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The Early Years: 1869-1883

LIKE THE UNIVERSITY OF WHICH IT IS A PART, THE NOTRE Dame Law School of today had a humble and precarious beginning. Those who know the history of the university stand ever in awe before the bold venture of her founder, the Reverend Edward Sorin, and never cease to marvel that he and his collaborators, Brothers of the Congregation of the Holy Cross, were able to get underway a school, however nondescript, in primeval forest within two years of their setting foot on what today is the Notre Dame campus. But the energy of Sorin seems to have been unlimited, his faith deep, his

thoughts big, his vision broad. Two years after the laying of the cornerstone of the first college building, now Old College, he obtained from the Legislature of the State of Indiana a charter in which his embryonic school bears the proud name of University of Notre Dame du Lac.

In view of this we are not unduly astonished when in the earliest extant printed catalogue Sorin expresses his intention of founding a Department of Law.¹ This was in 1854, and four years later courses in constitutional law were announced.² Ten years later, on October 5, 1868, the board of trustees decided on the establishment of a law department, and on February 1, 1869, the first law class was taught.³ The establishment of the law department was "due to the perseverance and energy which have characterized the long and popular administration of Father Corby."⁴ Two years earlier, on January 22, 1867, Timothy E. Howard, who for many years was to be a prominent member of the law faculty, wrote a letter to Father Sorin in which, after stating his qualifications for passing judgment, says that "as a college, Notre Dame is not successful." In his opinion, it was at best a prosperous high school.⁵ If this evaluation is correct, we might conclude that the establishment of a law department was not only a bold undertaking, but even that it smacked of pretentiousness. This would be true were it not for the fact that in 1869 not even a high school diploma was required for entering upon the study of law for degree in most American law schools.

The first head, or principal, as he was called, of the law department was Professor M. P. Colovin. He dis-

appears at the end of one year, and nothing is known of him except that he was the brother of the Reverend Patrick Colovin, fifth president of the university (1874–77). He was replaced by Professor Peter Foote, who is also on the university records for only one year. The only episode history seems to have recorded of him was his taking a few law students to Niles, Michigan, some ten miles distant, for a mild evening on the town at which “nothing was found wanting to satisfy the lawful aspirations of the excursionists,” including a few toasts at the end of the dinner. But everyone was back on campus by seven-thirty that evening.⁶ No one is named in the official catalogue as head of the law department from 1871 until William J. Hoynes was brought in as dean in 1883, although possibly Professor Lucius G. Tong gave it leadership, since he was the only member of the law faculty who gave continuous service during that period.⁷

In the early years of the law department, those entering it to work for a degree of bachelor of laws were required to have had “a good liberal education,” although prospective students were informed that “those who have not completed their studies in the faculty of Arts will have the opportunity of doing so without extra charge while prosecuting their legal studies.”⁸ This requirement of a good liberal education for admittance to the study of law was higher than that at other schools. The *University Chronicle*, student paper at the University of Michigan, in its January 16, 1869, issue observed that it was agreeably surprised that Notre Dame demanded of its law students some previous edu-

cation, and bemoaned that at Michigan law students had only to prove that they were eighteen years old and to present a certificate of good moral character.⁹ However, Notre Dame soon reduced its admission requirement.

For many years the course leading to the degree of bachelor of laws was a two-year course. The subjects in the curriculum in the initial announcements were: First Year: Political Economy (Origin, Nature, and Division of Laws), Principles of Legislation, Introduction to the Study of Roman Law, Institutes of Justinian, Common Law of England, Public and Private Law, Principles of Obligation: how contracted, modified, interpreted and extinguished, Criminal Law and Procedure, and Medical Jurisprudence; Second Year: Constitutional Law of the United States, Principles of Civil Jurisprudence, as contained in the Pandects, Code and Novels, Jurisprudence of the United States, The Law of Contracts, Practice at Law and Equity, and The Law of Evidence. In addition to these regular courses, students were assisted in studying the laws peculiar to their respective states in preparation for their bar examinations. And finally they were given the opportunity to gain poise, self-command, and quickness of decision through participation in Moot Court, which soon became a weekly exercise. In addition to the classes and the moot court, a short essay on some legal matter they had studied was required of all students.¹⁰ This seems to be a respectable program, although we may wonder how the small faculty of the time could teach it adequately.¹¹

