

## NOTES

# "TO LEARN AND MAKE RESPECTABLE HEREAFTER": THE LITCHFIELD LAW SCHOOL IN CULTURAL CONTEXT

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### INTRODUCTION<sup>1</sup>

The reopening of Harvard Law School in 1829 is usually considered the beginning of modern American legal education.<sup>2</sup> Whether one's goal is to glorify the legal profession or to demonize its members, the efforts of benefactor Nathan Dane and professor Joseph Story to standardize and invigorate the study of law at America's leading university have served as a convenient line of demarcation.<sup>3</sup> The intimate ties between the school's leaders and the emerging industrial capitalist elites of New England make the tale particularly appealing to minds with a conspiratorial bent. Joseph Story—a prolific and learned judge who wore his class prejudices as a badge of honor—is

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<sup>1</sup> Developing a citation format to meet the needs of both the historical and legal communities is a challenge which has perplexed many legal historians. Cf. Laura Kalman, *The Strange Career of Legal Liberalism* 9 (1996) (noting her development of hybrid citation system combining aspects of both historical and legal practice); John H. Langbein, *Chancellor Kent and the History of Legal Literature*, 93 *Colum. L. Rev.* 547, 550 n.14 (1993) (describing adaptations of legal citation format necessary to sensibly handle antiquarian and historical sources). This Note principally adopts legal citation methods but deviates from that standard when the structure or content of the Note demands, primarily in the three following ways: (1) When describing historical events or trends, citations do not follow every factual or interpretive assertion, but rather appear at the end of each paragraph or discussion (quotations and statistics are cited immediately); (2) Similarly, when a paragraph is entirely devoted to the analysis of a single primary source, a full citation to all quoted material appears at the end of the paragraph; (3) Sources are often described in greater detail in the footnote text than is traditional in legal writing.

<sup>2</sup> See, e.g., Charles Warren, *A History of the American Bar* 361 (1911) ("It remained, however, for Harvard College to establish the first public school of law which has remained permanently in existence since its founding.").

<sup>3</sup> On the history of law at Harvard before Story, see *infra* Part III.C.

perfectly cast as the father of the American law school. Legal education prior to Harvard's reopening is dismissively portrayed as consisting of shoddy and unscientific training performed haphazardly, either in the law offices of failed attorneys needing to pay the bills or of their successful but overworked counterparts eager to turn their prestige into quick cash.<sup>4</sup>

While Harvard certainly played a preeminent role in shaping the course of American legal education, its reputation as the first influential, large-scale, systematized law school is undeserved. In the four decades prior to Joseph Story's appointment as the Dane Professor at Harvard, over a thousand young men were initiated into the legal profession under the tutelage of Judges Tapping Reeve and James Gould in a Spartan structure in the country town of Litchfield, Connecticut.<sup>5</sup> The Litchfield Law School grew out of the colonial tradition of reading law in the offices of a private practitioner, in this case Judge Reeve.<sup>6</sup> Rapidly, however, Reeve's teaching responsibilities overwhelmed his private practice. By the early nineteenth century, he was educating as many as fifty students at a time.<sup>7</sup> The course of lectures offered at Litchfield was thorough and well-organized, easily surpassing in quality and coverage any previously offered in this country. Before its closure upon the retirement of Judge Gould in 1834, Litchfield educated over 100 future members of Congress, three

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<sup>4</sup> This basic storyline is common to diverse authorities. See, e.g., Arthur E. Sutherland, *The Law at Harvard: A History of Ideas and Men, 1817-1967* (1967) (offering Harvard-centric account of development of American legal education); Warren, *supra* note 2, at 361-65 (same). For a more recent turn on the story, which depicts the rise of Harvard Law School in less flattering terms, see R. Kent Newmyer, *Harvard Law School, New England Legal Culture, and the Antebellum Origins of American Jurisprudence*, in *The Constitution and American Life* 154 (David Thelen ed., 1988) (locating birth of American legal education in efforts of Dane and Story to prepare young men to service emerging capitalist economy). Newmyer's depiction of the conservative purposes of the nineteenth century formalization and professionalization of legal education and the law more generally owes much to Morton J. Horwitz's now classic *The Transformation of American Law, 1780-1860* (1977) (arguing that nineteenth-century judiciary consciously developed common law so as to serve needs of said emerging capitalist economy).

<sup>5</sup> See Samuel H. Fisher, *Litchfield Law School, 1774-1833: Biographical Catalogue of Students* 2 (1946); Marian C. McKenna, *Tapping Reeve and the Litchfield Law School* 145 (1986).

<sup>6</sup> The Litchfield Law School is normally considered to have been founded in 1784. For a discussion of the complexities of determining a single founding date for Litchfield which also notes the somewhat arbitrary selection of 1784, see *infra* note 110 and accompanying text.

<sup>7</sup> Enrollment appears to have peaked at 57 in 1813. See Steve Sheppard, *The History of U.S. Legal Education: Commentaries and Primary Materials* ch. 16 (forthcoming 1999) (reprinting most current list of Litchfield students).

United States Supreme Court Justices, dozens of state court judges, and scores of other prominent lawyers, politicians, and educators.<sup>8</sup>

One aim of this Note is to help restore the Litchfield Law School to its legitimate place of prominence. However, Litchfield has not been entirely ignored by the historical literature. Traditional scholarship has mentioned Judge Reeve's endeavor;<sup>9</sup> a handful of contemporary scholars have gone further, narrating the school's history at length and with skill.<sup>10</sup> Still, while historians have acknowledged and described the Litchfield Law School, they have not assimilated it into their broader narratives. The primary focus of this Note, then, is to explain the cultural forces that shaped the Litchfield Law School, the innovation it represented, and the reasons for its success. In so doing, this Note will integrate Litchfield into two grand historical narratives: the cultural history of the American law school and the postpolitical history of the Federalist Party. As this Note argues, both of these stories are incomplete and misleading unless they come to terms with Tapping Reeve's school.

Beginning the history of the American law school with Litchfield rather than Harvard reworks our understanding of the cultural sources of American legal education in subtle but important ways. Scholars such as Morton Horwitz<sup>11</sup> and R. Kent Newmyer,<sup>12</sup> who focus their attention on Harvard and its legion of successful graduates, attribute the prominence of the law in the nineteenth century to the desire of elites to insulate their privileges from the political process: Worried about the rising tide of democracy, and simultaneously desperate to reserve for themselves a disproportionate share of the fruits of the nascent industrial revolution, New England's leading lights envisioned the law school as an institution to produce "conservative shock troops in the struggle for republican civilization."<sup>13</sup>

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<sup>8</sup> See Fisher, *supra* note 5, at 3-4. Most of the biographical information about Litchfield graduates which appears in this (or any other) study comes from Fisher's prodigious catalogue. For some examples of leading graduates, see *infra* note 217.

<sup>9</sup> See, e.g., Alfred Zantlinger Reed, *Training for the Public Profession of the Law* 45, 128-33 (1921); Robert Stevens, *Two Cheers for 1870: The American Law School* 413, 415 (offprint) (1971).

<sup>10</sup> See, e.g., McKenna, *supra* note 5.

<sup>11</sup> See Horwitz, *supra* note 4. Horwitz's book, particularly his doctrinal conclusions, have occasioned an extraordinary volume of commentary and criticism. See, e.g., Richard A. Epstein, *The Social Consequences of Common Law Rules*, 95 *Harv. L. Rev.* 1717, 1718 (1982) (arguing that redistributive effects of common law are limited); Gary Schwartz, *Tort Law and the Economy in Nineteenth-Century America: A Reinterpretation*, 90 *Yale L.J.* 1717, 1730 (1981) (challenging Horwitz's conception of nineteenth-century tort law).

<sup>12</sup> See Newmyer, *supra* note 4.

<sup>13</sup> *Id.* at 158.

The Litchfield Law School was, similarly, a product of the imagination of a conservative New England elite. However, the social and political circumstances surrounding the school's rise to prominence were very different than those described by Newmyer. The context of Litchfield's emergence was one of economic uncertainty, political upheaval, and religious anxiety. Frightened, defeated colonial elites, swept from power in the new nation by the "Revolution of 1800,"<sup>14</sup> were pessimistic about their own future and downright despondent about their children's. The Litchfield Law School salved many of the wounds of Connecticut's embattled "Standing Order."<sup>15</sup> By providing the best legal education available to the children of the state's most distinguished citizens (many of whom were, nevertheless, on precarious financial footing), the institution served to replicate status in an era of economic chaos. By bringing together future leaders from all corners of the nation,<sup>16</sup> the school forged bonds between the elite in an era of increasing atomization. Finally, by providing a curriculum suffused with Federalist principles, Litchfield insured that the defeated party's public philosophy would remain an integral part of the nation's political discourse for generations to come.

The Litchfield Law School was a trade school for well-educated young men, a social club where life-long connections were formed, and a propaganda mill for the Federalist vision of the social order. In and of itself, Litchfield was a bold undertaking. However, the Law School was not an isolated institution; rather, it was part of a grand Federalist counteroffensive which deployed education, virtue, and careful management of the domestic sphere against the perceived threat of licentiousness, irreligion, and democracy. This Note argues that the Litchfield Law School can only be understood in the context of the other institutions emerging simultaneously in Litchfield. Like the temperance movement and the drive to establish female academies, both of which owe much of their early history to Litchfield during the period of the Law School's founding,<sup>17</sup> the Law School was an attempt to stem the tide of social disintegration and to preserve a privileged place in the social order for the children of embattled elites. These novel institutions represent the nonpolitical loci to which Fed-

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<sup>14</sup> The "Revolution of 1800" refers to the results of the election of 1800, which elevated Thomas Jefferson to the Presidency and gave his followers substantial majorities in both Houses of Congress. See *infra* text accompanying note 27.

<sup>15</sup> See *infra* text accompanying note 25.

<sup>16</sup> Approximately 300 students from outside Connecticut attended the Law School, constituting about 30% of the student body, an extraordinarily high percentage for its time. See McKenna, *supra* note 5, at 145 (quantifying number of students from each state and territory).

<sup>17</sup> See *infra* parts II.A, II.B.

eralist partisans relocated their ideological energy as traditional executive and legislative avenues were closed to them.<sup>18</sup>

In particular, the story of the Litchfield Law School is incomplete unless it is coupled with an exploration of the Litchfield Female Academy, a contemporaneous women's school that was in its own right every bit as innovative as Judge Reeve's Law School. While the decisions to open the two schools were made independently, their calendars, social events, and ideological visions were rapidly harmonized. By the early nineteenth century, one could sensibly conclude that Litchfield was previewing a new family structure, one that within a few decades would become the norm for Northern elites.<sup>19</sup>

Part I of this Note details the historical moment in which the Law School emerged, sketching both the political and social structure of colonial Connecticut and the multifaceted crisis facing that state's leaders in the late eighteenth and early nineteenth centuries. Part II describes the response of Litchfield's elite to this unfolding crisis, focusing in detail on the innovative institutions they founded and nurtured during this period, including the Law School and the Litchfield Female Academy. Part III then attempts to place the Law School in historical and cultural context, providing, sequentially, an exploration of the social vision propounded in its classroom, a brief examination of the school's legacy, and an overview of other contemporaneous developments in American legal education. In comparing Litchfield with these other early endeavors, Part III also offers some observations on the reasons for Judge Reeve's relative success.

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<sup>18</sup> The oft-noted Federalist "retreat to the judiciary" constitutes a complementary strategy developed by the defeated Federalists to achieve similar ends. For the definitive work on the struggle for control of the courts in the early republic, see Richard E. Ellis, *The Jeffersonian Crisis: Courts and Politics in the Young Republic* (1971); see also *infra* note 166 and accompanying text.

<sup>19</sup> Much has been written on the "new" family structure that emerged in the United States during the nineteenth century. The best starting point, particularly for those interested in the ideological and legal manifestations of this change, is Michael Grossberg, *Governing the Hearth: Law and Family in Nineteenth-Century America* (1985). Grossberg lists the following characteristics as emblematic of the new "republican family": a view of family as private rather than public, a shift of economic focus in the family from production to consumption, a loosening of generational ties, decreased fertility, a new spirit of domestic egalitarianism including compassionate marriage and a contractual notion of marital relations, an elevation of childhood and motherhood to favored status, and a focus on household intimacy in contradistinction to marketplace competition. See *id.* at 6. For an argument that Grossberg's analysis is inapplicable to the South, see Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* xii-xiii (1995).

## I

## THE HISTORICAL MOMENT

*A. The Political Culture of Colonial Connecticut*

To understand the cultural moment which produced the Litchfield Law School, one must first come to terms with the social and political structures of Federalist Connecticut. By the time of the American Revolution, Connecticut possessed a long history of elected government and a political culture characterized by frequent elections, legislative supremacy, and a large Assembly.<sup>20</sup> In one of the great paradoxes of colonial politics, Connecticut's government of representative institutions and frequent elections produced a record of extraordinary political stability. Elected officials were routinely re-elected and seriously contested elections were rare.<sup>21</sup>

Structural constraints contributed to the conservatism of Connecticut's electoral politics. Suffrage qualifications disenfranchised a substantial number<sup>22</sup> of the colony's residents (though inflation gradually liberalized the suffrage). Elections were long, ritualized community gatherings which often stretched from dawn to dusk, discouraging those with little at stake from attending. Voting procedures were structured to encourage conformity.<sup>23</sup>

Connecticut's religious establishment also contributed to the colony's political and cultural stability. Religion was woven deep into the fabric of Connecticut's politics. The Congregational Church was the established church, liberally supported by tax dollars. A resoundingly conservative Puritanism thundered from Connecticut's pulpits, affirming hierarchical social organization as God's design and portraying faction and discord as grave sins. The Great Awakening tempo-

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<sup>20</sup> For background on Connecticut politics during this period, see generally Richard J. Purcell, *Connecticut in Transition: 1775-1818*, at 174-226 (1918) (detailing "working government" of colonial and early national Connecticut). For this author's fuller take on the same material, see Andrew Siegel, "Steady Habits" Under Siege: The Defense of Federalism in Jeffersonian Connecticut, in *Federalists Reconsidered* 199, 200-03 (Doron Ben-Atar & Barbara Oberg eds., forthcoming 1998).

<sup>21</sup> See generally Purcell, *supra* note 20, at 174-226 (describing Connecticut's electoral stability during this period).

<sup>22</sup> Only approximately 1/12 of Connecticut's adult male population went to the polls in an average election year before the late 1790s. See *id.* (presenting data from which calculation was made). No historian has made a systematic effort to determine how many of the nonvoters were disenfranchised and how many were simply deferential or apathetic. It should be noted that electoral participation increased greatly in the years surrounding 1800. See *infra* text accompanying note 36.

<sup>23</sup> Among the methods utilized to these ends were public voting, two-stage election processes, statewide voting for the upper house of the legislature and for Congress, and the placement of incumbents before challengers on the ballot. See generally Purcell, *supra* note 20, at 212-26.

rarily shook the state's religious establishment, but the Congregationalist elite responded pragmatically, allowing dissenters limited exemptions from taxation and forming a political partnership with the equally conservative Episcopalian Church.<sup>24</sup>

The coming of the Revolution did little to alter Connecticut's political system. Newly independent Connecticut did not even draft a state constitution. The legislature simply affirmed the colonial charter as the fundamental law of the land, deleting all references to the crown and substituting oaths of loyalty to the state for those of allegiance to the monarch. The state's dominant political elite retained its power through the period of national Confederation and enthusiastically endorsed the federal Constitution. Elections to national office were integrated into the state's traditional electoral system. As national parties began to develop during the 1790s, the state's political leadership, known as the Standing Order, sided wholeheartedly with the Federalist Party.<sup>25</sup>

The ideology of the nation's leading Federalists meshed seamlessly with the worldview of the majority of Connecticut's politically active citizenry. Each of the key constitutive elements of Federalist ideology—republicanism, conservatism, and paternalism—resonated deeply with the electors of Connecticut. Federalist republicanism emphasized the corporate or holistic character of the community, countenanced hierarchy, encouraged deference, and defined liberty in stark contrast to licentiousness. Each of these themes mirrored the political and religious world of colonial Connecticut. Similarly, Federalist conservatism derived its power from two impulses: reverence for the status quo and an inchoate sense of caution. Connecticut, with its longstanding representative institutions and with a population whose reflexive skepticism had earned it the somewhat ironic title "Land of Steady Habits," was more receptive to these twin conservative impulses than any other state. Finally, Federalism argued for a paternalist social order, in which membership in the abstract community of moral beings was accorded to all regardless of gender, race, ethnicity, or property, but in which membership in the concrete political community was strictly limited along those lines. Such a mindframe was

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<sup>24</sup> See Richard L. Bushman, *From Puritan to Yankee: Character and the Social Order in Connecticut, 1690-1765* (1967) (discussing Great Awakening and establishment reaction to it); Barbara M. Cross, Introduction, in *1 Autobiography of Lyman Beecher* (Barbara M. Cross ed., Harvard Univ. Press 1961) (tracing themes of religious and political conflict of era); Vincent Harding, *A Certain Magnificence: Lyman Beecher and the Transformation of American Protestantism, 1775-1863*, at xix-xxvi (1991) (same).

