to the failure of their efforts to secure a Methodist appointment by establishing their own college in the village of Greencastle, an institution that became DePauw University.⁸⁸

These difficulties apparently seemed less unattractive to Daniel Read than those he encountered at William McGuffey's Ohio University, and he moved to Indiana in 1843. During two decades at Indiana, Read took an active role in the public affairs of the state, and taught public law and political economy as well as classics.⁸⁹ He participated in the 1850 Indiana Constitutional Convention, and was an important political force in protecting the University from even more serious political damage than it experienced.

Meanwhile, at about the time of Read's arrival, the Trustees established an additional professorship in law. The local judge, David McDonald, was appointed to fill this chair. McDonald was a native of Kentucky, but had

81. *Id.* at 30-33.

82. *Id.* at 75.

83. *Id.* at 59.

84. Stewart (1753-1828) was professor of moral philosophy at Edinburgh, a successor to Adam Smith, and the author of numerous works read by Americans. See Veitch, *A Memoir of Dugald Stewart*, in *X WORKS OF DUGALD STEWART* (Hamilton ed. 1860).

85. *Id.* at 81.

86. *Id.* at 78-97.

87. *Id.* at 115.

88. The institution was founded as Indiana Asbury University. The story is told in W. SWEET, *INDIANA ASBURY—DEPAUW UNIVERSITY 1837-1937* 25-41 (1937).

89. J. WOODBURN, *supra* note 30, at 185-205. Reed also taught natural philosophy (biology) at Indiana. 1 T. CLARK, *INDIANA UNIVERSITY: MIDWESTERN PIONEER* 69 (1970).

moved to the Indiana frontier at the age of fourteen.⁹⁰ He read law and was admitted to the Indiana bar in 1830 after a year of study while teaching school in the village of Washington.⁹¹ At the time of his appointment, he had served in the legislature and as a prosecutor. He was thus an experienced public man, and was well-known as a Clay Whig.⁹²

The stated aim of the University in making this appointment was to so train the student "that he shall never in the attorney forget the scholar and the gentleman."⁹³ McDonald was told to provide a legal education that would enable his students to practice in any state. He undertook this charge with a two-year course, but with the term limited to three months each year. His students read Kent, Blackstone, and some of Story.

McDonald was assisted for a time by Judge William T. Otto.⁹⁴ Otto was a graduate of the University of Pennsylvania and a Philadelphia lawyer when he migrated to Indiana in 1836. He was elected judge in 1844, and served on the faculty from 1847 to 1852.

McDonald was apparently well-received as a teacher, and while at the University, published a legal treatise.⁹⁵ That treatise was addressed to the Justices of the Peace, mayors, marshals and constables of Indiana, and sought to provide such officers with all the law they might need to know to adequately perform their official duties. It was also presented as a "valuable labor-saving aid in the office of every lawyer" in Indiana, and "as a business guide for traders, farmers, merchants, clerks, notaries, agents, teachers, student, physicians and others who keep in touch with the people."⁹⁶

In 1850, the year of *McDonald's Treatise*, the first rails west of the Alleghenies were laid from Madison, Indiana, on the Ohio River, to Columbus, Indiana, which was only an overnight mud wagon ride from Bloomington. Indianapolis had grown to a city of 8,000 as the state filled with immigrants from the northeastern states and northern Europe.

McDonald remained at the University until 1852, when he resigned to run for the Supreme Court of Ohio. He failed to be elected, but he was later appointed by President Lincoln to the federal bench.⁹⁷ Otto left the University with McDonald; he went to practice law in New Albany, across the river from Louisville. Otto was, however, soon appointed as Under Secretary of the Interior in the Lincoln Administration, where he earned a reputation as a committed if ultimately failing advocate for the rights of

90. WYLIE, INDIANA UNIVERSITY 1820-1920 112-13 (1922).

91. HARRIS, *supra* note 31, at 241.

92. McDonald was a personal friend of Alexander Wylie's and unsuccessfully counseled Wylie to be more amiable and respectful to his fellow citizens. 1 T. CLARK, *supra* note 89, at 60-61.

93. J. WOODBURN, *supra* note 30, at 179.

94. WYLIE, *supra* note 90, at 115.

95. McDONALD'S TREATISE (1850).

96. *Publisher's Notice*, McDONALD'S TREATISE (1896).