Changes in the originally announced program ap-

peared in the very next year. Then in 1873–1874 and for the following ten years, courses were designated by the textbooks used: Wallace's *American Law*, Blackstone's *Commentaries*, Angell and Ames's *Corporations*, Kent's *Commentaries*, Parson's *Contracts*, Greenleaf's *Evidence*, Washburn's *Real Property*, Stephen's *Pleading*, Storey's *Conflict of Laws and Equity Jurisprudence*, and Bishop's *Criminal Law*.¹² No textbook was announced for Constitutional Law.

This designation of courses by textbooks used indicates that the study of these books, supplemented by lectures, was the primary method of instruction, giving the students a theoretical knowledge of the law; this method continues to be used. But a practical as well as a theoretical knowledge of legal matters was recognized as essential, so from the very outset the students were "required during the course to argue cases, draw up pleadings, and conduct Law and Chancery suits according to the rules and formalities of regular courts of justice."¹³

There is no record of the number of students the law department attracted in its initial years, but there must have been very few. At the end of two years, in June 1871, the degree of bachelor of laws was conferred on three men, James A. O'Reilly, Andrew J. O'Reilly and Lucius G. Tong. We have seen that Tong immediately joined the law faculty. This small number of graduates would indicate the small number of students enrolled in the department, but there is more explicit information. In a report on Notre Dame sent to the General Prefect of Studies of the Congregation of the Holy

Cross in 1872 by the Reverend August Lemonnier, fourth president of the university (1872–74), the prefect is informed that the law department has been discontinued. Father Lemonnier wrote:

The Class of Law existed for two years and graduated a few students. Since 1870–71 [i.e., after the close of the school year 1870–71] it has ceased to exist for lack of students and professors. I am of the opinion that we are not old enough or patronized by the class of student that would support such a class and we had better discontinue it until better hopes can be entertained.¹⁴

- In spite of this statement, the official catalogues reveal that the law department was dropped for only one year, 1871–1872, if at all. The only sign of a discontinuance is that no law degrees were conferred in 1872. But two degrees were conferred in 1873, one of which was on Timothy E. Howard, five in 1874, and by the end of the decade twenty-three lawyers held their degrees from Notre Dame. Therefore it seems evident that the decision of Father Lemonnier was quickly reversed, although it is equally evident that the reversal was not influenced by a significantly enlarged student enrollment, and effort was made to bring more law students to the university. An example of this effort appears in the *Annual Catalogue* of 1876–1877 (p. 30): “We trust to see our Law Department better, and better attended year after year. We have every reason to be proud of the young men who each year have sought the classic retirement of Notre Dame to pursue their Law Studies. We shall endeavor to make their sojourn

among us an agreeable one and give them every facility for study." Judged by today's standards the facilities were minimal, but in historical perspective such a judgment is scarcely justified.

In the one hundred years of law at Notre Dame, many men have been on the law faculty, some of them outstanding jurists and professors. One of the earliest of them was Timothy E. Howard, who has already been mentioned. His was a long and prominent association with the university.

Timothy Howard first enrolled in 1859 as a sophomore, having completed his freshman year at the University of Michigan. In early 1862, after fulfilling the requirements for the bachelor of arts degree but before receiving it, he enlisted in the 12th Regiment of the Michigan Volunteers. Seriously wounded at the battle of Shiloh on April 6, 1862, he spent two months convalescing and was honorably discharged in June. He then returned to Notre Dame and received his bachelor's degree that same June. Two years later, in 1864, the university conferred on him the master of arts degree. The following fall he was appointed to the faculty as Professor of Rhetoric and English Literature.¹⁵