<sup>25</sup> See generally David Roth & Freeman Meyer, *Connecticut: From Revolution to Constitution* (1975) (detailing this history); David M. Roth, *Connecticut: A Bicentennial History* (1970) (same).

almost second nature to Connecticut's elite, who simultaneously possessed an ironclad grip on political power and a sincere albeit condescending benevolence towards the downtrodden of all races and genders.<sup>26</sup>

## *B. The Emerging Crisis*

### *1. The Political Dimension*

As the eighteenth century drifted towards its close, Connecticut's Standing Order, now unabashedly Federalist, began to perceive storm clouds on the horizon. The rise of the national Jeffersonian Party darkened its mood more than any other single development. The story of the emergence of the first party system needs only brief recapitulation. Partisan patterns are easily discernible in congressional voting records from the early 1790s, particularly over Alexander Hamilton's financial proposals. The events of the French Revolution further divided the nation's leading politicians. By the time the voters were asked to choose George Washington's Presidential successor, lines had hardened to the point that a full-scale ideological battle was waged between John Adams and Thomas Jefferson. Adams captured the office, but his victory was short-lived. By 1800, the Jeffersonian Republicans were powerful enough to evict the Federalists from the Presidency and to capture control of Congress.<sup>27</sup> By 1803, the Jeffersonians would hold over seventy percent of the seats in each house of the national legislature.<sup>28</sup>

Connecticut's leaders initially viewed these developments with puzzlement. Throughout the 1790s, Connecticut politics retained its extraordinary stability and homogeneity. The state spoke with a unified voice in the halls of Congress, supporting the Federalist administrations of Washington and Adams. An occasional advocate of greater democracy, religious disestablishment, or the French Revolu-

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<sup>26</sup> This analysis of the Federalist persuasion is a schematic summary of Siegel, *supra* note 20; cf. generally James M. Banner, Jr., *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts, 1789-1815* (1970) (tracing similar themes in contemporaneous Massachusetts); David Hackett Fischer, *The Revolution and American Conservatism: The Federalist Party in the Era of Jeffersonian Democracy* (1965) (exploring Federalist politics and ideology thematically and idiosyncratically, but reaching many similar conclusions); Linda K. Kerber, *Federalists in Dissent: Imagery and Ideology in Jeffersonian America* (1970) (detailing various facets of Federalist political culture).

<sup>27</sup> For the most thorough treatment of the decline of Federalism and the rise of Jeffersonianism, see Stanley Elkins & Eric McKittrick, *The Age of Federalism* (1993). For a very different take on the subject, one more critical of the Federalist Party, see James Roger Sharp, *American Politics in the Early Republic* (1993). For an outstanding collection of earlier scholarship on this topic, see the essays contained in *After the Constitution: Party Conflict in the New Republic* (Lance Banning ed., 1989).

<sup>28</sup> See Stephen G. Christianson, *Facts About the Congress xxix* (1996).



tion found his way into the Assembly, but most elections continued to result in an uncontested victory by an arch-Federalist.<sup>29</sup> The nascent opposition first proposed candidates for high office in 1796, but Council candidates Gideon Granger and Ephraim Kirby captured only a handful of votes.<sup>30</sup>

However, with a suddenness that stunned nearly every political observer in the Land of Steady Habits, Connecticut's Jeffersonians established an efficient and energetic political organization to contest the election of 1800. Campaigning with vigor and making unprecedentedly explicit appeals for popular support, the Republicans succeeded in placing two of their number on the list of nominees for Congress. When the fall election arrived, over a third of the voters sided with the party of Jefferson.<sup>31</sup> From that date forward, every election for statewide or national office was openly contested by a Republican candidate. For the next fifteen years, the Jeffersonians remained a strong minority party, never winning a statewide election or capturing control of the Assembly but often garnering as much as thirty-five or forty percent of the popular vote.<sup>32</sup>

The rise of the Connecticut Republican Party did more than offer a challenge to the hegemony of the state's Standing Order; it also fundamentally reworked the nature of politics in the Land of Steady Habits. Within a few years, Connecticut went from a colonial electoral system, in which election day served as a ritualistic reaffirmation of communal solidarity and deference,<sup>33</sup> to a nineteenth-century structure in which organized groups of men propagandized for rival slates of candidates and dragged unprecedented numbers of voters to the polls. A new political culture gradually took shape, characterized by rabidly partisan newspapers and pamphlets, omnipresent political oration, and statewide campaign networks.<sup>34</sup> The Republicans went so

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<sup>29</sup> See Purcell, *supra* note 20, at 227-29. By 1799, as many as 15 such "Jacobins" may have held seats in the Assembly. *Id.* at 230. Such a number would represent well under 10% of that body's membership.

<sup>30</sup> See *id.* at 229-30.

<sup>31</sup> See *id.* at 232-36 & 235 n.18.

<sup>32</sup> See *id.* at 236-97 (detailing electoral history of Connecticut during this period and providing raw data from which following comparisons are drawn). The highest Republican representation in the Assembly was 78 (roughly 38%) during the spring of 1804. See *id.* at 253. Their highest percentage of the vote was 43% in the 1806 Council election. See *id.* at 274. The War of 1812 and the events preceding it doomed the Republican ticket between 1810 and 1813. For example, the Republican gubernatorial candidate received 38% of the vote in 1808, *id.* at 279, and 37% in 1815, *id.* at 296, but only 11% in 1812, *id.* at 290. Otherwise, Republican support was eerily consistent.

<sup>33</sup> See *supra* note 23 and accompanying text.

<sup>34</sup> The adoption of such modern electioneering tactics by Federalists was the subject of much debate within the Party. On this topic, see Fischer, *supra* note 26, at 91-109. The presence of such a network in Connecticut is most evident in the circular letters inter-

far as to hold mass rallies, modeled on revival meetings, in the closing days of campaigns.<sup>35</sup> State-wide vote totals, which had lingered around 4,000 during the 1790s, surpassed 22,000 by 1803.<sup>36</sup>

Both the electoral success of the Jeffersonians and the rising tide of popular politics left Connecticut's Federalist elite feeling isolated. As Linda Kerber points out, Federalists across the country surveying the American political scene at the start of the nineteenth century concluded that "an ordered world was disintegrating, and that this disintegration was encouraged by an organized group of men."<sup>37</sup> Defeated at the polls, neither comfortable with nor proficient at the new politics, and worried that the policies of the Jeffersonians were harbingers of the demise of the American Republic, Federalism's mood was bleak.<sup>38</sup>

## 2. *Religious Concern*

Religious developments contributed to the sense of crisis under which Connecticut's elite operated during the early nineteenth century. Though Connecticut's Congregationalist Establishment retained political power in the aftermath of the schismatic decades surrounding the Great Awakening, the moral and spiritual force of orthodox Calvinism was on the wane. As trade expanded, newspapers proliferated, and soldiers from different colonies and nations interacted, the religious hegemony of New England's conservative Puritanism began to fray. Rationalists and deists claimed the highest offices in the new nation, the First Amendment guaranteed that the federal government would play no role in the maintenance or support of organized religion, and the great majority of states moved towards religious disestablishment. Sabbath-breaking and anticlericalism were endemic,

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scattered within the Baldwin Family Papers, Group 55, Series I, Box 9-10, Sterling Memorial Library (SML), Yale University [hereinafter Baldwin Family Papers].

<sup>35</sup> Tapping Reeve was so incensed by one such rally that he crafted an angry satirical retort. See Tapping Reeve, *The Sixth of August or the Litchfield Festival: An Address to the People of Connecticut* (Hartford 1806) (mocking concept of democratic politics implicit in mass political demonstrations). On the use of political rallies and festivals to shape popular political attitudes during the early republic, see David Waldstreicher, *In the Midst of Perpetual Fetes* (1997). For his take on this particular festival, see *id.* at 229-30.

<sup>36</sup> Compare Purcell, *supra* note 20, at 251 (showing 22,446 votes cast in 1803), with *id.* at 297 (showing vote totals ranged from 2,756 to 5,513 and averaged about 4,000 between 1794 and 1799).

<sup>37</sup> Kerber, *supra* note 26, at xi.

<sup>38</sup> See *id.* at 4 (detailing Federalist despondence at cultural and political ramifications of Jeffersonian victory). For Connecticut's peculiar variation of general Federalist response to rise of Jeffersonianism, see generally Siegel, *supra* note 20; John Hastings Chatfield, "Already We Are a Fallen Country:" The Politics and Ideology of Connecticut Federalism, 1797-1812 (1988) (unpublished Ph.D. dissertation, Columbia University, available from UMI).

particularly among the young. When children laughed at the dress and bearing of their ministers or when students at elite colleges addressed each other by the names of the leaders of the French Enlightenment, those who clung to the hierarchical world of colonial Connecticut shuddered.<sup>39</sup>

### 3. *Economic Uncertainty*

The disdain with which Connecticut's Standing Order viewed the political and religious developments of the late eighteenth and early nineteenth centuries turned to despair when they surveyed the economic prospects awaiting their children. In New England, the post-revolutionary decades were a time of economic chaos.<sup>40</sup> The land/population crisis that had been percolating throughout the eighteenth century had taken its toll, dividing family lands and fortunes into hopelessly small portions and producing an untenably large cadre of landless youth from established families.<sup>41</sup> The mercantile industry was suffering through a trying period, as war, embargo, piracy, and British commercial policy routinely devastated shipping.<sup>42</sup> The financial and industrial revolutions that would eventually enrich many of New England's elite were in their tentative early years, providing support to but a handful of lucky innovators.<sup>43</sup>

In this era, during the historical void between the decline of agricultural prosperity and the rise of industrial capitalism, the options open to an ambitious and well-connected young adult in Connecticut were at their nadir. The most obvious option was outmigration, and

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<sup>39</sup> See Cross, *supra* note 24, at xix, xxi (describing Americans' perception of Calvinism at beginning of eighteenth century).

<sup>40</sup> But compare Alice Hanson Jones, *Wealth of a Nation to Be* 59-61 (1980) (documenting New England's aggregate economic position relative to remainder of colonies as middling in 1774), with Lee Soltow, *Distribution of Wealth and Income in the United States in 1798*, at 42 tbl.7 (1989) (calculating New England's share of national wealth as comparatively generous in 1798). This newfound wealth developed unevenly across the region, across the society, and across time, allowing for the coexistence of profound economic insecurity, even among traditional elites.

<sup>41</sup> This crisis has been established through a series of detailed town studies. See, e.g., Philip J. Greven, Jr., *Four Generations: Population, Land, and Family in Colonial Andover, Massachusetts* 257-58 (1970) (looking at population, land, and family bonds in four successive generations in seventeenth- and eighteenth-century Andover, Massachusetts).

<sup>42</sup> See, e.g., Doron S. Ben-Atar, *The Origins of Jeffersonian Commercial Policy and Diplomacy* (1993) (detailing disasters and defeats befalling American shipping during this period).

<sup>43</sup> See Purcell, *supra* note 20, at 78 (arguing that less prosperous "colonial period of manufacturing lasted until the turn of the nineteenth century"); Alain C. White, *The History of the Town of Litchfield, Connecticut 1720-1920*, at 128-35 (1920) (discussing manufacturing in late eighteenth and early nineteenth century Litchfield and demonstrating that substantial development of industry did not occur until 1830s or 1840s).

thousands of young people took advantage of the opportunities available in Vermont, upstate New York, and Ohio's Western Reserve. Between 1790 and 1820, westward emigration reduced Connecticut's rate of population growth to under five percent per decade, one of the lowest in the nation; many of the state's towns lost population during that period.<sup>44</sup>

Those who stayed faced a difficult transition to adulthood. Young men born into privilege in Federalist Connecticut were forced to draw upon every resource and connection at their disposal in order to making a living. A kind and well-connected man such as Tapping Reeve spent countless hours securing lowpaying tutoring positions for family friends and acquaintances.<sup>45</sup> Families routinely strategized as a unit to give their children a foothold into respectability. One graduate of Litchfield excelled at West Point and looked forward to a career as an Army engineer; however, his family worried about the financial prospects of an engineer and "[i]t was determined in family council . . . that [he] should be a lawyer."<sup>46</sup>

Those who could not provide their sons with the capital to educate or otherwise establish themselves often resorted to a barter system. For example, Judge Simeon Baldwin, one of New Haven's leading Federalists, withdrew his eldest son Ebenezer from the Litchfield Law School when an Albany acquaintance offered to train and house Ebenezer if Baldwin did the same for his son, a student at Yale. Two years later, Baldwin sent his younger son to Litchfield to live with Judge Gould and took Judge Gould's son into his own home.<sup>47</sup> Although parents could pass on connections and social respect to their children in early nineteenth-century Connecticut, they were increasingly unable to help their progeny financially.<sup>48</sup>

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<sup>44</sup> See Purcell, *supra* note 20, at 151-52 (estimating effect of western emigration on state population).

<sup>45</sup> For an example of Reeve's generosity, unique only because of the later fame of the recipient of his aid, see Letter of Joel Barlow to Reeve (May 1, 1781), in Tapping Reeve Papers, Group 686, Series II, Box 1, SML [hereinafter Reeve Papers].

<sup>46</sup> E. D. Mansfield, *Personal Memories: Social, and Literary with Sketches of Many Noted People, 1803-1843*, at 78 (Arno Press 1970) (1879).

<sup>47</sup> On the first exchange, see Letter of Simeon Baldwin to Ebenezer Baldwin (July 19, 1810) and Letter of John Lovett to Simeon Baldwin (Sept. 13, 1810), both in Baldwin Family Papers. On the second, see Letter of James Gould to Simeon Baldwin (Sept. 15, 1812), in Baldwin Family Papers. Emily Noyes Vanderpoel refers to such exchanges as "a custom quite general in New England in the early part of the [nineteenth] century" in her documentary history of the Litchfield Female Academy. Emily Noyes Vanderpoel, *Chronicles of a Pioneer School* 257 (Elizabeth C. Barney Buel ed., 1903).

<sup>48</sup> The same themes of social success but financial anxiety resonate in Judge Reeve's correspondence with his only son, Aaron Burr Reeve. See Letter of Aaron Burr Reeve to Tapping Reeve (Dec. 9, 1802), in Reeve Papers ("[W]hen I reflect that it is possible that I

### C. *The Town of Litchfield*

In retrospect, it is not at all surprising that Litchfield was a launching pad for the Federalist counteroffensive against democracy, irreligion, and economic uncertainty. During the last years of the eighteenth century and the first two decades of the nineteenth, Litchfield was the closest approximation to a Federalist utopia existent. Early nineteenth-century Litchfield combined the attributes of an idyllic country village and a thriving metropolis. Located in Connecticut's rural northwest corner, the town drew natural beauty and agricultural prosperity from its environment. Like the prototypical Puritan towns of seventeenth-century New England, Litchfield radiated outward from a few central streets, around which the communal life of the town centered. Well into the nineteenth century, Litchfield remained a place where the inhabitants all knew each other by name.<sup>49</sup>

Given its current status and its rural character, many have dismissed Litchfield as a prosperous agricultural backwater. Charles Warren, for example, finds it bizarre that the nation's first successful private law school "grew up, not in any city or seat of learning, but in a little country town of Connecticut."<sup>50</sup> However, Litchfield was, in fact, a "seat of learning," a large, bustling, cosmopolitan enclave. During the period in question, Litchfield was Connecticut's fourth largest city, boasting a population of roughly 4,600.<sup>51</sup> The town was a postal center, connected to the remainder of the nation by an intricate set of roads and turnpikes. Litchfield was centrally located in the Northeast: It lay on the major inland route between Boston and New York and on the easiest path between Hartford and West Point; New York was less than a day away by coach and ship; and Hartford was barely thirty miles to the east.<sup>52</sup>

During its "golden age," Litchfield's population was often described as "enlightened." Literacy was practically universal; Tapping

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shall not succeed in business I am absolutely miserable . . . . The subject of my future fortunes occupies every moment of my time . . . .").

<sup>49</sup> On Litchfield in the late eighteenth and early nineteenth centuries, see Vanderpoel, *supra* note 47, at 20-27 (describing state of town at turn of century); White, *supra* note 43, at 92-97 (describing "Golden Age" of Litchfield); Samuel Church, *Judge Church's Address* (1851), in Dwight C. Kilbourn, *The Bench and Bar of Litchfield County, Connecticut 1709-1909*, at 3 (1909) (providing brief history of Litchfield County). The portrait in the following paragraphs draws heavily on these sources.

<sup>50</sup> Warren, *supra* note 2, at 357.

<sup>51</sup> See Vanderpoel, *supra* note 47, at 394 app. (providing 1820 census showing population of Connecticut towns).

<sup>52</sup> See McKenna, *supra* note 5, at 67 (noting Litchfield's location on mail routes); White, *supra* note 43, at 92-95 (describing process whereby Litchfield became transportation hub and reprinting advertisements quantifying traveling times and distances).