97. His judicial opinions (1864-1869) are reported in Bissell's REPORTS OF THE UNITED STATES COURTS FOR THE SEVENTH CIRCUIT.

Indians.⁹⁸ He continued in that department for almost a decade before moving on to other public duties.⁹⁹

McDonald and Otto were replaced by Judges Robert Gookins and James Hughes. Hughes had been raised in the village of Bloomington. He was admitted to the Indiana bar in 1842, served as a volunteer in the Mexican War, and was elected judge in 1852. He was an opinionated judge, and lawyers resented his arbitrary methods.¹⁰⁰ He was at the time an ardent pro-slavery Democrat, but as secession approached, he became vehement in his support of the Union. He was ever active in politics, it being said that "he kept a fine stock of liquors and was so generous with political friends who visited him that some were overcome by his hospitality."¹⁰¹ Hughes, credited with securing appropriations from the legislature,¹⁰² left the University in 1857 when he was elected to Congress.¹⁰³

James R. M. Bryant, who replaced Hughes, was the only Indiana law professor appointed before the Civil War who was not a judge. He, too, was a Philadelphia lawyer who had migrated to Indiana about 1840, and had been elected for several terms to the Indiana legislature. Bryant was a professor from 1856 to 1861.

While these later appointments signalled the continued existence of the law department, Indiana University had fallen again on hard times in the decade of the 1850's. President Wylie died, and Professor Read accepted an appointment at the University of Wisconsin. The University lost much of its endowment lands in a law suit. Its building was destroyed by arson in 1854. Desperate for political support in 1853, the Trustees appointed John Daily, a revivalist, as President. Daily proved to be an incompetent teacher, and was dismissed in 1858, on charges that he did not pay his debts and that he had plagiarized his baccalaureate address.¹⁰⁴ When the War came, the University was in but little better shape than it had been in 1843 when Daniel Read arrived.

The public mission of law teaching in Indiana was never so clearly defined as in Kentucky. Yet the Indiana Law Department was presented to the state legislature by Read and Wylie as a necessary element of the

98. Otto later concluded a long career as Reporter to the Supreme Court of the United States. See Norris, *William Tod Otto*, in 14 *DICTIONARY OF AMERICAN BIOGRAPHY* 110 (1934).

99. Otto was an arbitrator for the commission assessing claims of Americans against the Spanish government of Cuba (1871-1875), reporter of the decisions of the Supreme Court of the United States (1875-1884), and a delegate to the Universal Postal Congress in 1885. WYLIE, *supra* note 90, at 116.

100. 9 *DICTIONARY OF AMERICAN BIOGRAPHY* 351, 352 (1932).

101. *Id.*

102. T. CLARK, *supra* note 89, at 116.

103. Hughes made a general nuisance of himself in Congress, daily violating the traditional injunction against excessive show by rookies with frequent outbursts of procedural objections. He was not re-elected, and took an appointment by President Buchanan to the Court of Claims in Washington. After the War, he returned to Indiana to again seek elective office, but failing, he returned to Washington and private practice.

104. J. WOODBURN, *supra* note 30, at 252-53.

government. Its faculty were all public men, recognized chiefly for the quality of their public service. A large proportion of its graduates of this time entered public life.¹⁰⁵ A sense of the tone of the institution is evoked by an 1856 lecture of Judge Gookins:

It has been shown, I think, that without municipal law society cannot exist; that it is universal, attending upon every event that transpires; that under a free government it is the offspring of the popular voice; that it is sovereign, absolute, demanding unconditional, universal obedience. I have admitted it to be imperfect because mankind, its authors, are imperfect; but none the less obligatory on that account, for the reason that if men act upon their private judgment in reference to the obligation of the law, that is an end of society. Now, if you are in possession of a specific for the disease of the body politic, let the remedy be applied.

Am I asked what shall a good man do who sees the law work injustice? I answer, reform it. That is his legitimate sphere of action, and the constitution affords him ample protection in all his efforts in that direction. The air of heaven is not more free than the right to discussion, and he who would attempt to interfere with it belongs in the same category as other resisters of sovereignty. If there be one more cordially to be condemned than him who resists the law, it is he who denies the freedom of speech, whether he be north or south.