English literature was the field for which he was best prepared, but for the next few years he was assigned courses in several widely different subjects. This was common practice at the time, but Howard did not accept this fragmentation of his time and energy without protest. Thus, in the letter to Father Sorin in 1867 cited earlier, he complained that "professors are required to teach too many different branches, and, therefore,

cannot teach any branch as well as they should." He himself "was trying to teach five different sciences—Astronomy, Rhetoric, Geometry and Trigonometry, Latin, and Conic Sections." He adduced such assignments of disparate classes as one reason why "as a college, Notre Dame is not successful" and added that "At Ann Arbor, the classes I teach would be distributed among at least four professors."¹⁶

What reaction this letter produced is a secret of history, but possibly there is some connection between it and the fact that in 1868 Howard was teaching in Northfield, Michigan, his hometown in 1859, when he first enrolled at Notre Dame. Be that as it may, he gladly accepted the university's invitation to return to Notre Dame for the second semester of the school year, 1868–1869.¹⁷

Perhaps his teaching load was reduced or at least limited in scope after his return. At any rate, he found time during the next few years to study law, and completed the course for his degree in 1873. Three years later, he joined the law faculty of which he remained a member until June 1916.¹⁸

Professor Howard's greatest academic contribution to Notre Dame was in law, but he also served the other divisions of the university—the Arts, Science, and Engineering. Because of his prominence on campus he was frequently called upon to welcome important visitors and to speak at public gatherings. In 1871 he was elected vice-president of the nascent Alumni Association.¹⁹ When Notre Dame celebrated her Golden Jubilee in 1892, Howard was commissioned to write the

history of the first fifty years; in his modesty, however, he withheld his name as author of the book.²⁰ The university has honored no other faculty member as she has honored Timothy Howard: in 1893 he was given an honorary doctor of laws degree; in 1898 he received the university's highest award, the Laetare Medal; and in 1924 a residence hall was named for him.

Professor Howard died on July 9, 1916, after a short illness. The *South Bend Tribune* of July 10 carried his obituary notice: "Few men have been so widely useful to the city, county, or state as Timothy Edward Howard and few have done so much so unselfishly and with so small profit to themselves. . . . He was in truth a many-sided man who as teacher, public official, expounder of the law, lawmaker, instructor of the law, as writer or speaker and as soldier, met the requirements put on him." He served the city and county as attorney from 1886 to 1892, and in 1909 he was elected councilman-at-large in South Bend. He also obtained the first park for the city, Howard Park. For the state, he was a member of the Indiana Senate from 1886 to 1892, and a Justice of the Supreme Court of Indiana—Chief Justice toward the end of his term, from 1893 to 1899. In 1899 he was president of the Indiana Fee and Salary Commission, and in 1903 was on the commission for revising and codifying the laws of Indiana. In addition in 1891 he was the author of an Indiana Tax Law.

The law department survived the early years, even though its situation never ceased to be precarious. The curriculum adequately covered the law as it was in the 1870s, but the method of teaching it, primarily through

textbooks and lectures, was far from the best. Although there was some discussion of cases and practice in procedure in the moot court, no instruction in law through the rigorous use of the case method seems to have developed. The department was understaffed and the faculty could scarcely be called a strong one. The regular members who served through the 1870s were Lucius Tong, Francis Bigelow, and Timothy Howard. Howard was to become a distinguished jurist but had not yet achieved that stature during the 1870s.

Tong, also mentioned earlier, was first listed on the faculty of the university in 1864–1865. He was teaching bookkeeping and commercial law, and he helped set up the Commercial Course, from which the majority of Notre Dame students were then graduating. Concurrently he was studying law and in 1871 received his bachelor of laws degree; he immediately entered upon the teaching of law.

Bigelow received his bachelor of arts from Notre Dame in 1862 and the master's degree in 1867. Between these dates he worked in two law offices and in May 1865 was admitted to the practice of law before the Supreme Court of Michigan. He then read law in another law office in his hometown of Lancaster, Ohio, and in May 1866 was admitted to practice before the Supreme Court of Ohio.²¹ He set up a law office in Dayton, Ohio, but he could not have practiced for more than a year or two, because in 1871 he is listed on the law faculty, and, moreover, he is a member of Holy Cross.