Reeve claims never to have seen a witness in court who could not read.<sup>53</sup> The town supported one of the state's first newspapers, a full-fledged public library, and a local "lyceum" that organized speeches and debates on political, philosophical, and literary topics.<sup>54</sup> Twenty-eight small schools dotted the town and the surrounding countryside.<sup>55</sup> Litchfield was filled with a disproportionate number of learned men, mostly Yale-educated; the generation of Litchfield men who came of age around the Revolutionary War yielded four Congressmen, two Governors, and two Chief Justices of the state's highest Court.<sup>56</sup> The nation's first law reports were prepared in a house on Litchfield's main street during the 1780s and 1790s.<sup>57</sup>

The politics and social structure of Litchfield reflected the Federalist worldview. The town's leading citizens were "eminently pious," lending an air of religious authority to their social and political leadership.<sup>58</sup> Turnover in office was exceedingly rare; the county had but two County Clerks in the eighty-five years following its founding in 1751.<sup>59</sup> The town's leading figures were both active participants in the Revolution and proud descendants of English culture. The same men who tore down a statue of the King and melted it to make bullets<sup>60</sup> also spoke glowingly of "English Common Law" as "our birthright and our inheritance."<sup>61</sup> Their Revolution was a response to particularly unpardonable British acts rather than a call for a whole-scale reform of society. One manifestation of the town's conservatism consistently amused young law students: As Edward Mansfield noted with derision in 1823, "a few old gentlemen still retained the dress of the Revolution[:] . . . a powdered queue, white-topped boots, silk stockings, and breeches with buckles."<sup>62</sup>

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<sup>53</sup> See Church, *supra* note 49, at 23.

<sup>54</sup> See White, *supra* note 43, at 97.

<sup>55</sup> See *id.* (describing Litchfield schools at turn of century).

<sup>56</sup> See Kilbourn, *supra* note 49, at 217-306 (providing biographical dictionary of Litchfield's leading figures). Among these men were Reeve, Chief Judge Andrew Adams, Governors John Cotton Smith and Oliver Wolcott, Jr., Congressman John Allen, and Senator Uriah Tracy. See *id.*

<sup>57</sup> See, e.g., McKenna, *supra* note 5, at 84 (noting that Ephraim Kirby of Litchfield produced first volume of American law reports in 1789).

<sup>58</sup> Letter from Mrs. Beecher, in 1 *Autobiography of Lyman Beecher*, *supra* note 24, at 271 (describing favorably Litchfield community).

<sup>59</sup> See White, *supra* note 43, at 149.

<sup>60</sup> See Dorothy Bull, *Litchfield in the Revolution*, in White, *supra* note 43, at 65, 79-80 (describing "the event, so dear to local tradition, when the leaden statue of George the third, torn from its gilded glory on Bowling Green, was brought to Litchfield and turned into rebel bullets").

<sup>61</sup> Church, *supra* note 49, at 14 (discussing influence of English traditions and institutions in Litchfield County).

<sup>62</sup> Mansfield, *supra* note 46, at 125.

Large in relative size but with the feel of a small town, geographically remote but plugged into the nation's transportation and communications network, politically conservative but often culturally innovative, Litchfield was an ideal candidate for the role of cultural capital of the Federalist counterrevolution.

## II

### INNOVATION AS A MEANS TO CONSERVATION: LITCHFIELD'S RESPONSE TO CULTURAL CRISIS

Part II of this Note explores several manifestations of the cultural creativity employed by Federalist elites in responding to the crisis delineated above. While the ideological wellsprings of the Federalist worldview remained remarkably consistent, these defeated political actors adapted rapidly to their changing circumstances and developed a series of novel institutions intended simultaneously to inculcate Federalist values and to insure a privileged place for their children in the new world of nineteenth-century America. Part II.A briefly examines the various religious, reform, and temperance societies that Litchfield's elite helped found during the first two decades of the nineteenth century. Part II.B explores in greater depth one of Litchfield's two primary institutional innovations, the Litchfield Female Academy.<sup>63</sup> Part II.C turns to the Law School, offering a history of its founding and an examination of the daily life of a Litchfield law student. These movements and institutions were the products of similar ideological currents: Each reflected an aggressive and adaptive conservatism, a quasi-Calvinist assumption that material well-being is inextricably linked to spiritual well-being, and a commitment to restoring order and maintaining social cohesion in an increasingly atomized age.<sup>64</sup>

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<sup>63</sup> For most of the period in question, the women's school was more commonly referred to as "Miss Pierce's School" (though it was officially known as the Female Academy as early as 1798). This Note uses the later name throughout so as to counteract the impression, perpetuated by many historians, that the women's school was small or informal. It is worth noting that the Law School was known to many contemporaries as "Judge Reeve's School" yet few historians have adopted that usage.

<sup>64</sup> Litchfield's aggressive response to the crisis of the early nineteenth century was not limited to the moral sphere. Many of the region's leading men boldly experimented with a variety of financial schemes. Small iron works, paper mills, and textile plants were established throughout Litchfield County between 1790 and 1820. Oliver Wolcott, Jr.—Litchfield resident, former U.S. Secretary of the Treasury, and future Governor of Connecticut—and his brother Frederick opened the state's largest factory to date, a broadcloth woolen mill, in neighboring Wolcottville in 1815. See Fisher, *supra* note 5, at 138 (listing Wolcott's biographical and occupational information and mentioning mill); Purcell, *supra* note 20, at 22 (describing Connecticut's woolen manufacturing industry and making refer-

### A. Temperance, Religion, and Reform

As Litchfield's elite surveyed the crisis of the early nineteenth century, they were predisposed to think in moral, or even spiritual, terms. If mob politics was ascendant, it was only because the citizenry had not been appropriately vigilant. If Sabbath-breaking was the norm, the pious must have failed to inculcate love of God among their brethren. If economic life seemed especially precarious, discipline and perseverance must be on the wane. In this decidedly Calvinist worldview, the struggle to stem the Jeffersonian tide and reconstitute the Federalist social order would be fought as a battle to strengthen the faith and the character of individual citizens.

This attitude was most explicitly articulated by the noted minister Lyman Beecher, pastor of Litchfield's Congregational church between 1810 and 1826.<sup>65</sup> Beecher's 1812 sermon *A Reformation of Morals*, the work that first developed many of the themes that would make him a leader of the Second Great Awakening, is a spirited call for moral regeneration. Decrying the "timid," he repeatedly calls for a "reformation." The goal of Beecher's proselytizing is clearly backward looking:

Our fathers established, and for a great while preserved the most perfect state of society probably that has ever existed in this fallen world. . . . The same causes will still produce the same effects, and no other causes will produce them. New England can retain her pre-eminence only by upholding those institutions and habits which produced it.

Yet Beecher was willing to use innovative means to achieve his conservative ends, mocking those who opposed efforts at reformation due to their novelty:

What new thing is this? Did our fathers ever do so? . . . But because they did not make special efforts to repel an enemy which did not assail them, shall we neglect by appropriate means to resist an en-

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ence to mill); see also Church, *supra* note 49, at 81 (noting that manufacturing scheme was "disastrous" for Wolcotts but was "the parent" of future prosperity for town).

Similarly, residents of Litchfield and graduates of the Litchfield Law School were overrepresented in the directories of men who owned and operated the state's first private banks, ten of which were chartered between 1796 and 1818. See Purcell, *supra* note 20, at 102-09 (describing history of these banks, listing their stockholders and officers, and noting dominance of Federalist elite). Judge Gould was lead attorney for, director of, and President of the Phoenix National Bank. See McKenna, *supra* note 5, at 105 (describing Gould's service as lead counsel for bank).

<sup>65</sup> For a remarkable collection of family documents and reminiscences about the legendary Beecher, see 1 *Autobiography of Lyman Beecher*, *supra* note 24.



emy which is pouring in like a flood, and threatening to sweep us away?<sup>66</sup>

During the first three decades of the nineteenth century, Litchfield's civic and religious leadership sponsored numerous societies and reform efforts designed to steel the character of American citizens. In 1811, the Connecticut Bible Society was organized to distribute religious tracts throughout the state; Tapping Reeve was the agent for the town of Litchfield. Pious citizens were optimistic about the organization's prospects; Beecher, in his usual hyperbolic style, called the Bible Society the "most popular of any public charity ever attempted in Connecticut."<sup>67</sup> Enthused by the early success of their proselytizing efforts, the state's Federalist and Congregationalist elite held a mass meeting in New Haven, chaired by the powerful President of Yale College, Timothy Dwight, and organized a broad-based moral reform society under the laborious title "Society for the suppression of vice and the promotion of good morals in this state." Beecher sat on the society's statewide committee; Reeve was its chairman.<sup>68</sup> A familiar group of Litchfield's most revered and religious founded the Litchfield Foreign Missionary Society in 1813 and established the Foreign Mission School in 1817.<sup>69</sup>

Throughout this period, Litchfield was home to one of the most persistent temperance campaigns in the nation. In 1789, thirty-six of the town's leading figures, including Judge Reeve and two future members of Congress, signed a pledge to abstain from the consumption of spirited liquors.<sup>70</sup> Over the next several decades, the temperance appeal was consistently reaffirmed in Litchfield's churches, schools, and town meetings. Inspired by the efforts of his new congregants, Beecher shepherded a plan for a campaign against alcohol through Connecticut's General Association of churches in 1812.<sup>71</sup> In an address to her students in 1829, Sarah Pierce, the founder of the

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<sup>66</sup> Lyman Beecher, *A Reformation of Morals Practicable and Indispensable* 7 (1812), microformed on Early American Imprints Series No. 30834 (American Antiquarian Society).

<sup>67</sup> Letter from Lyman Beecher to Rev. Asahel Hooker (March 1811), in 1 *Autobiography of Lyman Beecher*, *supra* note 24, at 175, 176.

<sup>68</sup> See Beecher's various letters to Hooker, in 1 *Autobiography of Lyman Beecher*, *supra* note 24, at 185-89 (discussing Society).

<sup>69</sup> See Church, *supra* note 49, at 36-37 (discussing foreign missionary efforts). See generally Harding, *supra* note 24, at 73-81 (1991) (explicating political and cultural significance of societies discussed herein).

<sup>70</sup> See White, *supra* note 43, at 156-61 (discussing history of Litchfield temperance movement); Church, *supra* note 49, at 37 (same).

<sup>71</sup> See Harding, *supra* note 24, at 74-76 (describing Beecher's role in General Association's temperance campaign); 1 *Autobiography of Lyman Beecher*, *supra* note 24, at 179-84 (same).

Litchfield Female Academy, insisted that one of the primary duties of educated women was to maintain temperate husbands and sons.<sup>72</sup>

### *B. The Litchfield Female Academy*

Litchfield's Federalist elite believed that their ordered world could be restored only if the moral vigor of the population was renewed. On a more pragmatic level, they understood that the economic prosperity that was an unspoken underpinning of their social world was in jeopardy. Motivated by the twin goals of instilling morality among their progeny and preparing their children for new economic opportunities, they established two novel educational institutions, a Female Academy for their daughters and a Law School for their sons. When viewed individually, each of these schools is an impressive educational innovation. When viewed together, they represent something much more intriguing. As the following pages will argue, the Litchfield Female Academy and the Litchfield Law School represented the blueprint for a new family structure, designed to ensure status replication and the perpetuation of political orthodoxy in the face of a profoundly hostile culture.

Given the important cultural innovation which would emerge from the Litchfield Female Academy, its origins are rather pedestrian. Sarah Pierce, the descendant of an old Puritan family, trained to be a school teacher after her father's death plunged the family into financial insecurity. In 1792, she opened her doors for business and tutored a single pupil in her dining room.<sup>73</sup> Over the following years, her reputation as a teacher attracted dozens of students from Litchfield and the surrounding communities. In 1798, the town's leading men, spearheaded by Judge Reeve, raised a subscription to build a permanent home for Pierce's school.<sup>74</sup> The subscription campaign marked the public ratification of what had begun as Sarah Pierce's private venture; in the following decades, the school would retain the character of a communal endeavor.

By 1810, the annual population of Pierce's school exceeded one hundred, drawn "from the first families in all parts of the nation."<sup>75</sup> It is estimated that between 2,000 and 3,000 young women passed

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<sup>72</sup> See Sarah Pierce, *A Friend to Temperance*, reprinted in Vanderpoel, *supra* note 47, at 282-84 [hereinafter *Pierce, A Friend to Temperance*] (detailing advice to young women).

<sup>73</sup> For more on Pierce's background and the history of the school, see McKenna, *supra* note 5, at 69-80; Vanderpoel, *supra* note 47; White, *supra* note 43, at 110-20.

<sup>74</sup> See Subscription List for Building First Academy, in Vanderpoel, *supra* note 47, at 19-20.

<sup>75</sup> Letter from Mrs. H. B. Stowe to Lyman Beecher, in 1 *Autobiography of Lyman Beecher*, *supra* note 24, at 394.

through the building during the twenty-nine years of its existence.<sup>76</sup> In 1827, Litchfield's leading citizens confirmed the Academy's status as a communal institution by forming a corporation to acquire the school's building from the aging Pierce, to construct a new facility, and to manage the Academy in perpetuity.<sup>77</sup> Although Pierce retired in 1833, the school continued in existence for another two decades.<sup>78</sup>

Though the school was a communal endeavor, it took much of its character from Sarah Pierce.<sup>79</sup> Pierce was a rare character, a committed Christian soldier with abundant wit and charm. Her piety was well-known, as was her physical vigor. She worked long hours, taking daily breaks to walk in the surrounding hills. She held herself to a rigid code of conduct, and was known to quote scripture to explain her high standards of thrift and self-discipline. On the other hand, Pierce possessed "a cheerful lively temperament, a bright eye, and a face expressive of the most active benevolence."<sup>80</sup> At a time when most teachers worked hard to maintain their status as authority figures, "Miss Pierce's sympathy with her pupils was proverbial."<sup>81</sup> She further belied the stereotypes of a Christian reformer by writing plays, organizing dances, and otherwise encouraging the gaiety that drew young people to Litchfield.

The curriculum that Sarah Pierce developed combined serious intellectual study with piano lessons, drawing classes, and tutelage in the social graces. Many historians, unsure of what to make of this hybrid pedagogy, have emphasized one side of the curriculum or the other. The earliest scholars of the school, mostly local historians, tended to glorify the innovation of teaching history, geography, philosophy, and the natural sciences to women; one suggests that Pierce's "ideal was to train [girls] in all the same studies that a boy was taught."<sup>82</sup> Some contemporary scholars, particularly those buoyed by the strides towards equality and civic participation made by women in post-Revolutionary America, have been similarly impressed with Pierce's efforts

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<sup>76</sup> See Vanderpoel, *supra* note 47, at 7 (estimating attendance figures during Pierce's tenure); John P. Brace, Farewell Address on Leaving Litchfield Academy, October 23, 1832, in Vanderpoel, *supra* note 47, at 303, 307 (noting number of former pupils to date).

<sup>77</sup> See Notes from the Records of the Litchfield Female Academy, printed in Vanderpoel, *supra* note 47, at 260-68. Judge Gould, Reeve's partner and successor at the Law School, and his new colleague Jabez Huntington were two of the ten original trustees. See *id.* at 262.

<sup>78</sup> See White, *supra* note 43, at 114.

<sup>79</sup> For descriptions of Pierce's character and personality, see *id.* at 110-20; Church, *supra* note 49, at 24; Vanderpoel, *supra* note 47, *passim*.

<sup>80</sup> White, *supra* note 43, at 115 (quoting Pierce's friend, Gideon H. Hollister).

<sup>81</sup> *Id.* at 113.

<sup>82</sup> *Id.* at 112.

to develop the rational faculties of her pupils.<sup>83</sup> Other modern scholars, more skeptical of the gains made by women in this period, portray the Female Academy in a less flattering light. Nancy Cott suggests that the students received only "a basic literary education" and spent the majority of their time pursuing "elegant accomplishments";<sup>84</sup> Marian McKenna baldly calls the Academy a "finishing school."<sup>85</sup>

Whether they praise the Academy as a true seat of female learning or dismiss it as insignificant, most scholars who have specifically treated the school have assumed that the two sides of Pierce's curriculum were antagonistic. However, the more general historical literature does provide an analytic construct sufficiently broad to explain both the serious academic courses and the accomplishments offered at Litchfield: republican motherhood.<sup>86</sup> Careful reading of the letters and speeches of Pierce and her colleagues, as well as excerpts from the diaries and commonplace books of Pierce's students, suggests that Sarah Pierce's goal was neither the broad-based education of women for their own edification nor the preparation of cultured socialites, but the professional training of wives and mothers.<sup>87</sup> Given the pressures weighing upon the Federalist world and the necessity of raising a strong and virtuous citizenry, systematic preparation for these roles was considered to be essential in the early nineteenth century.<sup>88</sup>

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<sup>83</sup> See, e.g., Mary Beth Norton, *Liberty's Daughters: The Revolutionary Experience of American Women, 1750-1800*, at 270-73 (1980) (describing Pierce as rare educator willing to take "final step" of developing in women "the art of thinking," grouping Pierce among most radical pedagogues in Anglo-American world, and arguing that "academic subjects" predominated over "ornamental accomplishments" at Pierce's academy).