What I have had to say, gentlemen, you will perceive has had some reference to the state of things among us. If there ever was a time when the claims of the law should be held up, and its high demands vindicated, that time is the present. You have entered upon a course which brings you into intimate connection with its administration and consequently devolves upon you, in a large measure, this high duty. To its discharge I need not exhort you, being well assured that you have not chosen the legal profession without having bestowed much consideration upon the relation you would be called to sustain to the government, whose laws it will be your duty and pleasure to aid in administering; and I take my leave of you, gentlemen, by simply reminding you, as I, too, would ever be admonished, that upon the purity of its administration rests the welfare of the State and the perpetuity of our government. What new guards can be provided for our future security, if those powers which are incapable of annihilation shall once have reverted to the people as the source of sovereignty, I do not know, nor do I desire, at present, to inquire. It behooves us to take care of our present inheritance, and not cast away our patrimony in the hope of the prodigal that accident may bring us a better fortune.¹⁰⁶

The Indiana University Law Department survived the War, but not without continued difficulty. Its later encounters reflected some of the difficulty inherent in the enterprise of training an elite in a frontier society. The Indiana legislature in 1877 got fresh wind that the law department was providing training for professionals. Accordingly, it abolished the law

105. WYLIE, *supra* note 90, at 310-31.

106. S.B. Gookins, An Address Delivered Before the Graduating Class of the Law Department of the Indiana University, 13-14 (Feb. 28, 1856).

department (along with the medical school), reporting it to be "no duty of the people to help men into these easy professions."¹⁰⁷ Such sentiments had surfaced before in Kentucky,¹⁰⁸ and elsewhere, and would appear again from time to time.

VI. UNIVERSITY OF CINCINNATI

In the booming state of Ohio, no city in the antebellum years prospered so much as Cincinnati.¹⁰⁹ It was first settled in 1790 and named for the society of officers who served in the Revolution. By 1793, it had a newspaper. Settlers built cabins on the hill overlooking the Ohio River in order to avoid the recurring epic flood occasioned by every heavy rain in Pennsylvania and western Virginia, but they also gained the benefit of a stirring view. Steamboats soon connected the city to Pittsburgh and New Orleans. In 1815, a timely German publication described the beauty and promise of the city, attracting thousands of German immigrant families who gave the city a distinctly German character. In 1827, the Miami Canal opened to bring commerce into the city from the north and to provide it with enough water power to operate mills. By 1840, the city's population was 115,000, making it the nation's fifth largest city.

In 1834, the University of Cincinnati was formed by the merger of a college with a one-year old entrepreneurial law school. For a brief time beginning in 1836, McGuffey was the President of the University. In that role, he aggressively sought to divert public support from Bishop's Miami to the University of Cincinnati, but he enjoyed no success in this endeavor.

The guiding spirit of the law school was Timothy Walker, a native of Massachusetts who had graduated from Harvard in 1826. After three years of school teaching, he had studied law with Joseph Story at Harvard for a year and then served his year of legal apprenticeship in Cincinnati, in 1830-31.¹¹⁰ Two years later, he was organizing a law school; he was initially joined in the enterprise by a member of the Ohio Supreme Court, John C. Wright.

Walker's law school was not devoted single-mindedly to the Jeffersonian aim of developing public leadership. One of his colleagues in the enterprise was Edward King, a young graduate of the Litchfield Law School in Litchfield, Connecticut.¹¹¹ Litchfield was perhaps the initiator of a different tradition in law teaching, one that would in time threaten to engulf the Jeffersonian model established by George Wythe and maintained at Transylvania.

107. J. WOODBURN, *supra* note 30, at 280-81.

108. For a fuller account of the affair, see 4 J. HOPKINS, *THE PAPERS OF HENRY CLAY* 818 (1965).

109. A comprehensive history of the city can be found in L. LEONARD, *GREATER CINCINNATI AND ITS PEOPLES* (1927).

110. R. MCGRANE, *THE UNIVERSITY OF CINCINNATI* 26 (1963).

111. *Id.*

The Litchfield Law School was in part the product of a feature of Connecticut licensure law that placed no limit on the number of legal apprentices who might serve a single lawyer at one time.¹¹² Finding the supervision of apprentices to be more gratifying than the practice of law, Tapping Reeve came to be served by as many as 100 apprentices, for whom he planned a formal program of instruction. Reeve and his successor, James Gould, taught little public law; common law pleading was the heart of their curriculum.

