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The Harvard Collections of Foreign Law:¹

Changing Dimensions of Legal Study

John P. Dawson

THE feature of the Harvard Law Library that is most likely to evoke surprise in the sight-seer is the collection in foreign and international law. Familiarity with it through use confirms the first impression that in its range and completeness it could not be reproduced. It is the product of decisions made and actions taken decades ago by men of exceptional foresight. But this collection, even more than others, has had some vicissitudes which have reflected the changing fortunes of the Law School and the ambitions, modest or lofty, of a few key personalities. A backward glance at their actions and motives may be timely in this 150th year of legal education at Harvard.

The Harvard Corporation in 1817 resolved to establish a school "for the instruction of students at law." Shortly thereafter the Corporation declared its intent to provide "a complete law library — as soon as means for that purpose may be found." To that end it authorized the expenditure of \$500 for the purchase of law books. The small stock of books concerned with law that was housed in the College Library was surrendered to the resident professor, though members of both governing boards expressed their serious misgivings at this "parcelling out the Library into private houses," lest other professors claim a like indulgence. The informal arrangements made for housing and circulating the few law books that there were gave a basis for these misgivings.

It is not easy now to imagine the difficulties in assembling a library to support this radical experiment, university instruction in Anglo-American law. The literature of English law was extraordinarily meager. Apart from statutes and reports of decided cases, there were a few tracts on practice, the ancient texts of Glanvill and Bracton, the

¹ Miss Edith Henderson, Curator of the Law Library Treasure Room, has been most helpful in assembling materials for this essay.

"gnarled pedantry of Coke," and finally Blackstone, whose *Commentaries on the Laws of England* (published in four volumes from 1765 to 1769) were the first literate and readable description of English law that had appeared in England in 500 years.² There were learned lawyers in the United States who were widely read in history and political philosophy, even in the legal literature of the Continent. But very few had written books on law, and these had been small essays on technical subjects. The reporting of decisions by American courts had not been attempted until shortly before 1800 and in most states regular series of law reports began about or after 1817. In contrast with this dearth in the literature of Anglo-American law was the abundance to be found on the continent of Europe, where learned men had been writing voluminously for centuries.

Legal education at Harvard had a most unpromising start. During the first twelve years it seemed extremely likely that the experiment would fail. There were two professors, one of them the Chief Justice of the state Supreme Judicial Court serving as lecturer, very much part-time. The program of instruction was narrowly conceived. The student body, whose attendance was most irregular, ranged from six to twelve, then dwindled by 1829 to one or two (one report said none).³ The Library was somewhat augmented by scattered private gifts but there were no funds for substantial purchases. With the teaching program conceived as it was, a library of 1,300 to 1,400 volumes no doubt seemed quite adequate.

The turning point came in 1829 with the addition to the Faculty of Joseph Story. Many have described the contributions of this versatile man, immensely productive as Justice of the Supreme Court of the United States, as lecturer in the Law School, as prolific author of a shelf of books. Able and aspiring students were attracted by him to the Law School. Shortly after his appointment he described the gross inadequacies of the Library and explained the need "that students should have ready access to an ample law library which shall of itself afford a complete apparatus for study and consultation."⁴ He sold to the University most of his own considerable library, which included

² The condition of English legal literature before 1800 is graphically described by Arthur Sutherland, *The Law at Harvard* (Cambridge, 1967), pp. 1-31.

³ Sutherland, *The Law at Harvard*, p. 85; Charles Warren, *History of the Harvard Law School*, I (New York, 1908), 364.

⁴ Warren, *History*, I, 462-463 (letter to President Quincy of Nov. 3, 1829).

not only English and American law reports but numerous treatises on foreign law. More important perhaps was the demonstration by his own extensive writings of the uses of a comparative and historical method. He drew heavily on foreign experience and employed it to explain the American law of his time. He and Chancellor Kent, his friend whose earlier lectures on law at Columbia had had for a time a discouraging reception, developed a genre of learned expository writing that was almost entirely new in the Anglo-American legal tradition. A principal incentive was to provide aids in teaching, though Story himself was an animated and voluble teacher who did not adhere closely to a single text. A principal resource was the Library that was being gathered at Harvard as increased income from students attracted by Story's fame made it possible to buy many more books. Through Story and the men he stimulated, American law and legal education flowered for a time in New England.

It seems likely that the presence of Story helps to explain the unexpected gift in 1833 by Samuel Livermore of his remarkable foreign law collection. Livermore was a graduate of Harvard College and a younger contemporary of Story at the Massachusetts bar. He had then moved to New Orleans, where he had acquired a reputation as a self-taught expert in French and Spanish law.⁶ For the time his library was large (some 400 volumes) and even now it is impressive for the care shown in its selection. His motives for the gift to Harvard were not stated but he must have been persuaded that nowhere else could his books be put to better use. With the new acquisitions that Story continued to make, the Library provided a solid base for a developing center of international legal studies.

At Story's death in 1845 horizons closed down. A replacement for Story was very hard to find, indeed in the fullest sense impossible, and in the Faculty there was much coming and going. For 25 years, from 1845 to 1870, there was not only little interest in the enlightenment that the study of foreign law could provide but teaching degenerated into stale routines. The Library quickly reflected this. Acquisitions sharply declined. The administration of the Library was entrusted to student helpers, with no controls over the use of books. In some years more books disappeared than were newly acquired. A visiting committee attributed this to the "bibliofuracity" of student users, which it

⁶ Warren, *History*, II, 79-80.

thought should be sharply punished.⁶ But the defects of administration and of policy were too numerous for a single explanation to suffice. There is no evidence, fortunately, that the collection on foreign and international law was depleted, and there was little in the environment that would have stirred any larcenous interest in its contents.