In the 1870s, law students were few in number and of indeterminate quality. The officers of the university

must have been deeply concerned with this situation and most probably were aware of the dissatisfaction being voiced by the legal profession with the low quality of many graduates of American law schools. Then came the catastrophic fire which destroyed the second college building on April 23, 1879. There was no question that it had to be rebuilt and the work of the university continued. But what of the law department: should it be continued or dropped? The decision was a difficult one, but a dynamic new president, the Reverend Thomas E. Walsh, who became the sixth president in 1881, opted not only for the continuance but also for the strengthening of the department. To this end an alumnus, William J. Hoynes, was invited to head the law department, with title of dean.

NOTES

1. *University Catalogue* (1854-55), 6.
2. *University Annual Catalogue* (1858-59), 6.
3. *Notre Dame Scholastic*, II (1868-69), 47; [Timothy E. Howard], *A Brief History of the University of Notre Dame du Lac, Indiana, 1842-1892* (Chicago: The Warner Co., 1895), 122; *Annual Cat.* (1868-69), 19-21.
4. *Scholastic*, IV (1870-71), Dec. 31 issue, 7. Rev. William Corby, third president of Notre Dame.
5. Howard to Sorin, Jan. 22, 1867. Prov. Archives (Indiana).
6. *Scholastic* III (1869-70), 150. Cited in *Notre Dame: One Hundred Years* by Arthur J. Hope, C.S.C. (Notre Dame: University Press, revised edition, 1948), 152.

7. Lucius G. Tong appears for the first time in the list of faculty in the 1864–1865 school year. His subjects were bookkeeping and commercial law. He received the LL.B. in 1871 and was a member of the law faculty, 1871–72; 1873–82; 1892–98.
8. *Annual Cat.* (1868–69), 19.
9. *Scholastic*, II (1868–69), 159–160. Cited in Hope, *One Hundred Years*, 151.
10. *Annual Cat.* (1868–69), 19. In regard to moot court the statement reads: “For this end [to cultivate the art of public speaking] and in order to enable the students to acquire those habits of self-command and quickness of decision so characteristic of the learned and accomplished Lawyer, a moot court will be held from time to time under the direction of a professor, at which questions of law will be discussed and mock trials held.”
11. In the first year, two men seem to have constituted the law faculty, Professors Colovin and Foote. During the 1870s a maximum of three men are named as regular faculty members; they were supplemented by several part-time members or lecturers.
12. Present-day students might stand aghast at the subject matter reported to have been covered by the examination in Criminal Law in June 1869: 1. The Criminal Law in General; 2. Military and Martial Law; 3. Jurisdiction over crimes with respect to their locality as between the United States and foreign nations; 4. Jurisdiction of the United States within and outside State limits; 5. Jurisdiction and local limits of the States; 6. Common law as a rule of decision; 7. Rules and principles of decision; 8. Intent; 9. Combinations of persons in the intent; 10. Necessity and compulsion; 11. Coverture; 12. Infancy; 13. Mental incapacity; 14. Corporations; 15. The Act; 16. Criminal and Civil

- prosecution arising out of the same act; 17. Division of crimes; 18. Parties to a criminal transaction; 19. Compounding, misprison, and attempt; 20. Consequences which flow from crime. *Scholastic*, II (1868-69), 34.
13. *Ibid.*, 34.
 14. Prov. Archives (Indiana).
 15. Joseph A. Lyons, *Silver Jubilee of the University of Notre Dame* (Chicago: E. B. Myers and Co., Revised and enlarged, 1869), 113-115; Hope, *One Hundred Years*, 306-307.
 16. Cf. *supra*, note 5.
 17. Howard to Sorin, Nov. 10, 1868. Prov. Archives (Indiana).
 18. From 1893 until 1903 Howard's name is not on the university Faculty list, but is listed on the law faculty for a course on the Appellate Jurisdiction of the Supreme Court. These years correspond with his term as judge on the Supreme Court of Indiana and with other political appointments.
 19. Cf. Hope, *One Hundred Years*, 122, 155, 168, 179.
 20. *A Brief History of the University of Notre Dame du Lac, Indiana, 1842-1892* (Chicago: The Warner Co., 1895).
 21. Joseph A. Lyons, *Silver Jubilee*, 115-117.