Students came from many places to "read law" at Litchfield as a supplement to or in lieu of apprenticeship training. Among them were Horace Mann from Massachusetts and John Calhoun from South Carolina. They were practitioners of early human capitalism in law, and Walker's partner, King, had trained in that tradition.

Walker and King enjoyed the benefit of Ohio law that resembled the Connecticut law in allowing them to take an unlimited number of apprentices. They offered a one-year course,¹¹³ this being the period of study required for admission to the Ohio bar.¹¹⁴ In serving as a surrogate for an otherwise mandatory professional apprenticeship, this school differed significantly from the program at Transylvania.

Walker's law department graduated a dozen students in 1840, increasing to seventy-six in the year preceding the Civil War. Walker was a gifted teacher and a serious student of the law. He founded the first scholarly publication on American law, the *Western Law Review*. He was also himself an active and apparently exemplary public person. He served briefly as a judge and was a vigorous advocate supporting the judicial law reform movement. He drafted the rules of court for use in the Ohio federal courts. He campaigned also to reform the legal status of married women in Ohio and for reform of the criminal law.¹¹⁵

Walker's lectures, *Introduction to American Law*, were first published in 1837 and widely read for several decades, the eleventh edition appearing in 1905.¹¹⁶ The lectures reveal a level of literacy and sophistication that places him among the most accomplished of the law teachers of his time. Walker respected the technology of the law, but taught his students and readers that law is a social and political artifact.

Walker's writing was addressed to an audience that included students with non-professional interests in law; he "rejoiced at the prospect" that a knowledge of law would become a standard part of American education.¹¹⁷ Perhaps on this account, he eschewed the pedantry that marred the writing

112. See generally M. McKenna, *TAPPING REEVE AND THE LITCHFIELD LAW SCHOOL* (1986). Alfred Z. Reed, a perspicuous observer, rated Litchfield as more influential in its time than either school in Virginia. See also A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* 45 (1921).

113. A. REED, *supra* note 112, at 451.

114. R. McGRANE, *supra* note 110, at 26.

115. *Timothy Walker* in 19 *DICTIONARY OF AMERICAN BIOGRAPHY* 363.

116. J. WALKER, *INTRODUCTION TO AMERICAN LAW* (5th ed. 1869).

117. *Id.* at 2.

of Wythe and Robertson. Indeed, Walker seems to have been among the first to make a genuine effort to avoid the use of jargon in discussing law. Only in extreme circumstances did he resort to the use of Latin phrases.

As his goal, he stated he would "endeavor to imbue" his readers "with the spirit and philosophy of law."¹¹⁸ Indeed, his introductory exhortation to a life in the law is as exalting as any in our language. His style and substance are reflected in the following thoughts:

We are trying the greatest political experiment the world ever witnessed; and the experience of all history warns us not to feel too secure. A voice from the tombs of all departed republics, tells us that if our liberty is to be ultimately preserved, it is at the price of sleepless vigilance. I refer not to foreign aggression, for this we have nothing to fear; our only foes are those of our own household. Domestic aggression may come from two quarters; from those who govern, or from those who are governed. On the one hand, power is always tending to augmentation. Those who have some, employ it to gain more; and if not seasonably withstood, become too strong to be resisted. And on the other hand, liberty is always tending to licentiousness. The more men have, the more they are likely to want. Being free from many restraints, they would do away with all. Now when dangers threaten, from either of these quarters; when rulers would trample the law under their feet, or mobs would rise to overthrow it; who are the sentinels to give the alarm? Do I assume too much, in saying society looks with confidence to that class of men whose profession it is to watch over the law?¹¹⁹

In 1850, Walker was invited to deliver a Phi Beta Kappa lecture at Harvard. In that lecture on *The Reform Spirit of the Day*, he called for the support of legal institutions, but also advocated material change in both procedure and substance.

In his *Introduction to American Law*, Walker, in about 750 tightly printed pages, tells us what everyone should know about law. He covers six great topics: Constitutional Law, Persons, Property, Crimes, Procedure, and International Law. His book contains no systematic treatment of Contracts,¹²⁰ and scarcely a word about Torts, two headings of legal study imparted to American legal education by William Blackstone. In his synthesis of state and federal Constitutional Law, he affirmed several rights of the poor that were not widely enforced for a century after his writing in 1837. His discussion of poverty and homelessness has a contemporary pertinence:

We have seen that no property is necessary here as a qualification for office, or for the right of suffrage. We have seen that poll-taxes are prohibited for the benefit of the poor; and that they have the same access to our schools as the rich. We have seen that in criminal cases those who cannot

118. *Id.* at 1.