<sup>84</sup> Nancy F. Cott, *The Bonds of Womanhood: Women's Sphere in New England, 1780-1835*, at 115 (1977).

<sup>85</sup> McKenna, *supra* note 5, at 70; see also Kathryn Kish Sklar, Catherine Beecher: A Study in American Domesticity 17-18 (1973) (portraying Female Academy as "chiefly dedicated to training the social instincts of its pupils" and describing school's curriculum as "undemanding").

<sup>86</sup> The term "republican motherhood," representing a post-Revolutionary movement through which women gained a certain measure of social leverage and civic respect by the reconceptualization of their childrearing role as a crucial political function, was coined by Linda Kerber. See Linda Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (1980). The contours of the concept have proven quite malleable. More recent scholarship has forged republican motherhood into a more nuanced construction through challenges to its timing, origins, details, and applicability across racial and class lines. See *infra* note 88 and the works cited therein. Also see generally Sara M. Evans, *Born for Liberty: A History of Women in America 57-72* (1989) (offering succinct and elegant explanation of evolution of republican motherhood and its gradual adaptation into different but related Victorian ideologies of associationalism and domesticity, and evenhandedly exploring concomitant educational development).

<sup>87</sup> See, e.g., Brace, *supra* note 76, at 303-07 (discussing purposes of women's education).

<sup>88</sup> The movement through which women's roles as wife and mother were cast in civic terms, and through which women came to be seen as the repository of a community's religiosity and moral virtue, is the subject of a thorough literature. For a sampling of views

Sarah Pierce believed unequivocally in the intellectual equality of the sexes, telling one graduating class that their studies had been designed so as "to practically vindicate the equality of the female intellect." She argued that "the discipline of the minds, the formation of those intellectual habits which are necessary to one sex are equally necessary to the other." More specifically, she cited storing the memory with facts, developing an active but properly contained imagination, and honing the ability to distinguish between reasoned judgment and mere prejudice as the proper goals of the schoolmaster, whatever the gender of his or her pupils.<sup>89</sup>

Though Pierce believed in the intellectual equality of the sexes and insisted that women's education should develop the same faculties as that of their male counterparts, she assumed that women's faculties were being prepared towards different ends. Her speeches on women's education are often prefaced with the explanation that "the employments of man and woman are so dissimilar" that their courses of study must differ in significant ways.<sup>90</sup> Like many of her generation, Sarah Pierce's understanding of the "proper employments" of women simultaneously located women's role in the domestic sphere and empowered that sphere with a vital civic function. Expressing the ideology of "republican motherhood" as cogently as any of her contemporaries, Pierce commented:

A free government like ours can only be supported by the virtue of its citizens. The ancient governments were destroyed by the vices of their subjects. . . . Who then can calculate the beneficial effects resulting from the early habits of piety and morality planted by mater-

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challenging Kerber's narrative, described *supra* note 86, see, e.g., Cott, *supra* note 84 (portraying rise of capitalist economy as crucial to whatever changes took place and downplaying women's gains); Mary Ryan, *Cradle of the Middle Class: The Family in Oneida County, New York, 1790-1865* (1981) (focusing on shifting economic relations as cause of movement, emphasizing community reform functions as well as familial roles, and dating transformation to slightly later period); Christine Stansell, *City of Women: Sex and Class in New York 1789-1860* (1982) (demonstrating different ways in which gendered concepts of republican virtue impacted upon lives of poor and working class women during this period); Ruth H. Bloch, *The Gendered Meaning of Virtue in Revolutionary America*, 13 *Signs* 37 (1987) (analyzing changes discursively and arguing that shift of primary responsibility for virtue to women necessitated altering notions of virtue to reject classical republican conceptions). As one can see, the causes of this movement are a matter of controversy, with some scholars emphasizing the effects of the Revolution and others the coming of industrial capitalism. A more judicious reading might argue that the process happened relatively gradually over the half century after the revolution and had mixed political and economic causes. This Note argues that, at least in Litchfield, the crucial event may have been neither the American Revolution nor the industrial revolution, but the Revolution of 1800.

<sup>89</sup> Sarah Pierce, Address at the Close of School, October 29, 1818, in Vanderpoel, *supra* note 47, at 176-79.

<sup>90</sup> See, e.g., *id.* at 176.

nal wisdom upon the rising generation. And may we not hope that the daughters of America will imitate the example of the Spartan and Roman matrons in the day of their glory, who taught their children to love their country beyond every earthly object, even their own lives.<sup>91</sup>

Especially in the years after 1800, the role Pierce envisioned for her students was somewhat broader than that implied by the ideology of republican motherhood. In the immediate aftermath of the Revolution, the maintenance of civic virtue was the primary preoccupation of the nation's elite. However, as we have seen, their sense of crisis broadened in the early years of the nineteenth century. Religious and economic fears intersected with political worries. If a class of professional mothers was to stem the tides of disorder, its members would have to inculcate moral virtue in addition to civic virtue, love of God in addition to love of country. The mother "has it [in] her power to plant the seeds of vice or virtue and an awful responsibility rests upon her, if she does not exterminate every root of evil as she perceives it springing up in the heart or temper of her children." If a "faithful" mother "points out the road to virtue" and "arduously guards her offspring against the danger of dissipation in all its various forms," the odds that her children will be prosperous, pious, and civic-minded will be dramatically enhanced. At worst, the children of a Litchfield-trained mother will have the sober habits and perseverance necessary to support themselves in the dark world of Jeffersonian America. At the best, these children might play a vital role in the reestablishment of religiosity and social order.<sup>92</sup>

Further, given the urgency of the nation's spiritual crisis, women could not wait for their children to begin the struggle for social regeneration. Sarah Pierce's ideal woman was not only a successful mother and a dutiful wife but also a force for good within the community. While men are "entirely engrossed by business," women must serve as the moral guardians and religious conscience of their community.<sup>93</sup> Describing a fictionalized icon of benevolence, Pierce wrote: "She did not confine her exertions to her own family,—the poor looked to her as their protector, her alms were always accompanied with suitable admonitions and many hardened sinners have been brought through her influence to humble themselves at the foot of the cross."<sup>94</sup> As

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<sup>91</sup> Sarah Pierce, Fragment, in Vanderpoel, *supra* note 47, at 218-19. On "republican motherhood," see *supra* notes 86 and 88 and works cited therein.

<sup>92</sup> [Sarah Pierce], Dialogue Between Miss Trusty and Her Pupils, in Vanderpoel, *supra* note 47, at 213, 214-15.

<sup>93</sup> *Id.* at 214.

<sup>94</sup> *Id.* at 217.

Ruth Bloch has demonstrated, American society gradually shifted the primary responsibility for the production and maintenance of virtue onto women during the half-century following the Revolution.<sup>95</sup> Sarah Pierce intended to make sure that women were prepared to exercise this new responsibility.

Both the course of study and the pattern of life at the Litchfield Female Academy were designed specifically to prepare women for the demanding role of guardian of familial and communal virtue. In the classroom, the first priority was to ensure that women were provided the facts necessary to answer the questions of their young children in a manner calculated to increase their affection for God and country. Geography, rudimentary political theory, and especially history served this purpose. Grammar, writing, and public speaking were taught so that women might develop the skills necessary to persuade their fellow citizens to tread a righteous path. The women at Litchfield were encouraged to read the works of the great writers and thinkers of antiquity and to record particularly salient quotes in their commonplace books, with the explicit purpose of enabling them to converse with their husbands, thereby making their homes appealing and reducing the likelihood that their spouses would seek diversion through liquor or other vices.<sup>96</sup> Finally, philosophy and science were taught so that women could develop mental discipline and train their reasoning faculty to "nice discernment," skills vital for anyone saddled with the responsibility of inculcating a sense of right and wrong in the home and in the community.<sup>97</sup>

In the eyes of Sarah Pierce, training morally disciplined women was a process that transcended the classroom. The daily behavior of the students at the Litchfield Female Academy was carefully regulated through a system that is best described as a Christian disciplinary regime. Every young woman who registered at the school was required to copy, sign, and adhere to the official Academy rules, a set of proscribed and prescribed behaviors. This code committed the women to attend daily prayers, read scripture, keep the Sabbath, follow the golden rule, and obey their elders. On a more personal level, it made duty out of the character traits of industry, politeness, good humor, modesty, neatness, and economy. The students were expected

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<sup>95</sup> See generally Bloch, *supra* note 88.

<sup>96</sup> See Pierce, *A Friend to Temperance*, *supra* note 72, at 281. The diaries and commonplace books of the students at the Academy, as reprinted in Vanderpoel, reveal an eclectic reading list including such notable authors as Homer, Shakespeare, Cervantes, Milton, Byron, Burke, Bolingbroke, and Wollstonecraft. Lists of these authors are printed throughout Vanderpoel, *supra* note 47.

<sup>97</sup> Brace, *supra* note 76, at 304.

to police themselves by asking themselves dozens of specific questions prepared by Pierce to test their adherence to the Academy's moral code.<sup>98</sup>

While self-discipline was the linchpin of Litchfield's strategy for developing moral beings, the instructors did their part to goad their young pupils down the road to righteousness and responsibility. Unsurprisingly, some students chafed at the school's restrictions.<sup>99</sup> To get their young charges to conform, Pierce and her assistants developed a system of credits and debits to reward the virtuous and punish the lax. Students were rewarded "credit marks" for behavior, industry, and scholastic performance. A high score might win the recipient special privileges or an appointment as one of the Academy's "lieutenant[s]."<sup>100</sup> Equally as persuasive was Pierce's habit of reading each student's total number of credit marks and the reasons behind any deductions at school assemblies on Friday afternoons. This tactic was made especially effective by the presence of many students from the Law School at this "public telling of fault."<sup>101</sup>

In her efforts to prepare young women for lives as professional wives and mothers, Sarah Pierce did not neglect the social dimension of that role. Her pupils were instructed on everything from how to attract appropriate suitors to how to organize a stimulating social life for their families. Attempting to unite reformist zeal and romantic yearning, Pierce told one class that "Candor, Truth, Politeness, Industry, Patience, Charity, and Religion" were the characteristics most likely to "render [them] agreeable to [their] companions."<sup>102</sup> On a more earthly level, students were instructed in manners and social graces; *Addision on Taste* was one of the school's thirteen assigned texts.<sup>103</sup> Musical and artistic abilities and conversational skills were encouraged as means to earn social respect and provide engaging yet

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<sup>98</sup> The questions stretched from the profound ("Have you in all cases done unto others as you would be done by?") to the picayune ("Have you eaten any green fruit during the week?"). See Rules for the School and Family [copied by Elizabeth Ann Mulford in 1814], in Vanderpoel, *supra* note 47, at 146, 147; see also Sarah Kingsbury's Copy of the Rules of the Litchfield Academy (1821), in Vanderpoel, *supra* note 47, at 231 [hereinafter Kingsbury's Rules] (listing Academy's rules in similar but not identical terms).

<sup>99</sup> See Letter from Mary Chester to Edwin Chester (May 29, 1819), in Vanderpoel, *supra* note 47, at 190 [hereinafter Mary Chester's Letter] ("Every thing here is founded on system and as fix'd as the laws of the Medes and Persians. We must go to bed at such a time and get up at such a time; and [I] am accountable to my Instructors for almost every moment.").

<sup>100</sup> Eliza Ogden's Journal (1816-1818), in Vanderpoel, *supra* note 47, at 175 [hereinafter Eliza Ogden's Journal].

<sup>101</sup> On these practices, see, e.g., *id.*; Mary Chester's Letter, *supra* note 99, at 190; *Memoirs of Litchfield*, in Vanderpoel, *supra* note 47, at 331, 334.

<sup>102</sup> Eliza Ogden's Journal, *supra* note 100, at 167.

<sup>103</sup> See Kingsbury's Rules, *supra* note 98, at 233.



upright entertainment within the home. In the end, Sarah Pierce knew why families paid to send their daughters to her innovative academy: "To learn and make respectable hereafter."<sup>104</sup> In a society that believed that ignorance produces vice and education produces order, those two imperatives were inextricably linked.<sup>105</sup>

### C. *The Litchfield Law School*

#### 1. *Its History*

Of course, the desire of Connecticut's leading Federalist families to educate their children and insure their respectability was not limited to their daughters. While the forms of employment open to young men were considerably more diverse than those open to young women, even their opportunities were severely circumscribed in the early nineteenth century.<sup>106</sup> Surveying their career options in their late teens and early twenties, often upon graduation from America's leading colleges, many of the republic's richest, brightest, and most ambitious young men did what many of their modern counterparts do: They decided to study law. Sensing the rising demand for formal legal education and hoping to shape that education to conform to his highly developed social vision, one of Connecticut's leading lawyers opened and nurtured an unprecedentedly systematized and rigorous law school in the decades after the Revolution.

In 1774, Tapping Reeve,<sup>107</sup> a young attorney recently arrived in Litchfield, tutored his first law student, his brother-in-law, the future Vice-President Aaron Burr. The social prominence of Reeve's first pupil combined with his obvious abilities as a teacher to convince his new townsmen that the young lawyer, who had been practicing for less than two years, was a suitable tutor for aspiring attorneys. When two of the most talented members of Yale's history-making class of 1778,<sup>108</sup> Oliver Wolcott, Jr., and future Senator Uriah Tracy, moved to

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<sup>104</sup> Pierce, *A Friend to Temperance*, *supra* note 72, at 281.

<sup>105</sup> On the links between education and virtue in the American early republic, see Cott, *supra* note 84, at 123.

<sup>106</sup> See *supra* Part I.B.3.

<sup>107</sup> For a detailed discussion of Reeve's early life, a life marked by struggles against many of the same forces which would plague the next generation, see McKenna, *supra* note 5, especially chapters 2-4 (noting, among other salient facts, Reeve's father's alcoholism, decision to send Reeve to Princeton rather than Yale so he could board with relatives, and limited job opportunities available to Reeve after graduation despite academic success).

<sup>108</sup> In addition to Oliver Wolcott and Uriah Tracy, the class of 1778 included poet Joel Barlow, dictionary maker and Federalist intellectual Noah Webster, jurist Zephaniah Swift, and two of Connecticut's leading Jeffersonians, Abraham Bishop and Alexander Wolcott. See 4 Franklin Bowditch Dexter, *Biographical Sketches of the Graduates of Yale College* (July, 1778 - June, 1792), at 2-3 (1907).

Litchfield to study under Reeve, his reputation spread throughout the state. By 1782, Reeve had organized his legal material and was delivering detailed lectures to the young men congregating around his office. In order to provide peace and quiet to his ailing wife, Reeve built himself a crude, freestanding schoolhouse in 1784.<sup>109</sup>

Though historians tend to date the opening of the Litchfield Law School to the construction of this separate structure,<sup>110</sup> Reeve's transition from mentor to professor was actually a gradual process. Every characteristic that would qualify Reeve's tutoring system as a formal school—the growth of its student body, the formalization of its curriculum, the development of a library, the adoption of record-keeping procedures to further institutional memory, and the proliferation of organized preprofessional activities—emerged slowly over the last two decades of the eighteenth century.<sup>111</sup> Though records are scarce, the best estimates suggest that Reeve averaged between ten and fifteen students per year during the 1780s and 1790s, a sharp contrast to the forty or fifty who filled the school at its peak during the 1810s and early 1820s.<sup>112</sup> While Judge Reeve was clearly undertaking an unprecedented endeavor, the nature and structure of the institution was not firmly established until the early years of the nineteenth century; the Litchfield Law School remained a work in progress.

In 1797, Tapping Reeve's life was transformed by tragedy. After years of lingering illness, his wife, Sally Burr Reeve, died at the age of forty-three. A grief-stricken Reeve was ready to throw himself into full-time teaching when a vacancy occurred on the Superior Court, Connecticut's highest court.<sup>113</sup> Reeve was offered the seat and, de-

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<sup>109</sup> See McKenna, *supra* note 5, at 53-56, 60-62.

<sup>110</sup> See, e.g., Stevens, *supra* note 9, at 413 (stating that Law School was "formally established in 1784"); cf. Reed, *supra* note 9, at 129 n.3 (noting that "1784 is the date usually assigned as the foundation of the Litchfield law school" but also observing that "[d]oubtless it was never born—it simply grew").

<sup>111</sup> See generally McKenna, *supra* note 5, at 54-119.

<sup>112</sup> See Fisher, *supra* note 5, at 2-3 (noting creation of school register in 1798 and walking reader through available figures); see also McKenna, *supra* note 5, at 151 (providing year-by-year totals for period after 1798). The annual estimates for the early period are this author's best guess, fully consistent with both the surviving literary evidence and contemporary estimates of the total number of students who received legal training from Reeve before he instituted formal recordkeeping in 1798. See Fisher, *supra* note 5, at 2.