119. *Id.*

120. *Id.* at 199-201.

employ counsel, have counsel assigned them by the court; and although in civil cases we have no provision for suing *in forma pauperis*, yet the practice of not demanding costs until the end of the suit, amounts to the same thing. And if to these provisions we add those abolishing imprisonment for debt, and relieving against the consequences of bankruptcy and insolvency, we shall probably conclude that the poor have no reason to complaint of the law. There is no constitutional provision which directly asserts, that those who cannot support themselves, shall be maintained at the public expense. Yet their right of maintenance would seem to result not only from the dictates of humanity, but from all the great principles of social organization. In a state of nature, the poor might appropriate to themselves the first property within their reach. By entering into the social contract, they have been obliged to renounce this right; and among the chances of life, it has fallen their lot to be destitute. May they not, then, claim a bare support as of right? Life is the first and highest of all rights; but what is life without the means of living?¹²¹

Walker died in 1856 as the result of a carriage accident.¹²² The school that he had created was, however, firmly established as an ornament of the city's university

VII. OBERLIN

Charles Grandison Finney was a New York lawyer who became a Calvinist revivalist at Utica in 1824. His "plain and pungent and faithful preaching was attended with evident and wonderful success."¹²³ His special doctrine was that of *immediatism*, a doctrine bearing chiefly on the consequences of sin for the human soul, and having only indirect bearing on matters of law and politics. Among Finney's early converts was John Jay Shipherd, the son of a Troy lawyer who had served as a Federalist Congressman. Shipherd brought the Finney faith to Elyria, Ohio, where he came to minister in 1830.

Shipherd found life on the frontier hard. "Our moral condition," he reported, "is deplorable. No one has been injured by the wolves; wolfish men are much more to be dreaded."¹²⁴ Too aggressive in his support of the temperance movement for the satisfaction of his congregation, he was soon dismissed. And so he organized the Oberlin Institute as a Manual Labor School, stating the object to be "the education

121. *Id.* at 209.

122. The details of the accident are reported by his granddaughter in C. CHAMBRUN, *THE MAKING OF NICHOLAS LONGWORTH* 69-70 (1933).

123. 1 R. FLETCHER, *HISTORY OF OBERLIN COLLEGE* 11 (1971). His effectiveness may be judged by his impact on Hamilton College, near Utica. President Davis thought Finney a menace, but Professor Monteith (later at the University of Michigan) was converted. Monteith prayed at a student convocation thus: "Thou knowest, O Lord, that the faculty of Hamilton College have sinned in high places; and we pray thee, O Lord, if they are obstacles to thy work, thou wouldst remove them out of thy way." H. DAVIS, *A NARRATIVE OF THE EMBARRASMENTS AND DECLINE OF HAMILTON COLLEGE* 32 (1833).

124. 1 R. FLETCHER, *supra* note 123, at 76.

of gospel ministers and pious school teachers."¹²⁵ A female academy was established alongside the Institute.¹²⁶ Shipherd traveled about New York seeking support from Finneyites for his schools, and achieved some success, partly because he enjoyed the warm support of Finney, who served as the chair of his Trustees.

Just as these institutions emerged, the Finney movement became markedly more aggressive on the issues of slavery. Finney joined others in withdrawing from the American Colonization Society because it was too moderate. That organization, founded by Madison, and long led by Clay, sought the peaceable termination of slavery in America, with compensation to slave owners and voluntary resettlement of slaves on land of their own, in Africa or the West, or wherever space could be found.¹²⁷ After 1833, the rhetoric dividing "emancipationists" from "abolitionists" became increasingly shrill, perhaps especially in Ohio.¹²⁸

An upshot was the rupture of Lane Seminary in Cincinnati, where Finney himself called the students to the abolitionist colors. Seeking compromise was the new head of the Seminary, Lyman Beecher, the father of Harriet.¹²⁹ Beecher was supported by his son-in-law Calvin Stowe, then a teacher in the seminary, and by Robert Hamilton Bishop, a Trustee, and himself later a victim of slavery politics.¹³⁰ When the student abolitionists became unruly, the Trustees forbade further discussion of Finney's doctrine of *immediatism*,¹³¹ resulting in the withdrawal of thirty-two students.