<sup>113</sup> Reeve's appointment to the bench was the culmination of a rapid two-decade ascent to civic and political prominence. His many honors and offices included appointments to a statewide Revolutionary committee in 1776, as a lay leader of the Congregational Church in the first years of the 1780s, as a Justice of the Peace in 1783, and as State's Attorney for Litchfield County in 1788. See McKenna, *supra* note 5, at chapter 3. Reeve's career in electoral politics was cut short by his decision to decline election to the Council in 1792, a decision due in equal parts to Sally's illness and the Law School's rapid expansion. See *id.* at 53-54.

spite some reluctance, accepted the post. The new judge immediately closed his practice and began searching for a partner to assist him in managing the Law School. He rapidly settled on James Gould, a brilliant young lawyer who had graduated first in his class at Yale in 1791 and who had impressed Reeve during his tenure as a student at the Law School during 1795. Gould, the son of a prominent doctor in a distant portion of Connecticut, had remained in Litchfield to court the eldest daughter of Senator Uriah Tracy. His appointment as Reeve's partner and his marriage to Sally Tracy elevated Gould to Litchfield's social elite at the precocious age of twenty-seven.<sup>114</sup>

Bringing Gould into his school as a partner was a stroke of genius for Reeve.<sup>115</sup> The two men possessed felicitously complementary personalities and intellects. Reeve, for all of his brilliance, was a man ruled by his heart.<sup>116</sup> Whether lecturing on the law, debating politics or religion, or corresponding with his wives, Reeve wrote and spoke passionately. His rapport with children was legendary. He was an empathetic man, taking the problems of others to heart and arguing their causes in the courtroom with an "ardor"<sup>117</sup> unmatched by any of his contemporaries. Driven from one thought to the next by his rapid mind and intense emotions, Reeve was a "huddle of ideas,"<sup>118</sup> often one step ahead of his audience or his own tongue. He rarely finished a sentence in the courtroom and butchered the grammar of his speeches when delivering them. A serious throat problem reduced him to a hoarse whisper in the 1790s. Reeve was a "beloved"<sup>119</sup> town eccentric, a ruddy-faced and "portly"<sup>120</sup> absent-minded professor who would routinely misplace important legal papers and was known to wander down Main Street obliviously holding the bridle of a horse that had broken free blocks before. No doubt Reeve's reputation as an eccentric was enhanced by his decision to marry his housekeeper in the aftermath of Sally's death.<sup>121</sup>

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<sup>114</sup> See *id.* at 89-98 (narrating these events).

<sup>115</sup> Personally the two would eventually fall out. See *infra* text accompanying note 206.

<sup>116</sup> For first-hand descriptions of Reeve (from which the following account is primarily drawn), see Mansfield, *supra* note 46, at 126-27; David S. Boardman, *Sketches of the Early Lights of the Litchfield Bar* (1860), reprinted in Kilbourn, *supra* note 49, at 42-45; and 1 *Autobiography of Lyman Beecher*, *supra* note 24, at 162-63 (providing recollections of Catherine Beecher); see also Morris W. Seymour, *Address of Hon. Morris W. Seymour* (1911), in *Presentation of the Reeve Law School Building to the Litchfield Historical Society* 14, 18-21 (1911) (presenting second-hand his father's observations on Reeve).

<sup>117</sup> Boardman, *supra* note 116, at 43.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 42.

<sup>120</sup> 1 *Autobiography of Lyman Beecher*, *supra* note 24, at 162.

<sup>121</sup> See *id.* (recounting Catherine Beecher's impressions of Betsey Reeve); McKenna, *supra* note 5, at 92 (noting marriage).

While Reeve brought spirit and purpose to the school, James Gould<sup>122</sup> provided refinement and mental discipline.<sup>123</sup> Gould was an exceedingly “polished”<sup>124</sup> individual of strikingly good looks. His fair complexion, flowing hair, and remarkable dark eyes made him the center of attention every time he entered a room. His “maturity of intellect, . . . self-possession, . . . [and] command of his thoughts”<sup>125</sup> contributed to his senatorial bearing. Gould’s mind was subtle and discriminating; in court, his approach was “philosophical”<sup>126</sup> and his arguments were brief. Gould’s ability to identify the central legal issues of a case in a matter of seconds was universally acknowledged; his stubborn refusal to argue tangential issues, often to the detriment of his clients, was equally apparent. Gould exceeded the accomplished Reeve in scholarly achievement, transforming himself into a walking encyclopedia on the common law. Students considered his lectures “more methodical and perspicacious than the Judge[’s].”<sup>127</sup> Gould was Litchfield’s unofficial arbiter of historical and grammatical issues; to a young Catherine Beecher, “his word was law.”<sup>128</sup> Commenting simultaneously on his looks, his bearing, his achievements, and his area of expertise, one observer dubbed Gould “the last of the Romans.”<sup>129</sup>

## 2. *A Day in the Life*

To understand the cultural project that was the Litchfield Law School, one must examine both the intellectual and social worlds in which its students lived.<sup>130</sup> The transition from an apprentice system of legal training to a formal scholastic program was marked by the emergence of a rigid and routinized academic schedule (a recalibra-

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<sup>122</sup> For descriptions of Gould (from which the following accounts are primarily drawn), see Mansfield, *supra* note 46, at 123; Boardman, *supra* note 116, at 59-60; 1 *Autobiography of Lyman Beecher*, *supra* note 24, at 163-64; Seymour, *supra* note 116, at 21-23; and Letter from Ebenezer Baldwin to Simeon Baldwin (Mar. 23, 1810), in Baldwin Family Papers. Despite relying on the same primary sources, McKenna portrays Gould in a different and less flattering way; perhaps her obvious affinity for Reeve predisposed her towards antipathy for his historical rival. See McKenna, *supra* note 5, at 93-106.

<sup>123</sup> See Letter from Ebenezer Baldwin to Simeon Baldwin, *supra* note 122.

<sup>124</sup> Seymour, *supra* note 116, at 22 (quoting Catherine Beecher).

<sup>125</sup> Boardman, *supra* note 116, at 59.

<sup>126</sup> McKenna, *supra* note 5, at 100 (quoting G. H. Hollister); Seymour, *supra* note 116, at 21 (same).

<sup>127</sup> Letter from Ebenezer Baldwin to Simeon Baldwin, *supra* note 122.

<sup>128</sup> 1 *Autobiography of Lyman Beecher*, *supra* note 24, at 163.

<sup>129</sup> White, *supra* note 43, at 105.

<sup>130</sup> The following paragraphs are meant to portray life in Litchfield during the first quarter of the nineteenth century, during the Law School’s “golden age.” This account is mainly based on sources from that period, but draws intermittently on earlier and later sources where appropriate.

tion of life according to the dictates of the clock that would serve Litchfield's graduates well in the emerging market economy of nineteenth century America).

The morning lecture was the focal point of the academic day. Five or six mornings a week, students would gather in the school building at exactly nine o'clock to hear ninety minutes of lecturing from either Reeve or Gould. The lecturers would expound upon a predetermined topic, picking up where they had left off the previous day. The law was presented as an orderly science revolving around a series of crucial principles. Students were expected to record precisely these principles and the cases or authors that provided authoritative support for these precepts. Gould and, in particular, Reeve would offer illuminating illustrations, examples, and digressions, though only the most zealous students took these down in their notes. The lectures progressed sequentially through a series of topics or "titles." A full set of lectures was delivered over a fourteen to eighteen month period, interrupted by two month-long vacations every year. The teachers preferred that students enroll at the beginning of the cycle and follow it through to its conclusion. However, the world of the early nineteenth century was not yet attuned to the academic calendar; law students came into town at all times of the year and began attending the lectures immediately. The fee schedule reflected this reality; students were charged \$100 for their first year of attendance and \$60 for their second.<sup>131</sup>

The law student's scholastic day was far from done when the lecture ended. The students were expected to remain in the school build-

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<sup>131</sup> On daily life at the Law School, see Fisher, *supra* note 5, at 1-3; Mansfield, *supra* note 46, at 126-29; McKenna, *supra* note 5; Warren, *supra* note 2, at 360-61 (quoting extensively from school's catalogue); and the letters of Roger Sherman Baldwin to Ebenezer Baldwin (November 1812-March 1813), in Baldwin Family Papers.

One hundred dollars seems to have been a considerable but not outlandish sum. Note that the average annual salary for a tutor, the occupation which many of the law students held before attending Litchfield, was somewhere between \$300 and \$500. However, room and board at Litchfield ran as much as \$250 per year. See, e.g., McKenna, *supra* note 5, at 139-40 (citing letter detailing expenses of law student). Since the majority of the cost of attending Litchfield was room and board, historians, comparing dissimilar educational alternatives and differently estimating the percentage of such expenses that would have been expended even if the student had not matriculated, have come to startlingly different conclusions as to the relative cost of a Litchfield education. Compare McKenna, *supra* note 5, at 139-40 & 140 n.6 (comparing cost of Litchfield to those of other educational programs and concluding that Litchfield was "reasonably inexpensive"), with Craig Evan Klafter, *The Influence of Vocational Law Schools on the Origins of American Legal Thought, 1779-1829*, 37 *Am. J. Legal Hist.* 307, 324-25 (1993) (comparing cost of Litchfield to other vocational law schools and to clerkships and concluding that "[t]he high cost of going to proprietary law school meant that . . . only the sons of the wealthier members of society could afford to attend").

ing after the lecture and make use of Litchfield's extensive law library. They would spend the next hour or two looking up the authorities to which the lecture had referred, in order to sharpen their citations and clarify the crucial issues.<sup>132</sup> Though no sources say so explicitly, it is likely that the students used this required but unsupervised time to discuss and debate these legal principles among themselves and to develop social bonds. Students were expected to work on their legal studies during the three or four hours after lunch. The available evidence suggests that they did so in three different ways. Some students chased down Reeve and Gould to ask them questions about the morning's lecture or about their reading. Others immersed themselves in law books, either borrowed from the school's library or purchased at an exorbitant cost.<sup>133</sup>

On any given afternoon, however, the majority of students were probably at work copying the morning's lecture into the bound folio volumes around which their legal practice would revolve.<sup>134</sup> In the decades before the publication of Chancellor Kent's commentaries,<sup>135</sup> no complete scholarly assessment of the legal system of the nation, or of any of its states, existed. Young men and their families knew that a lawyer who emerged from his legal training with a systematic guide to the science and practice of law had a major advantage over his competitors; acquisition of such a guide was one of the primary reasons aspiring lawyers chose to study at the Litchfield Law School.<sup>136</sup>

On Saturdays, informal exams replaced the lectures.<sup>137</sup> Since neither grades nor diplomas were offered, neither Reeve nor Gould saw the need for any formal assessment of the students' performance. However, as leaders of the community, the bar, and the Federalist Party, the Judges<sup>138</sup> were always on the lookout for talented young men. Students understood that impressing their mentors was the fastest route to power and prosperity. That dynamic combined with com-

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<sup>132</sup> McKenna, *supra* note 5, discusses the authorities cited by Reeve and Gould and the books available in the school's library in depth in chapters 4 and 6.

<sup>133</sup> For example, the most widely sought legal book of the era was, of course, Blackstone's *Commentaries*. To purchase a copy in 1813 would have cost the considerable sum of \$12. See Letter from Jeremiah Evarts to Simeon Baldwin (Sept. 27, 1813), in Baldwin Family Papers.

<sup>134</sup> On the ways in which Litchfield students continued their studies in the afternoons, see, e.g., Warren, *supra* note 2, at 360-61 (quoting Law School's catalog).

<sup>135</sup> James Kent, *Commentaries on American Law* (1826).

<sup>136</sup> Gould reacted angrily when, during the 1820s, it came to his attention that students were selling their lecture notes. See McKenna, *supra* note 5, at 171.

<sup>137</sup> For details on these aspects of daily life at the Law School, see works cited *supra* note 131.

<sup>138</sup> Gould joined the Connecticut Superior Court in 1816, two years after Reeve's retirement from that court.

munal pressure and more personal motivating factors to insure a charged, if collegial, atmosphere during these examinations. Students received a further opportunity to impress their teachers during moot court exercises, held once a week, usually on Thursday evenings or Friday afternoons. While moot courts were a fixture at England's Inns of Court, they made their American debut at the Litchfield Law School. These exercises appear to have been optional under Reeve's tutelage, but to have become a required part of the curriculum sometime after Gould joined the faculty. A law student would receive a topic several days in advance, retreat to his room for frantic preparation, and deliver a prepared statement before one of his instructors. After asking several questions, the "judge" would deliver the opinion of the "court" and then critique the student's performance.<sup>139</sup> In later years, Gould added one further formal event to the school's calendar: an optional lecture on the criminal law for those who intended to make criminal litigation an important part of their practices.<sup>140</sup>

The unmatched professional training offered by the Litchfield Law School was, no doubt, a significant factor in luring young men to the institution. However, the appeal of Litchfield transcended its formal course of study. The town's intense social environment offered the children of the young nation's elite unmatched opportunities to meet, mingle, and form lasting attachments. The social world of Litchfield provided further opportunities for bonding. Students boarded in the homes of Litchfield residents, often living with the most socially prominent. A few families adopted a solitary student, but most boarded a substantial group. The great majority of Litchfield Law students lived and worked in constant contact with their classmates. They engaged in a full spectrum of stereotypically male behavior: hiking and riding in the nearby hills, loudly debating politics in semiformal debating societies, and drunkenly carousing around town;<sup>141</sup> "often the midnight air resounded with the songs of midnight rioters."<sup>142</sup>

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<sup>139</sup> For a particularly thorough exploration of the Litchfield moot court and an intriguing example of how to integrate the history of legal education into the history of legal doctrine, see Donald F. Melhorn, Jr., *A Moot Court Exercise: Debating Judicial Review Prior to Marbury v. Madison*, 12 Const. Comment. 327 (1995) (describing debate at Litchfield moot court over issue of judicial review). On the moot courts, see also McKenna, *supra* note 5, at 170, 181-82; White, *supra* note 43, at 108; Letter from Roger Sherman Baldwin to Simeon Baldwin (Jan. 24, 1813), in Baldwin Family Papers (praising "Moot-hall" as place "to explore 'the mysterious labyrinths of the law'").

<sup>140</sup> See McKenna, *supra* note 5, at 171 (quoting letter from student mentioning criminal law lecture).

<sup>141</sup> On living arrangements and social life in Litchfield, see generally, Mansfield, *supra* note 46, at 128-36; White, *supra* note 43, at 98-127; McKenna, *supra* note 5, at 70-80.

<sup>142</sup> Mansfield, *supra* note 46, at 135-36.

The social life of the law students was inextricably linked with that of the students at the Female Academy. The female students also boarded with the people of Litchfield, though a sizable contingent lived with Pierce. Many of the law students boarded in homes that also housed their female counterparts; all lived within a few houses of substantial numbers of young women. The late afternoon and early evening were reserved for social interaction between the sexes. During the four and five o'clock hours, the streets were filled with young people, taking their daily strolls and stopping every few paces to chat and flirt. After dark, the scene of interaction shifted to the drawing rooms of the town's leading citizens, where mixed groups exchanged news, gossiped, and entertained each other until the women's nine o'clock curfew.<sup>143</sup> On the Sabbath, young people filled the back pews of Lyman Beecher's Congregationalist Church, socializing so extensively that the preacher occasionally stopped the services to admonish the wayward youth.<sup>144</sup>

Formal social events were a regular part of a student's calendar. Miss Pierce held monthly coed dances; the law students reciprocated with lavish balls.<sup>145</sup> The students at the two schools wrote and produced plays, to which they always invited their counterparts.<sup>146</sup> Sleigh rides were a highlight of the winter season; bowling and boating filled the summer months.<sup>147</sup>

Romance and courtship between the students at the two schools was a natural outgrowth of Litchfield's intensely social atmosphere. To a young Catherine Beecher, it seemed as if "romances . . . abounded on every side."<sup>148</sup> The young men and women strolling through the town and conversing in the parlors made much of their opportunities to develop "mutual attachments."<sup>149</sup> One particularly shy law student described the experience of attending one of the balls as being subjected to a "whole artillery of [female] beauty";<sup>150</sup> one of

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<sup>143</sup> On the social interaction of law students and students at the Female Academy, see works cited *supra* note 141; see also Vanderpoel, *supra* note 47 (offering full volume of primary and secondary material detailing life of women at Academy, replete with discussions of interaction with law students).

<sup>144</sup> See Vanderpoel, *supra* note 47, at 149 (recounting former student's memories of life at Litchfield Academy, including Beecher's admonitions).

<sup>145</sup> One ball, held in 1798, cost the extraordinary sum of \$160, equivalent to two years tuition at the Law School. See *id.* at 35.

<sup>146</sup> See *id.* at 34 (describing social life at Academy, including dances and balls).

<sup>147</sup> See White, *supra* note 43, at 118-27 (describing amusements and social activities of law students and Academy attendees).