With the encouragement of Finney, the Lane rebels resettled at Oberlin, where they proposed that Finney join them as a Professor of Theology. Overnight, Oberlin became an academic host to seemingly radical ideas.

In coming to Oberlin, Finney insisted that the institution be opened to black students. A faculty substantial in number for that time was successfully recruited and financed by Finney adherents and abolitionists throughout the Northeast and Ohio.

125. *Id.* at 117.

126. For a full account of this beginning, see F. HOSFORD, *FATHER SHEPHERD'S MAGNA CHARTA. A CENTURY OF COEDUCATION AT OBERLIN COLLEGE* (1937).

127. For a statement of the "emancipationist" position, see Henry Clay's statement for the Kentucky Colonization Society 8 R. SEAGER, *THE PAPERS OF HENRY CLAY* 138 (1970).

128. The controversy raged elsewhere, too. Amherst College required its Anti-Slavery Society to disband in 1833 as a menace to good order. W. TYLER, *HISTORY OF AMHERST COLLEGE* 246-51 (1895). Karl Follen was fired at Harvard at about the same time, whether on account of his strident anti-slavery activity is perhaps uncertain. Cf. S. MORISON, *THREE CENTURIES AT HARVARD 1636-1936* 254 (1936).

129. See generally 2 *AUTOBIOGRAPHY OF LYMAN BEECHER* (Beecher ed. 1865). Beecher had come to Lane with an enlarged sense of mission: "Here is to be the battlefield of the world, here Satan's seat is. A mighty effort must be made to dislodge him soon or the West is undone." *Id.* at 224.

130. W. HAVIGHURST, *supra* note 46, at 60.

131. "There may be room enough in the world for abolitionism and perfectionism, and many other isms; but a school to prepare pious youth for preaching the gospel has no legitimate place for these." 1 R. FLETCHER, *supra* note 123, at 160-61.

Asa Mahan, a graduate of Hamilton, came from Lane in 1835 to be President, and was shortly the nation's foremost champion of co-education,¹³² and also one of the nation's leading moral reformers, speaking in opposition to such moral deficiencies as dancing¹³³ and reading novels.¹³⁴ He spoke with passion against all dictates of fashion, which he described as "a great incentive to crime."¹³⁵ In 1840, when two members of his faculty attended a theater in Columbus, he demanded their resignations and supported their reappointments only when they expressed the greatest contrition.¹³⁶ He decried "dress so arranged as to excite lust" and proposed capital punishment for seduction of a married person.¹³⁷ Yet he balanced these views with ardent support of the rights of women to higher education.

In 1835 Mahan made an offer to James Birney,¹³⁸ perhaps the leading abolitionist lawyer of the time and a former student, but now critic, of Henry Clay,¹³⁹ to become Professor of Law at Oberlin. Birney declined. So did two other Finneyite New York lawyers.¹⁴⁰ Finally, Edward Wade, a Cleveland lawyer, accepted the appointment and remained in the position for ten years. How much teaching Wade did is uncertain. His first experience as a teacher was one that few law teachers have not shared; we are told that "[t]he young men who attended cross-questioned him so mercilessly that he concluded that his preparation was, for the time at least, inadequate."¹⁴¹ However daunted by his students, Wade was active at Oberlin for many years. He led a protest against the Ohio Fugitive Slave Law of 1839 and spoke for the organization of the Freedom Party that nominated James Birney in 1848 and attracted enough votes to deny the Presidency of Henry Clay. Wade later reviled the Kansas-Nebraska Act of 1854 as an "atrocious plot."¹⁴²

Amasa Walker, another Ohio lawyer, was appointed to the Oberlin faculty in 1842 as the Professor of Political Economy. He appears to have taught from the Wayland text for about eight years. He may have shared with Wade the lecturing on public law. James Monroe, yet another lawyer, came as Professor of Rhetoric in 1849; he was elected to the state legislature. However, for reasons not stated, law was dropped from the Oberlin curriculum in 1856.¹⁴³

Many Oberlin alumni became lawyers. Among them were several black students, including George Vashon '44, who practiced for many years in

132. *Id.* at 191.

133. *Id.* at 305.

134. *Id.* at 309.

135. *Id.* at 308.

136. *Id.* at 311.

137. 2 R. FLETCHER, HISTORY OF OBERLIN COLLEGE 703 (1971).

138. 1 R. FLETCHER, *supra* note 123, at 194.

139. For Birney's "abolitionist" views of Clay, see 8 R. SEAGER, *supra* note 127 at 748.

140. 2 R. FLETCHER, *supra* note 137 at 705.

141. *Id.*

142. 1 R. FLETCHER, *supra* note 123, at 389.

143. 2 R. FLETCHER, *supra* note 137 at 706.

Pittsburgh, and John Langston, the founding dean of the law school at Howard University. Langston practiced law in Oberlin, served as Town Clerk, and held an administrative position in the college.¹⁴⁴ It does not appear, however, that antebellum Oberlin trained any women lawyers despite the large number of women who studied there.

In actively recruiting black students, Oberlin exceeded the earlier efforts of Miami and Dartmouth which sought to serve Native Americans, and became the premier American college in bringing students together without regard for race. Because all Oberlin students were allowed to earn their tuition by work for the college, cost was not a factor in the selection. It does not appear that black students were treated in any different way, although it is said that there was a tendency "to lionize them."¹⁴⁵

Despite its relative radicalism, the Oberlin position on gender was not quite what one would today expect of an institution pioneering in co-education: Oberlin felt that women should stay within the role of motherhood for the benefit of future generations. Female students at Oberlin were required to clean the rooms of the male students. One Oberlin professor proclaimed that the idea of women holding public office was unnatural.

The college's strictness with respect to sexual conduct was possibly crucial to gaining acceptance of co-education, for this seems to have been the primary obstacle to co-education. Indeed, in 1870, the President of the University of Michigan explained that women could not be admitted to that university because he would be unable personally to guarantee their chastity.¹⁴⁶ Women were nevertheless admitted at Michigan the next year, partly on the Oberlin example that demonstrated the possibility of strict social division along gender lines. It was also a factor in gaining acceptance of co-education that Oberlin never suffered from the violent discipline problems that afflicted student relations almost everywhere; some observers thought that the presence of women made Oberlin men more circumspect in their behavior.¹⁴⁷

Neither was the Oberlin position with respect to slavery quite as radical as one might envision in light of the schism with the Colonization Society that so deeply influenced its origins. It is true that Oberlin students like those at Ohio were engaged in endless efforts to support the underground railroad, and even in 1858 rescued a fugitive slave from the very grasp of the federal marshal.¹⁴⁸ Yet, for the most part, the prevailing opinion in Oberlin was not favorable to The Liberator, William Lloyd Garrison, whose firebrand beliefs eschewed legal remedies and positively favored disunion:

144. 1 R. FLETCHER, *supra* note 123, at 402.

145. 2 R. FLETCHER, *supra* note 137 at 525-26.

146. See E. BROWN, *The Initial Admission of Negro Students to the University of Michigan*, 2 MICH. Q. REV. 233, 235 (1963).

147. 2 R. FLETCHER, *supra* note 137 at 675.

148. 1 R. FLETCHER, *supra* note 123, at 405.

The Constitution, he declared "is a covenant with death and an agreement with Hell." The Oberlinites said it was a great anti-slavery document which had been misinterpreted by corrupt judges. Garrison was a radical non-resistant (at least, until the Civil War); Oberlin's leaders believed that force was righteous when used for a righteous cause.¹⁴⁹

There were Oberlin alumnae (but no alumni) who were active in Garrison's movement, perhaps stimulated to do so in part by Oberlin's repressive posture with respect to the role of women in public affairs.

In proportion to its importance and influence on other matters, Oberlin's impact on the law and legal institutions was relatively modest. While no one at Oberlin seems to have signaled any interest in or awareness of the Jefferson-Wythe tradition abiding elsewhere in Ohio, it is clear that all the education provided at Oberlin was primarily moral education, and much of it was aimed at public issues. Yet, while men like Wythe and Tucker might have been reasonably comfortable working in that environment, there does seem to be a significant difference between the more disinterested role for which they prepared their students and the evangelical role for which all Oberlin students were cast. A significant difference may have lain in the limited degree of Oberlin's receptivity to diverse and competing ideas and to opinions not those held at Oberlin. Given the times and the nature of the Oberlin community, this was a perhaps inevitable difference. For public lawyers, Wythe and those who labored in his tradition, might have wished for a bit less self-righteousness than seemed to pervade antebellum Oberlin. On the other hand, it should be emphasized, Oberlin was not all remorseless Calvinism. What but admiration can one have for the self-awareness and maturity of those wonderful young Oberlin women who in the 1850's debated: "resolved, that women shall have the right to sing bass?"¹⁵⁰

VIII. DEPAUW AND WESTERN RESERVE

There were at least two other efforts to teach law in antebellum Ohio and Indiana, but less is known about them.