<sup>148</sup> Vanderpoel, *supra* note 47, at 180 (quoting Beecher).

<sup>149</sup> *Id.*

<sup>150</sup> Letter from Roger Sherman Baldwin to Ebenezer Baldwin (Nov. 25, 1812), in Baldwin Family Papers.



his more forward colleagues rhapsodized about "being swallowed at the kissing bout" and being "kissed to death."<sup>151</sup> Some of the law students, particularly the scions of wealthy Southern families, were accused of being "wild" or "fast," but, for the most part, romance in Litchfield was part of the process of courtship.<sup>152</sup> The students at the Litchfield Law School and the Litchfield Female Academy were simultaneously approaching their society's ideal age for marriage and accumulating the training necessary to assume their adult roles; marriage was on their minds. Though the absence of records makes precise quantification impossible, literally hundreds of graduates of the Law School married their counterparts at the Female Academy.<sup>153</sup>

Litchfield's vibrant social atmosphere and the marriage nexus between the two schools was actively encouraged by both the town's leading figures and the students' families. During the uncertain early years of the nineteenth century, the choice of marriage partners took on immense importance for Connecticut's conservative elite. The strategy of training their daughters as republican mothers and guardians of domestic virtue and preparing their sons to be sound thinkers and prosperous attorneys would only bear cultural fruit if the younger generation chose to form appropriate unions. To this end, Litchfield was turned into a veritable marriage market.<sup>154</sup> The town was filled with young men and women from "the first families in all parts of the Union."<sup>155</sup> Students were given relative freedom to meet, interact, and court, without the moment to moment supervision of their elders. However, community coercion and disciplinary pressure were bought to bear on young people who were courting unsuitable partners and on couples who exceeded the norms of decorum. In an era in which many young people moved to cities and participated in a "self-guided transition to marriage,"<sup>156</sup> Litchfield offered a more circumscribed path to the altar.

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<sup>151</sup> George Cutler's Diary, excerpted in Vanderpoel, *supra* note 47, at 192, 207.

<sup>152</sup> See Mansfield, *supra* note 46, at 135, 136.

<sup>153</sup> Fisher, *supra* note 5, notes whether or not a law student's future wife attended "Miss Pierce's" school in the entries in his catalogue, provided the information was available to him. That work is the best starting point for a systematic study of marriages between graduates of the two schools.

<sup>154</sup> See, e.g., Charles Burr Todd, *In Olde Connecticut* 190 (1906) (characterizing marital bonds formed in Litchfield somewhat hyperbolically as result of schemes of "marriageable maidens and managing mammas" to meet "the most eligible young men of the country"). Todd notes that the two schools were so close together, separated only by a backyard, that the goings-on in one school could be perceived through a window at the other. See *id.*

<sup>155</sup> 1 *Autobiography of Lyman Beecher*, *supra* note 24, at 394.

<sup>156</sup> Ellen Rothman, *Hands and Hearts: A History of Courtship in America* 54 (1984). See generally *id.* at 17-84 (describing courtship practices during period 1770-1830).

Litchfield's leaders did not limit their involvement in the marriage process to the setting of limits, but rather played an active role in making suitable matches. In order to prevent her younger pupils from making rash and unfortunate decisions, Pierce prohibited her students under the age of sixteen from attending public balls and sleighrides.<sup>157</sup> Once a student was sixteen, however, Pierce encouraged her to interact with the most eligible young men in town. Pierce controlled the guest lists to the Academy's balls and was willing to withhold invitations from those who had reputations for drunkenness, dishonesty, or forwardness. At the beginning of every semester, Pierce and Reeve exchanged lists of the "eligible" students under their respective tutelage.<sup>158</sup> By the later years of the school, this matchmaking process had become considerably more explicit. Even discounting his sentiments as the wishful thinking of a single young man, the comments of one law student, boarding with Judge Reeve's widow in 1830, are instructive:

I understand from Mrs. Reeve that all the marriageable young ladies have been married off, and that there is at present nothing but young fry in town, consequently that it will not be as gay as usual. The young ladies, she tells me, all marry law students, but as it will take two or three years for the young crop to become fit for the harvest, you need apprehend no danger of my throwing up my bachelorship.<sup>159</sup>

The expectation that the law students would find wives while in Litchfield was so strong that at least one family mocked their son who spent all his time "shut up in that Chamber poring over [his] Books" rather than participating in the "harvest."<sup>160</sup>

### III

#### THE LAW SCHOOL IN CONTEXT

##### A. *An Ideological Vision*

The Law School's contribution to the restoration of an ordered world and the preservation of the status of Yankee elites was ideological as well as instrumental. That the school was a law school was not an accident. The law, as an institution, had a central place in the Federalist social vision; it was through law that the Federalists hoped to inculcate and protect their core social values: order, hierarchy, and

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<sup>157</sup> See Vanderpoel, *supra* note 47, at 32 (quoting Miss Pierce's rules for school in 1825).

<sup>158</sup> See White, *supra* note 43, at 122 (noting Pierce provided "eligible" lists of students).

<sup>159</sup> Anonymous letter (Oct. 28, 1830), in Kilbourn, *supra* note 49, at 188, 189; see also McKenna, *supra* note 5, at 74 n.28 (noting difficulty of identifying letter's author).

<sup>160</sup> Letter from Rebecca Baldwin to Roger Sherman Baldwin (Apr. 27, 1813), in Baldwin Family Papers.

benevolence. Both through their explicit teachings and the implicit message conveyed by the structure and scope of their lectures, Reeve and Gould utilized the podium their lectureships offered them to forward a Federalist conception of the proper role of law in society and the proper organization of society more generally.<sup>161</sup> In short, the same social vision which shaped the institutions of education and courtship in Litchfield suffused the content of that education.<sup>162</sup>

Tapping Reeve and James Gould taught their students that law was the cornerstone of the American republic, the fundamental guarantor of a free and just society. In the first lecture of his course, Reeve presented the law as an omnipresent structure whose purview extends "to every species of conduct."<sup>163</sup> A legal system was not an arbitrary collection of prohibitions and pronouncements, but "a system of ethics."<sup>164</sup> Without such a social code, "civil society can never exist."<sup>165</sup> As scholars from Morton Horwitz to John Murrin have argued, to extol the power and importance of the law in the early nineteenth century was a profoundly political gesture. According to this historical consensus, as the Jeffersonians claimed control of the executive and legislative branches of government, embattled Federalist elites sought new venues in which to agitate for their social vision and press their particularistic claims. The legal system, staffed primarily by Federalist holdovers and structurally receptive to the persuasion of

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<sup>161</sup> This Note's assertions about the legal philosophy of Tapping Reeve and James Gould are based primarily on an exhaustive reading of the notebooks of Aaron Burr Reeve, which Tapping Reeve used as a lecture guide during the 1810s and 1820s and in which Judge Reeve made extensive notes. See Aaron Burr Reeve, *Notebooks (1802-1803)*, Beinecke Library, Yale University [hereinafter Beinecke] [hereinafter A. B. Reeve Notes]. I have also drawn upon Judge Reeve's published treatise, *The Law of Baron and Femme, of Parent and Child, Guardian and Ward, Master and Servant, and of the Powers of Courts of Chancery; with an Essay on the Terms Heir, Heirs, Heirs of the Body* (Burlington, Chauncey Goodrich 2d ed. 1846) [hereinafter Reeve, *Baron and Femme*]. For the sake of thoroughness and to determine whether the content of the lectures changed significantly over the span of the school, I also consulted the notebooks of Roger Sherman Baldwin (1812-1813) [hereinafter Baldwin Notes] and Asa Potter (1826-1827) [hereinafter Potter Notes], both available at Beinecke; they will be cited only when they differ from those of A. B. Reeve in a significant way.

<sup>162</sup> McKenna disagrees, arguing that, "Although both [Reeve and Gould] were ardent Federalists, somehow the two managed to keep politics out of their law lectures." McKenna, *supra* note 5, at 130. While it is true that explicit discussions of contemporary public affairs were absent from their lectures, an exceedingly partisan social vision shaped the very structure of their teachings.

<sup>163</sup> 1 A. B. Reeve Notes, *supra* note 161, at "Of Law." (Citations to notebooks are to section title, rather than page number. This is to make particular quotations accessible to researchers utilizing one of the several dozen other students' notebooks available in libraries across the country; the text remains absurdly consistent across notebooks but the page numbers differ.)

<sup>164</sup> *Id.* at "Of Municipal Law: Construction of Customs."

<sup>165</sup> *Id.* at "Of Municipal Law."

the disproportionately well-educated Federalists, was an obvious target. By claiming an all-encompassing role for the law, Reeve was propagandizing for his party as well as for his profession.<sup>166</sup>

Still, the centrality of legal concepts in structuring a republican society was not in and of itself any guarantee that the professional legal community would wield the power to interpret and apply the law. As Robert Gordon has shown,<sup>167</sup> the assumption of such power by legal elites was contingent upon a subsidiary claim. According to this argument, the law was not only profoundly important but also mindnumbingly complex. While Jeffersonians argued that "ordinary intuition"<sup>168</sup> could derive a viable system of law from "customary morality,"<sup>169</sup> Federalist thinkers posited a sophisticated "legal science"<sup>170</sup> whose secrets could only be unlocked by a trained priesthood of judges, lawyers, and treatise writers.

Unsurprisingly, Tapping Reeve was one of the leading proponents of this "*these nobilaire*."<sup>171</sup> In his lectures and treatises, Reeve paints himself as a scientist endeavoring to uncover the "governing principles"<sup>172</sup> of the legal universe; his method is "historical deduction."<sup>173</sup> As he constantly reminded his students, the process is difficult and time consuming. On issue after issue, from the interpretation of legislative statutes to the distinction between real and personal property, students at the Litchfield Law School were told that legal matters are not easy to figure out or are "difficult" to understand.<sup>174</sup> When introducing the subject of evidence, Reeve solemnly warns,

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<sup>166</sup> See, e.g., Horwitz, *supra* note 4; John M. Murrin, *The Great Inversion, or Court Versus Country: A Comparison of the Revolution Settlements in England (1688-1721) and America (1776-1816)*, in *Three British Revolutions: 1641, 1688, 1776*, at 368, 427-28 (J. G. A. Pocock ed., 1980). See also the works cited by Murrin, *supra*, in his notes to those pages. Cf. Perry Miller, *The Life of the Mind in America: From the Revolution to the Civil War* 105-34 (1965) (describing legal literature produced by Story and Kent during this period as serving parallel partisan goals).

<sup>167</sup> See Robert W. Gordon, *Legal Thought and Legal Practice in the Age of American Enterprise, 1870-1920*, in *Professions and Professional Ideologies in America* 83 (Gerald L. Geison ed., 1983); see also Miller, *supra* note 166, at 167 (arguing that Story's and Kent's dedication to developing complex systematic common law treatises derived from desire to limit those able to decipher law to small privileged class); Langbein, *supra* note 1, at 566 (describing "titanic struggle" between those who advocated local, informal, and popular dispute resolution and those who saw law as too complex for such "folk" wisdom and battled for system of "learned law").

<sup>168</sup> Gordon, *supra* note 167, at 83.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 84.

<sup>171</sup> *Id.* at 83.

<sup>172</sup> Reeve, *Baron and Femme*, *supra* note 161, at 1.

<sup>173</sup> *Id.* at 13.

<sup>174</sup> 1 A. B. Reeve Notes, *supra* note 161, at "Of Municipal Law: Construction of Statutes"; *id.* at "Real Property."

"There is almost an infinite variety of questions made, relative to evidence, which cannot be treated of in any moderate length of time."<sup>175</sup> The ultimate uniformity and symmetry of the law are icons of faith for Judge Reeve; in his mind, it is his responsibility, and one day will be that of his students, to discern and delineate the order implicit in the chaotic legal universe. By so doing, they will claim a privileged place in the American polity.

Much as one would expect from Connecticut Federalists horrified by the French Revolution and fearful of the consequences of Jeffersonian democracy, the legal philosophy of Reeve and Gould emphasizes the values of reverence for the law and obedience to authority.<sup>176</sup> Their lectures portray the law as a "compulsory command" which is "prescribed by the supreme power in a State."<sup>177</sup> The particular laws of a given society are not the arbitrary determinations of a compact of people, but an expression of a "permanent, uniform and universal" code.<sup>178</sup> Reeve takes particular umbrage at the assertion that citizens are free to break the laws of their society if they are willing to pay the prescribed penalty, arguing that "there is a certain respect and obedience which we owe to the laws of our country which should bind us '*in foro conscientia*' [by force of conscience] never to transgress."<sup>179</sup> He similarly rejects the suggestion that time-tested precedents might be challenged simply because they fail to conform to an individual's or a generation's sense of reason. Particular precedents are "law[s] made of the law";<sup>180</sup> to disrespect precedent is to disrespect the law itself. The law's majesty even protects the temporary custodians of legal authority, making the slandering of one's title an actionable offense.<sup>181</sup>

The structure of the curriculum at the Litchfield Law School forwarded a conception of society as an organic entity organized around a series of reciprocal yet hierarchical relationships. After brief introductory remarks such as those quoted above,<sup>182</sup> Reeve and Gould began their course with a long series of lectures on the law of baron and femme, of parent and child, of guardian and ward, and of master and

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<sup>175</sup> Id. at "Evidence."

<sup>176</sup> These values also echo Reeve's and Gould's quasi-Calvinist religiosity. See *supra* Part II.A.

<sup>177</sup> 1 A. B. Reeve Notes, *supra* note 161, at "Of Municipal Law"; id. at "Of Law."

<sup>178</sup> Id. at "Of Municipal Law."

<sup>179</sup> Id. at "Public Wrongs."

<sup>180</sup> Id. at "Of Municipal Law" (annotations of Tapping Reeve).

<sup>181</sup> See id. at "Private Wrongs." Note that Reeve uses the Blackstonian terminology. By 1827, Gould was referring to "torts" rather than "private wrongs." See generally 3 Potter Notes, *supra* note 161, at "Pleadings."

<sup>182</sup> See *supra* notes 163-81 and accompanying text.

servant. This section on "the personal relations" was completed with a discussion of the responsibilities of executors, administrators, sheriffs, and innkeepers.<sup>183</sup> The emphasis in this section is on "duty," both the reciprocal duties which flow between the unequally situated participants in the first group of enumerated relationships and the public duties incumbent upon those who hold minor offices of legal trust.<sup>184</sup>

The preeminent position given to an examination of the laws pertaining to hierarchical relationships is problematic. From the outset, Reeve and Gould argue that the law accords different rights and responsibilities to individuals based on their gender, age, race, or employment status. Hence, one generation of adult white male professionals was implicitly teaching another generation of adult white male professionals that their privilege was the first principle of the legal system. The first lectures of the Litchfield course affirmed values which lay at the core of both the general Federalist sociopolitical vision and the more specific professional mandate of the Law School: duty, order, and, not the least, hierarchy.<sup>185</sup>

The lectures on the law of master and servant are charged with particular social significance. As Christopher Tomlins has ably illustrated, the homogenization of diverse English precedents into a generic law of master and servant during the first half of the nineteenth century was a precondition for the emergence of American industrial capitalism during the second half of that century.<sup>186</sup> Tomlins cites Reeve's treatises as one of the earliest sources of this tradition, imply-

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<sup>183</sup> 1 A. B. Reeve Notes, *supra* note 161, at "Baron and Femme," "Parent and Child," "Guardian and Ward," "Master and Servant," "Of Executors and Administrators," "Sheriffs," and "Inns and Innkeepers." This section of the curriculum was apparently Reeve's area of expertise. McKenna attributes all but the lecture on innkeepers to him, see McKenna, *supra* note 5, at 64; he published a treatise covering much the same ground as these lectures, see Reeve, *Baron and Femme*, *supra* note 161; and Gould cut their length once he took sole control of the school (though he did not, with the exception of "Sheriffs" and "Innkeepers," demote them from their place of prominence), see generally 1, 3 Potter Notes, *supra* note 161.

<sup>184</sup> 1 A. B. Reeve Notes, *supra* note 161, at "Baron and Femme," "Parent and Child," "Guardians and Wards," "Master and Servant," "Of Executors and Administrators," "Sheriffs," "Inns and Innkeepers."

<sup>185</sup> A skeptic might legitimately wonder whether these sections needed to be in the curriculum altogether. Most of the crucial points raised during these lectures are repeated in the sections treating more familiar legal subjects. See, e.g., the treatment of the law of baron and femme, in 3, 5, 6, 7 A. B. Reeve Notes, *supra* note 161, at "Contracts," "Devises," "Alienation by Deed," "Evidence," and "Public Wrongs."

Much of the organization of the lectures at Litchfield is actually borrowed from Blackstone. See Klafter, *supra* note 131, at 327 (noting that 13 of 27 lectures at Litchfield Law School borrowed their titles from Blackstone). However, the section on the personal relations receives significantly less attention from Blackstone than from Reeve.