Western Reserve University was chartered in 1826, and was soon opened to students in Cleveland. It was at times overshadowed in public awareness during the antebellum years by its more renowned neighbor, Oberlin. In 1833, the Trustees conducted a purge of abolitionists from the faculty and debated whether discussion of abolition should be allowed in the college, but did allow the Anti-Slavery Society to become active among students.¹⁵¹ The college required its students to attend lectures on the Constitution, International Law and Political Economy Kent's *Commentaries* were assigned reading. In 1850, the Cleveland bar was

149. *Id.* at 265.

150. 2 R. FLETCHER, *supra* note 137 at 770.

151. 1 R. FLETCHER, *supra* note 123, at 144.

agitating for the appointment of a law professor¹⁵² However, if such an appointment was made, I have found no record of it.

In 1853, Indiana University's Methodist rival in Greencastle, Indiana-Asbury University opened a Law Department under the leadership of Professor John Matson.¹⁵³ In 1857, the presidency of this institution, soon to become DePauw, was offered to Judge McDonald, recently retired from Indiana University, who performed briefly in that role before ascending to the federal bench.¹⁵⁴ Matson continued to teach until the War, and his department conferred law degrees on fifty-six graduates.¹⁵⁵ The DePauw program was revived briefly after the War, but without a regular professor It expired in 1871¹⁵⁶

IX. CONCLUSION

As elsewhere, the legal professionals in the Ohio Valley did not depend on institutions of higher education to learn their trade. Most lawyers trained as apprentices. Especially in some states such as Indiana, apprenticeships could be very meager training, indeed. Even then, however, men of learning and character emerged to participate in the public profession. Abraham Lincoln was an extraordinary man, but by no means unique in his capacity for self-instruction. More than a few of his brothers at the Western bar proved that motivated persons could acquire substantial learning on their own. Lincoln, for example, seems to have read whatever law books were available in Illinois, including the contemporary works of Story and Greenleaf.¹⁵⁷ Lincoln and his law partners were, moreover, close students of Shakespeare as well as of the Bible. Lincoln claimed to have read Macbeth "perhaps as frequently as any unprofessional reader"¹⁵⁸ If less accomplished as technocrats than their brethren in Philadelphia and New York, many of these lawyers were quite undeserving of Jefferson's characterization of the worst of them as "insects of the law"¹⁵⁹

If the profession was not dependent on them, the public universities of the Ohio Valley did nevertheless establish and perpetuate a significant tradition. These institutions played a deliberate and worthy part in the development of the shared sense of nationhood as they prepared their graduates, many of whom willingly attempted to meet the moral challenges of leadership in democratic legal institutions.

152. See generally 1 C. CRAMER, *THE LAW SCHOOL AT CASE WESTERN RESERVE UNIVERSITY* 18 (1977).

153. W. SWEET, *supra* note 88, at 67

154. *Id.* at 82.

155. *Id.* at 120.

156. *Id.* at 126.

157. J. DUFF, *A LINCOLN: PRARIE LAWYER* 16 (1960).

158. *Id.* at 11.

159. *Letter to Judge John Tyler 1812*, in 16 *WRITINGS OF THOMAS JEFFERSON* 66 (Washington ed. 1854).

The tradition established in Kentucky did not survive unchanged, and the flagship institution at Transylvania disappeared entirely. Yet Transylvania was, for sixty years, Mr. Jefferson's nursery of patriotism, and at least Cincinnati, Indiana, and Miami can be said to have joined Transylvania in service to Jefferson's cause. The lamp passed from Wythe to the Kentuckians was passed on to other hands. This would become more evident after the War. In 1858, the very year in which the Transylvania Law Department closed in Lexington, there opened a new and equally proximate law department at another public university, this one located in Ann Arbor. For the ensuing decades, the chief tender of the Wythe flame would be Thomas McIntyre Cooley, Chief Justice of Michigan, assisted by many, especially by those at the rising state university law schools of the Midwest. But that is another tale.