<sup>186</sup> See Christopher L. Tomlins, *Law, Labor, and Ideology in the Early American Republic* 259-92 (1993).

ing that the Litchfield jurist was in some way attuned to the imperatives of impending industrialization.<sup>187</sup> Certainly, Reeve's evocation of a standard vocabulary of master and servant derived from and reinforced a hierarchical social vision. However, analysis of Reeve's lectures and writings on the topic suggests that the law of master and servant taught at Litchfield was a backward looking doctrine, aimed at regulating a preindustrial world of agriculture and commerce, not an opening wedge in the effort to remake the law to conform to the dictates of industrial capitalism.

The organization and content of Reeve's treatment of the law of master and servant reveal a great deal about the society for which Reeve believed he was training lawyers, and, consequently, about the cultural roots of American legal education. As was his wont, Reeve began his discussion of the topic with a categorical statement, defining a "master" as "one who, by law, has a right to a personal authority over another" and a "servant" as "such person over whom such authority may be rightfully exercised."<sup>188</sup> In his lectures, Reeve extended this definition to wives and minor children as well as employees,<sup>189</sup> a point that firmly roots his text in the household economy of preindustrial New England. Reeve breaks his holistic category down into six distinct groups: slaves,<sup>190</sup> apprentices, menial servants, day laborers, agents (including factors and attorneys), and debtors assigned in service. Significantly, Reeve makes a series of important distinctions between the different groups. For example, he reassures his

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<sup>187</sup> See *id.* at 263-64.

<sup>188</sup> Reeve, *Baron and Femme*, *supra* note 161, at 339; see also 1 A. B. Reeve Notes, *supra* note 161, at "Master and Servant" (offering similar albeit less elegant formulation); 1 Baldwin Notes, *supra* note 161, at "Master and Servant" (same).

<sup>189</sup> See 1 A. B. Reeve Notes, *supra* note 161, at "Master and Servant;" 1 Baldwin Notes, *supra* note 161, at "Master and Servant." But see Reeve, *Baron and Femme*, *supra* note 161, at 339 (omitting this point from published treatise). This author reads the omission of this aside from the much tighter prose of the treatise as an editing decision. However, one could also speculate either that Reeve's attitudes shifted in the early 1810s or that Reeve was more willing to make such claims in front of a group of adult men than in print.

<sup>190</sup> Reeve's treatment of slavery in his lectures and treatise is fascinating and complex; it provides an intriguing window into the attitudes of the conservative humanitarians who dominated New England politics in the early republic and gave birth to the leading abolitionists. In brief, Reeve argues that slavery is difficult if not impossible to justify and is not supportable by reference to natural law or the English common law, but must be accorded scholarly treatment as long as the requisite "local laws, or usages" are "sanctioned by Congress." 1 A. B. Reeve Notes, *supra* note 161, at "Master and Servant"; see also Reeve, *Baron and Femme*, *supra* note 161, at 339-41.

In his personal life, Reeve was an active opponent of slavery. He served as an attorney in the case that effectively put an end to slavery in Massachusetts and offered sanctuary and employment to runaway slaves. See, e.g., White, *supra* note 43, at 153 (referring to Reeve's defense and employment of runaway slaves); Boardman, *supra* note 116, at 44 (noting Reeve's participation in Massachusetts case).

students that agents and attorneys are “servants of a higher order” over whom the principal has no personal control.<sup>191</sup> Similarly, while a master possesses the same “right of correction” as a parent, day laborers and agents are exempt from such treatment.<sup>192</sup> The rights and duties of each of these employment categories is thoroughly laid out, with important differences highlighted.<sup>193</sup> The social world that Reeve simultaneously dissects and endorses is one in which a multiplicity of labor relations still exist. It is a world in which the patriarchal householder retains substantial power over his dependents and employees, but in which this power takes a variety of forms based on the societal role and social status of the “servant.” In describing the structure of labor relations, Reeve calls the law into service naturalizing hierarchical social relations, while simultaneously insisting that hierarchical relationships draw their legitimacy from the existence of an organic social order in which they are embedded.

Of all the areas of the law, Tapping Reeve took as his specialty the legal relationship between husband and wife, “the law of baron and femme.” When Reeve made the decision to publish his scholarship in 1816, he rejected offers to publish his entire course and expanded his lectures on baron and femme into a 220-page treatise.<sup>194</sup> That text, which was circulated throughout the nation and republished in several editions, secured Judge Reeve’s fame and reputation as a scholar.<sup>195</sup> However, the book’s contents caused an uproar; to the person, Reeve’s colleagues considered him to be ahead of the curve in his advocacy of married women’s property rights.<sup>196</sup> It is probably be-

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<sup>191</sup> 1 A. B. Reeve Notes, *supra* note 161, at “Master and Servant.”

<sup>192</sup> *Id.*

<sup>193</sup> See *id.*

<sup>194</sup> See Reeve, *Baron and Femme*, *supra* note 161.

<sup>195</sup> Judge Reeve’s treatise immediately became a staple of legal citations for courts of all levels across the entire nation and continued to be cited by appellate courts well into this century. See, e.g., *Lamar v. Micou*, 114 U.S. 218, 222 (1885) (citing Reeve in decision on whether ward assumes domicile of guardian); *Colt v. Colt*, 111 U.S. 566, 578 (1884) (citing Reeve in decision on whether judgment against minor is open to collateral attack when trustee for minor is also executor of estate and appeared in original litigation in both capacities); *Norton v. Meader*, 18 F. Cas. 420, 427 (C.C.N.D. Cal. 1866) (No. 10, 351) (citing Reeve in decision turning on property rights of married woman); *Plummer v. Webb*, 19 F. Cas. 894, 896 (D. Me. 1825) (No. 11, 234) (citing Reeve decade after publication in case determining rights of husband and father to sue in own name for battery on wife and child); *Wemple v. Wemple*, 212 N.W. 808, 810 (Minn. 1927) (quoting Reeve in case regarding validity of marriage obtained by fraud); *Cameron v. State*, 136 So. 418, 418 (Alaska Ct. App. 1931) (quoting Reeve in case reversing conviction for assault on stepchild in course of administering corporal punishment).

<sup>196</sup> See, e.g., *Mansfield*, *supra* note 46, at 127 (remembering that “the lawyers admired [Reeve’s treatise], but said [it] was not law, on account . . . of its leaning too much to women’s rights”).



cause of Reeve's unorthodox views that Gould offered a short lecture on "Husband and Wife" immediately after Reeve's lectures on "Baron and Femme," the only example of duplication in their course.<sup>197</sup> Generations later, when Reeve's reforms were the law of the land, his townspeople lauded him as "the first eminent lawyer in this country who dared to arraign the common law of England for its severity and refined cruelty in cutting off the natural rights of married women."<sup>198</sup>

While the case for Reeve's progressivism is persuasive, it is wise to remember that the assumption that married women were devoid of all rights under English law is now a matter of some dispute.<sup>199</sup> According to one school of thought, nineteenth-century American treatise writers played an important role in perpetuating a caricatured vision of married women's property rights under Anglo-American law.<sup>200</sup> That those who opposed reform did so is unsurprising; that a man like Reeve who supposedly "lean[ed] too much to women's rights"<sup>201</sup> did so is perplexing. Tapping Reeve was paradoxically both a leading advocate of married women's rights and an important popularizer of the historically suspect assertion that they had traditionally lacked such rights.

The key to unlocking this paradox lies in the authorial persona Reeve constructed. Throughout his treatise on "the domestic relations," Reeve consistently begins each section with either the statement of an absolute legal principle that mitigates against women's rights or the suggestion that the prevailing opinion in the legal community on a particular issue is in favor of a stringently inegalitarian reading of the law.<sup>202</sup> He then spends the bulk of the text uncovering numerous exceptions to such principles, arguing for more egalitarian readings of case law, and boldly challenging established interpretations on relatively minor issues such as a woman's ability to devise personal property<sup>203</sup> or her ownership of materials that her husband

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<sup>197</sup> See 1 A. B. Reeve Notes, *supra* note 161, at "Of Husband and Wife (from the Lectures of Mr. Gould)."

<sup>198</sup> Kilbourn, *supra* note 49, at 336; see also Vanderpoel, *supra* note 47, at 25 (introducing Reeve as person who "took the initiative in this country with regard to the legal standing of women, and was the first to advocate their having equal rights with men"); White, *supra* note 43, at 105 (quoting Charles Loring on Reeve's comments about women's rights).

<sup>199</sup> For a powerful early critique of the once-conventional wisdom, see Mary R. Beard, *Woman as a Force in History* 78-121 (1946).

<sup>200</sup> See *id.*

<sup>201</sup> Mansfield, *supra* note 46, at 127.

<sup>202</sup> For examples of categorical statements followed by numerous exceptions, see, e.g., Reeve, *Baron and Femme*, *supra* note 161, at 60-61, 98, 227.

<sup>203</sup> See *id.* at 137-38.

has "permitted" her to order and receive.<sup>204</sup> Without deviating from his scholarly tone, Reeve casts himself as a zealous and chivalric defender of women. Even when he chooses to defend a principle that seemingly treats women unfairly, Reeve phrases such support in terms of women's best interests; in such cases, a husband's rights are the direct consequence of his "duty . . . to provide necessities and protection to the wife."<sup>205</sup>

Like many of his Federalist colleagues, Tapping Reeve was a paternalist. His was a sincerely philanthropic mind which strove to ameliorate suffering and enhance liberty throughout his community. However, there was a catch. Reeve retained a colonial understanding of the nature of social and political power. In his Federalist mind, the well-educated, well-established male members of the community were the societal decisionmakers. While he wholeheartedly advocated efforts to improve the lot of other members of the community (such as married women), Reeve insisted that such improvements must stem from the benevolence of the elite. According to the paternalistic ideology Tapping Reeve inherited from his New England forebearers, exercised in his own life, and attempted to pass on to his students, it was this very benevolence that in the end validated elite authority. In the world of Jeffersonian democracy, it was little wonder that an embattled Judge Reeve loudly articulated categorical claims to authority and then ostentatiously waived portions of that power while putting the remainder to benevolent use. Such a course was but an exaggerated version of the gesture upon which the Yankee power structure had rested for generations.

### *B. Litchfield's Legacy*

Litchfield's "golden age" was destined to last for little more than a generation. An aging Tapping Reeve retired from the school in 1820, perhaps pushed out by his partner James Gould.<sup>206</sup> At first, the school's reputation and enrollment remained constant, but the size and quality of the student body began to decline after Judge Reeve's death in 1823. After 1827, no more than nineteen students could be found at the school at any one time.<sup>207</sup> The permanent defeat of Connecticut's Standing Order in the 1815-1818 elections,<sup>208</sup> rising sectional tensions which dissuaded Southerners from sending their

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<sup>204</sup> See *id.* at 91.

<sup>205</sup> 1 A. B. Reeve Notes, *supra* note 161, at "Baron and Femme"; see also Reeve, *Baron and Femme*, *supra* note 161, at 9, 42-43, 129-30 (utilizing such justification).

<sup>206</sup> See McKenna, *supra* note 5, at 160-65 (describing feud between Reeve and Gould).

<sup>207</sup> See *id.* at 151 (listing annual enrollment figures).

<sup>208</sup> See Purcell, *supra* note 20, at 332-72 (detailing Federalist defeat).

children north for legal training, and the publishing of thorough commentaries on the law all contributed to Litchfield's decline.<sup>209</sup>

However, no single factor was more important than the proliferation of law schools, particularly ones with university affiliations.<sup>210</sup> In regard to such schools, Litchfield may have been said to have sown the seeds of its own destruction, for Litchfield's methods were explicitly copied by its successor schools, and Litchfield graduates were disproportionately represented among the leading legal educators of the next generation.<sup>211</sup>

Yale Law School, in particular, owes its early history to Litchfield; the private school that Yale absorbed in the late 1820s was founded by a Litchfield graduate and several other friends of Judge Reeve and pupiled by Connecticut Federalists in an effort to get back at Gould for his perceived cruelty to Reeve.<sup>212</sup> By the time Gould became too ill to continue in 1833, the competition of Harvard and Yale, among others, had reduced the student body to six students.<sup>213</sup> After that year, the doors of the Litchfield Law School were permanently closed.<sup>214</sup>

However, the legacy of the school lived on. The graduates of the school continued to play an important role in the nation's civic life for most of the nineteenth century. Their numbers tell much of the story. At least 101 Litchfield graduates sat in the United States House of Representatives, while at least twenty-eight served in the Senate. As late as 1850, over thirty members of the U.S. House had either attended the Law School or married graduates of the Litchfield Female Academy.<sup>215</sup> Fourteen state governors and six members of the national cabinet owed their legal training to Reeve and Gould. In the legal sphere, thirty-four sat on state supreme courts, three earned places on the U.S. Supreme Court, and dozens more served as influential court reporters, lower court judges, and law professors. Many of

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<sup>209</sup> See, e.g., James Kent, *Commentaries on American Law* (1826); Joseph Story, *Commentaries on the Constitution of the United States* (1833); Zephaniah Swift, *A System of the Laws of the State of Connecticut* (1795).

<sup>210</sup> See *infra* Part III.C.

<sup>211</sup> Among them were Seth Perkins Staples, founder of the private law school eventually absorbed by Yale University, see Fisher, *supra* note 5, at 119; Samuel Howe, founder of a successful private law school in Northampton, Massachusetts, see *id.* at 65; Edward King, founder of Cincinnati Law School, see *id.* at 72; and Edward Greely Loring, lecturer at Harvard Law School from 1825-1855, see *id.* at 79.

<sup>212</sup> See McKenna, *supra* note 5, at 167-70 (describing links connecting, and competition between, Litchfield and school that would eventually become Yale Law School).

<sup>213</sup> See *id.* at 151 (providing enrollment figures).

<sup>214</sup> On Litchfield's decline, see generally *id.* at 147-76.

<sup>215</sup> See *id.* at 78-80 (relating experience of Origen Storrs Seymour upon arriving at Congress).

these men, such as Connecticut Chief Justice Origen Storrs Seymour and Tammany Grand Sachem Augustus Schell, served into the 1870s and 1880s. The great majority of Litchfield graduates remained wedded to the genteel political tradition which spawned the Federalist, Whig, and Republican<sup>216</sup> parties and the abolitionist movement; ironically, however, it was the unabashedly proslavery Democrat John Calhoun, a man whose mature political views were anathema to most of his fellow Litchfield alumni, who would come closest to putting a Litchfield man in the White House.<sup>217</sup>

Even these numbers do not do justice to Litchfield's influence. To begin with, these numbers do not take into account the influence of men such as the educator Horace Mann or the painter George Caitlin who played more unique roles in the history of nineteenth century America. Further, such laundry lists falsely imply that ideas and cultural attitudes can only be shaped through formal political or legal activity; the subtle but powerful influence which Litchfield graduates employed in the family, the community, and the marketplace must be taken into account when the school's legacy is measured. Most significantly, such surveys fail to measure achievement on the one axis that was probably paramount in the minds of the parents who sent their sons to Litchfield and of the young men themselves: personal prosperity and familial success. On these terms as well, Litchfield was a raging success.<sup>218</sup>

### C. *A Period of Experimentation*<sup>219</sup>

The first half-century of American independence saw a wild diversity of experiments in legal education. From the banks of the Charles River in Cambridge<sup>220</sup> to the edge of the frontier in Ken-

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<sup>216</sup> In this context, "Republican" refers to the Republican Party that was founded in the 1850s and propelled Abraham Lincoln to the White House in 1860.

<sup>217</sup> See Fisher, *supra* note 5, 2-4 (providing these biographical statistics). Among the most prominent graduates of the Law School were Vice Presidents John Calhoun and Aaron Burr, U.S. Supreme Court Justices Henry Baldwin, Levi Woodbury, and Ward Hunt, Treasury Secretary and reforming Connecticut Governor Oliver Wolcott, Jr., Secretary of State John Middleton Clayton, and the leading educator of the nineteenth century, Horace Mann. See *id.*

<sup>218</sup> See, e.g., Frederick H. Jackson, *Simeon Eben Baldwin* 3-35 (1955) (detailing immensely successful marital and familial life of Roger Sherman Baldwin and noting that he earned unprecedented legal fees of over \$10,000 per year).

<sup>219</sup> This author is currently at work on a doctoral dissertation on early American legal education which will further develop the themes tentatively explored in this Part.

<sup>220</sup> See Sutherland, *supra* note 4, at 43-91 (discussing Harvard's first experiment with legal education).

tucky,<sup>221</sup> from university campuses to urban countingrooms, dozens of individuals were busy drawing up plans for law programs, law courses, law professorships, and law schools. For every experiment that, however briefly, opened its doors to students, several never left the drawingboard. Of those that did reach fruition, the historical record is replete with well-pedigreed failures;<sup>222</sup> successes of any stripe are much harder to locate.

A case can be made that the Litchfield Law School was the only successful institution of legal education founded between 1780 and 1825;<sup>223</sup> by any measure, it was the most successful. While nominal factors, such as the quality of Reeve's teaching and the prominence of his early students, certainly played a role in the school's success, the prosperity that the Law School enjoyed was no accident. The cultural moment that inspired the Litchfield Law School ensured that legal education at Litchfield would have several distinctive characteristics: institutional independence, a professional (or postcollegiate) character, a national student body, a vocational focus, and an animating ethos that transcended the personal or the pecuniary. These characteristics should be familiar (at least in theory) to anyone attending a modern law school.

A short tour through Litchfield's legal pedagogical contemporaries can do little more than provide an overview of the alternative conceptions of legal education in the air in early national America. Among the earliest experiments in American legal education were a series of professorships established during the late eighteenth century and the first decade of the nineteenth at most of the young nation's leading colleges. President Ezra Stiles of Yale was the first to propose such a professorship in 1777; Yale did not fill its chair however until 1801, when Elizur Goodrich was appointed.<sup>224</sup> George Wythe, appointed to a chair of "Law and Police" at William and Mary in 1779, is

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<sup>221</sup> See Klafter, *supra* note 131, at 315-16 (discussing development of law school at Transylvania College in Lexington, Kentucky).

<sup>222</sup> See, e.g., Reed, *supra* note 9, at 121-22 (describing collapse of James Kent's lectures at Columbia and of James Wilson's at College of Philadelphia); Sutherland, *supra* note 4, at 29-30 (same); Warren, *supra* note 2, at 347-49 (describing initial success and ultimate failure of Wilson's lectures); Langbein, *supra* note 1, at 557-60 (describing Kent's failure to attract students).

<sup>223</sup> But see Benjamin F. Butler, Plan for the Organization of a Law Faculty, in the University of the City of New-York 6 n. (Law Center Foundation 1956) (1835) (lamenting death of Peter Van Schaak of Kinderhook and hinting at success of his private law school whose dates of existence are nearly identical to Litchfield's); McKenna, *supra* note 5, at 138-39 (discussing Van Schaak's school in glowing terms and counting him as Reeve's only peer as educator); Klafter, *supra* note 131, at 314-22 (portraying experiment at William and Mary and its progeny Transylvania as successful).

<sup>224</sup> See, e.g., Reed, *supra* note 9, at 136 (describing these events and explaining delay).

usually credited with being America's first law professor.<sup>225</sup> He was quickly joined, however, by, among others, David Howell at Brown in 1790, Samuel Smith at Princeton in 1795, Daniel Chipman at Middlebury in 1806, and an unfortunate soul whose name is lost to history at Dartmouth.<sup>226</sup> Each of these schools understood both key terms, "law" and "professorship," somewhat differently. Some of these "professors" taught extensively; others (such as Howell<sup>227</sup>) may never have given a lecture. The mandate of each of these men was considerably broader than the content of modern legal education, encompassing issues and texts today thought of as belonging to ethics or political philosophy. The one characteristic that all of these law professorships did share—and the one thing that most distinguished them from Litchfield—was that, with the possible exception of Wythe's, they were not intended to prepare lawyers. For these universities, education in the law was part of a general "cultural education," intended more to prepare citizens and politicians than to train attorneys.<sup>228</sup>

The best-known and yet perhaps the least successful of these professorships were those of James Wilson at the College of Philadelphia (now the University of Pennsylvania) and James Kent at Columbia. Their failures shed substantial light on Reeve's success. Wilson, then a sitting Supreme Court Justice, was appointed to his professorship in 1790 and announced his intention of providing three years of general lectures on substantive legal topics, intended to edify the general citizenry and, only secondarily, to supplement the learning of young men training for the legal profession. While his first lecture was a national occasion, with every important official from President Washington on down in attendance, Wilson, unlike Reeve, failed to develop a rapport with any audience, providing too much detail to interest the general public and too little information of practical utility for the aspiring lawyer; the lectures were discontinued during their second year.<sup>229</sup> A nearly identical fate befell an eager young Federalist professor at Columbia College, James Kent. His lectures, intended for the edification of a "Gentleman of Polite Education"<sup>230</sup> and thrown open to the public, were well-attended at first, but quickly lost

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<sup>225</sup> See, e.g., Stevens, *supra* note 9, at 414; Warren, *supra* note 2, at 343-44.

<sup>226</sup> See, e.g., Stevens, *supra* note 9, at 414 n.35 (listing these professorships); Reed, *supra* note 9, at 136-37 (describing same in more detail).

<sup>227</sup> See Reed, *supra* note 9, at 136 ("[A]lthough requested by the Corporation to prepare and deliver a course of lectures in 1799, and again in 1815, there is no record that [Howell] ever did so.").

<sup>228</sup> See, e.g., *id.* at 134-37 (characterizing these courses as "non-professional" and explaining how they fit into liberal arts curricula).

<sup>229</sup> On Wilson's experience, see *supra* note 222 and sources cited therein.

<sup>230</sup> Reed, *supra* note 9, at 121 (quoting Kent).

their audience; they too were discontinued for lack of interested students within a few years, though not before Kent earned sufficient professional admiration to galvanize one of the most prominent careers in American legal history.<sup>231</sup>

In Virginia and Kentucky, a similar but importantly distinct model of legal education developed. Wythe and his benefactor Thomas Jefferson strenuously believed that a proper education needed to include substantial legal study and that the proper place for such an education was in the undergraduate classroom.<sup>232</sup> However, they also saw the need for producing college graduates with enough practical sense to move quickly to leadership positions in the bar and the polity. The result was a program not altogether different than those described above, but incorporating more systematic coursework, a moot court, and a mock legislature, and potentially culminating in a bachelor's degree in law.<sup>233</sup> This movement towards a more practical legal education gained steam with the selection of Wythe's replacement, St. George Tucker, in 1789. A small but flourishing Kentucky school, Transylvania College, began a law course modeled on William and Mary's in 1789;<sup>234</sup> the University of Virginia did the same in 1826.<sup>235</sup> While the William and Mary model enjoyed some success, attendance was relatively small (a total of about ninety students attended William and Mary in the quarter-century before 1804)<sup>236</sup> and further study was required before even its few graduates (approximately thirty over the same period)<sup>237</sup> were ready to join the bar. In contrast, Litchfield's students moved directly from the classroom to the courtroom.

Other models for legal education also abounded during this period. Many students continued the colonial tradition of learning their law at the heels of a practicing attorney.<sup>238</sup> Curricula for self-taught

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<sup>231</sup> On Kent's experience, see *supra* note 222 and sources cited therein. Kent's later career would include time as Chief Justice of New York's highest court and as Chancellor of that State, authorship of the first systematic treatise on American law, and a second somewhat more successful stint as a law professor. See, e.g., Langbein, *supra* note 1, at 560-66.

<sup>232</sup> See, e.g., Warren, *supra* note 2, at 343-44 (noting Jefferson's role in Wythe's appointment).

<sup>233</sup> See Klafter, *supra* note 131, at 314-22 (discussing William and Mary's practical bent).

<sup>234</sup> See *id.* at 315.

<sup>235</sup> See John Ritchie, *The First Hundred Years: A Short History of the School of Law of the University of Virginia for the Period 1826-1926*, at 1-10 (1978) (narrating early history of school and noting influence of William and Mary).

<sup>236</sup> See Klafter, *supra* note 131, at 322.

<sup>237</sup> See *id.*

<sup>238</sup> See *id.* at 311-12 (relying upon early national sources when describing legal apprenticeship as institution); see also McKenna, *supra* note 5, at 9-17 (same).

courses circulated extensively.<sup>239</sup> Over a dozen proprietary law schools opened during this period, though the quality and formality of the teaching varied wildly.<sup>240</sup> In reality, Litchfield dwarfed the other private schools in importance, educating almost twice as many students as its dozen rivals combined.<sup>241</sup>

Harvard established a law professorship in 1815 in the same vein as those at other elite universities. However, the first incumbent of that chair, Issac Parker, sensed a need and an opportunity and convinced the University's overseers to establish a free-standing law school in 1817. The school had moderate success during the next decade, training just over 100 men (two-thirds of whom were college graduates), but the University's failure to dedicate sufficient resources to the school, Judge Parker's long absences to fulfill his judicial duties, and the lack of a born teacher such as Reeve doomed Harvard's first experiment in legal education; by 1829, enrollment was virtually nonexistent.<sup>242</sup>

Two other experiments deserve mention. In 1835, Attorney General Benjamin Butler proposed an ambitious plan for a new law school at the University of the City of New York (now New York University).<sup>243</sup> Butler's plan was the first to include many modern features of legal education: a three-year program, readings in preparation for lectures, and, most notably, the subject course.<sup>244</sup> Even more importantly, Butler's school was explicitly an adjunct to, rather than a replacement for, office training. Classes were held only in the late afternoon or evening and students were expected to work as law clerks for the bulk of the day;<sup>245</sup> the city's practitioners were the plan's biggest champions. The school was opened in 1838 and lasted but two

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<sup>239</sup> See, e.g., John Anthon, *A General Course of Preparatory Study for the Duties of the Bar* (New York, S. Gould 1810), microformed on *Nineteenth Century Legal Treatises* (Research Publications).

<sup>240</sup> See Reed, *supra* note 9, at 431-33 (identifying and describing private law schools operating during this period); Klafter, *supra* note 131, at 323 & n.83 (quantifying and listing "proprietary" schools).

<sup>241</sup> Compare Klafter, *supra* note 131, at 323 & n.83 (estimating that proprietary law schools, including Litchfield, educated approximately 1600 students during this period), with Fisher, *supra* note 5, at 2 (estimating that Litchfield educated over 1000 students during its existence).

<sup>242</sup> See Sutherland, *supra* note 4, at 41-93. For a discussion of Harvard's rebirth, see generally *id.*

<sup>243</sup> See Butler, *supra* note 223.

<sup>244</sup> See Julius J. Marke, *Introduction to Butler*, *supra* note 223, at v, x-xiii (discussing innovative aspects of Butler's plan).

<sup>245</sup> See Butler, *supra* note 223, at 29-30.



years in that incarnation.<sup>246</sup> The purely practical law school, functionally and spiritually auxiliary to the practicing bar, was stillborn.

David Hoffman was among the most famous legal educators of the early republic.<sup>247</sup> In 1812, a group of Baltimore educators and professionals announced their intention to build a state university made up of several distinct schools or faculties, among them a faculty of law. Hoffman, a successful attorney, was appointed to the law faculty and immediately set to work on a majesterial course of study, including both practical legal materials and general philosophical subjects.<sup>248</sup> The course was published to great fanfare in 1817,<sup>249</sup> including a glowing review by Joseph Story.<sup>250</sup> Legal historians are often amazed by the thoroughness, elegance, and perspicacity of his text; some have even seen in Hoffman's work a foreshadowing of the "sociological jurisprudence" of the late nineteenth and early twentieth centuries.<sup>251</sup> Two problems prevented Hoffman from developing an institutional instantiation of his vaunted course: a lack of institutional support which required Hoffman to wait until 1822 and invest substantial amounts of his own money before the law faculty would open,<sup>252</sup> and the sheer volume of the course, which would have required seven years to complete faithfully.<sup>253</sup> Hoffman published shorter versions of the course, but was personally incapable of synthesizing his material into a workable curriculum; three years of lectures got him less than a third of the way through the course.<sup>254</sup> In order to raise funds, Hoffman was also required to shift the focus of the course, first by allowing junior attorneys to become participants and then by developing extensive forensic activities to meet the needs of those (paying)

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<sup>246</sup> See, e.g., Reed, *supra* note 9, at 423 (listing dates of operation for New York University Law School as 1838-1839 and 1858-present).

<sup>247</sup> To pick one example among many of his import, he is the only American contemporary of Reeve's and Gould's whose lectures McKenna systematically compares with theirs. See McKenna, *supra* note 5, at 66-67.

<sup>248</sup> See, e.g., Reed, *supra* note 9, at 123-24 (describing these attempts to found University of Maryland, Hoffman's appointment, and preparation of his text).

<sup>249</sup> See David Hoffman, *A Course of Legal Study; Respectfully Addressed to the Students of Law in the United States* (Baltimore, Coale and Maxwell 1817), microformed on *Nineteenth Century Legal Treatises* (Research Publications).

<sup>250</sup> See Sutherland, *supra* note 4, at 56 (quoting Story's review calling Hoffman's work "by far the most perfect system for the study of the law which has ever been offered to the public").

<sup>251</sup> *Id.* at 55-56.

<sup>252</sup> See, e.g., Klafter, *supra* note 131, at 314 (focusing on "lack of institutional support" offered Hoffman).

<sup>253</sup> See Reed, *supra* note 9, at 124 (reporting Story's estimate that course would take seven years to complete).

<sup>254</sup> See *id.* (emphasizing Hoffman's inability to keep lectures on track).

attorneys.<sup>255</sup> The school lasted off-and-on for less than a decade; Hoffman attempted to found a private law school in Philadelphia in the 1840s but met with a similar fate.<sup>256</sup> For all his brilliance, David Hoffman ultimately constructed a law school with the characteristic defects of both the esoteric university professorship and the overly pragmatic Butler plan.

While the aforementioned educators struggled to instantiate their visions, one of their number succeeded unequivocally. The prerequisites for a successful institution of legal education came together for the first time in Litchfield in the period after 1780. As the experiments above indicate, the construction of an independent school (whether or not affiliated with a university) was a risky venture, yet it was a necessary step in order to prevent the law from becoming merely an adjunct to a general liberal arts education. Litchfield was one of the few locations in the young nation that possessed sufficient intellectual, cultural, and financial resources to support a quality law school yet did not already contain a college. Similarly, given early national elite culture's obsession with the ideal of the erudite gentleman, law schools that did not draw most of their students from the body of young men already possessing college degrees were required to devote substantial attention to repairing the educational "deficiencies" of their students. Litchfield was fortunate enough to have available a pool of college graduates confused as to their prospects and searching for professional opportunities.<sup>257</sup> Further, Tapping Reeve was smart enough to understand both that much of what is learned at law school is learned from fellow students and that lifelong bonds of immense personal and pecuniary value are formed during professional training; to that end, he recruited a student body of intellectual and social distinction from across the United States.

Ironically, however, it was the sheer scope of the crisis facing Litchfield which produced a workable model for modern legal education. If Connecticut's Federalist elite had been complacent about their economic prospects, they might have given in to the overwhelming desire of educated post-Revolutionary Americans and, like James Wilson<sup>258</sup> or a young James Kent,<sup>259</sup> conceptualized legal lectures as an opportunity to construct grand and potentially reputation-making

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<sup>255</sup> See *id.* at 124-25 (discussing said modifications).

<sup>256</sup> See *id.* at 125-26 (recounting formation and failure of private school).

<sup>257</sup> Fisher, *supra* note 5, was able to identify the colleges attended by approximately two-thirds of the 903 Litchfield students listed in his catalog, setting that as a baseline for college attendance.

<sup>258</sup> See *supra* note 229 and accompanying text.

<sup>259</sup> See *supra* notes 230-31 and accompanying text.

models of political and civil society. On the other hand, if Reeve and his colleagues had perceived the crisis of the Standing Order in purely economic terms, they might have joined Benjamin Butler<sup>260</sup> in developing a practice-oriented, quasiclinical legal education. What Tapping Reeve realized was that to make a law school worthy of the immense resource allocation—parental and communal, fiscal and intellectual—which such an endeavor demands requires both a commitment to producing trained professionals and a broader vision which explains the need for and the utility of placing disproportionate power in the hands of professional elites.<sup>261</sup> One does not need to agree with Reeve's social vision to acknowledge that he was the first legal educator to fulfill this dual imperative. With that success comes the somewhat arbitrary but nevertheless well-earned title of "founder of modern American legal education."

### CONCLUSION

This Note has explored in detail both the cultural context which produced the nation's first serious, large-scale law school, the Litchfield Law School, and the details of that institutional project. In so doing, this Note contributes to the ongoing project of restoring Litchfield to its rightful place of historical prominence. However, the conclusions to be drawn from such an exploration do not end there. The Litchfield Law School was an integral part of the multifaceted cultural campaign that represents the unwritten postpolitical chapter in the history of the Federalist Party. Only by locating the Litchfield Law School in a cultural context which includes political change, economic uncertainty, religious reform activity, and a broad new understanding of the ideal division of labor within the family can we begin to understand the impulses which gave birth to the first law school worthy of that name. In ways big and small, admirable and disturbing, we are still living with Tapping Reeve's legacy.

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<sup>260</sup> See *supra* notes 245-48 and accompanying text.

<sup>261</sup> Reeve's lesson was quickly absorbed. See, e.g., Joseph Story, *A Discourse Pronounced upon the Inauguration of the Author as Dane Professor of Law in Harvard University* 20 (Boston, Hilliard, Gray, Little, and Wilkins 1829), microformed on *Nineteenth Century Legal Treatises* (Research Publications) (explaining how "principal object" of this lecture and of course he will offer is to train those "who intend to make the law a profession for life" after providing 20 pages of normative justification for role of law and lawyers in society). But developments after Litchfield's hey-day are a story for another day and another project.