It is not at all surprising that the chief victim of neglect during the decades after Story's death was comparative work in foreign law. As the sources of American law multiplied, even scholarly minds could readily conclude that there was enough useful work to do in analysing and clarifying American law. The United States was not the only country in which this shift of interest occurred. In western Europe likewise the middle and late decades of the nineteenth century were a period in which energies were mainly directed toward constructing and rationalizing national systems of law. For American lawyers English law was of course not "foreign," since the inheritance from England continued to be received and adapted to our own, often different needs; the influence of English law persisted even where it was consciously modified. But the transfer of ideas from other national systems of law presents difficulties that are far more acute than those facing students in other disciplines. Simple translation will give access to knowledge accumulated in foreign languages where the phenomena described are universally the same, as will usually be the case in the natural sciences. Even private experience expressed in creative literature may pass through translation without major loss. But the words that are law's chief instrument acquire technical meanings, are interconnected through word-structures that have their own special meanings, and cannot be understood if wrenched from this larger context. It was part of the achievement of Story and Kent that they penetrated these verbal labyrinths of foreign law, and provided maps for others to follow. The failure of Story's successors to follow him was not merely due to their own flagging energies. Even after energies were revived — indeed, until the nineteenth century neared its end — attention was to be focused on the traditional sources of Anglo-American law because they defined the limits of ambition at the time and seemed to provide for scholars a sufficient task.

The appointment in 1870 of Langdell as Dean was a notable event and gave a new direction to American legal education. The great inno-

⁶ Warren, *History*, II, 332-338.

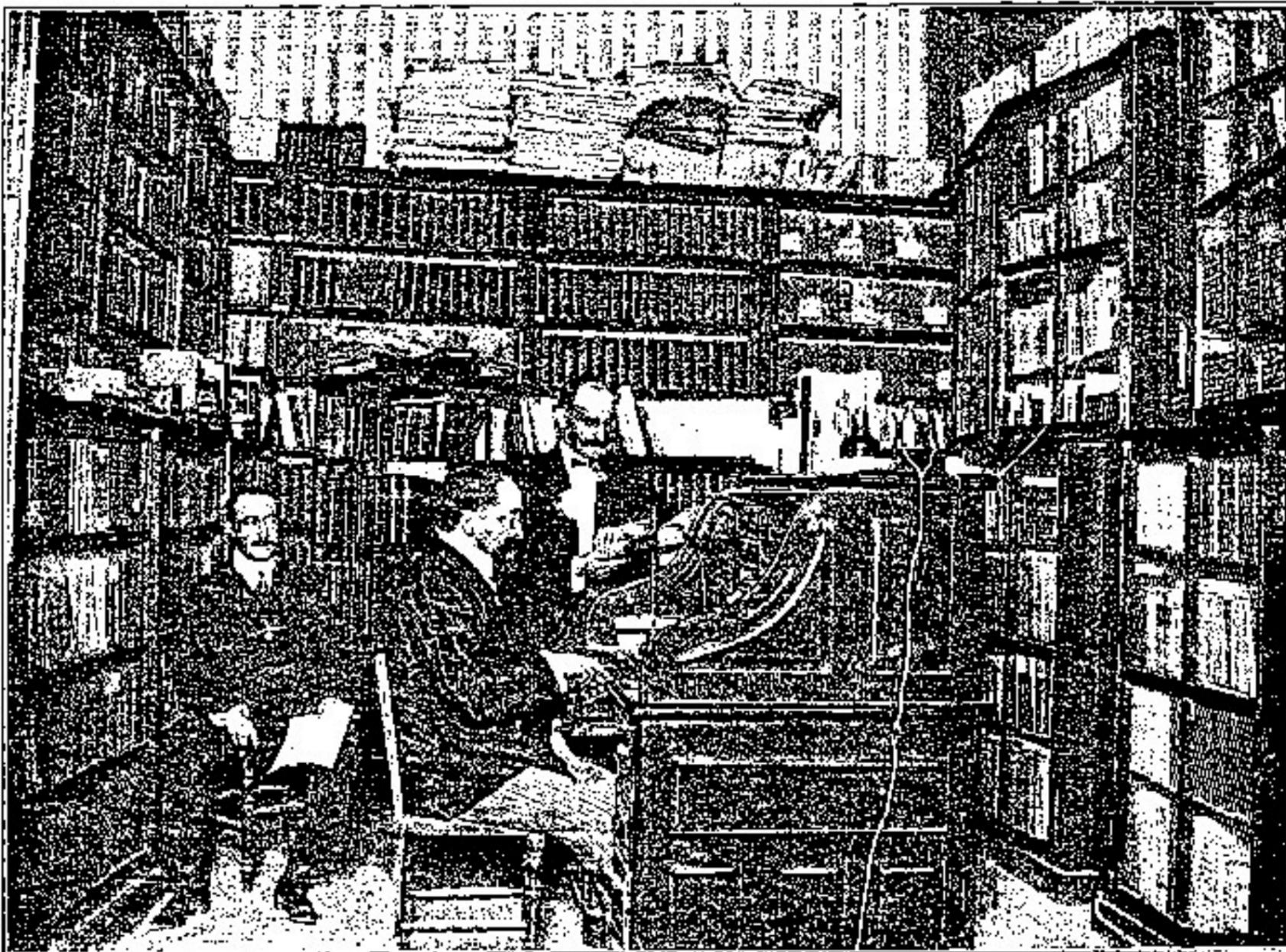


PLATE I
THE MARQUIS DE OLIVART AT HIS DESK

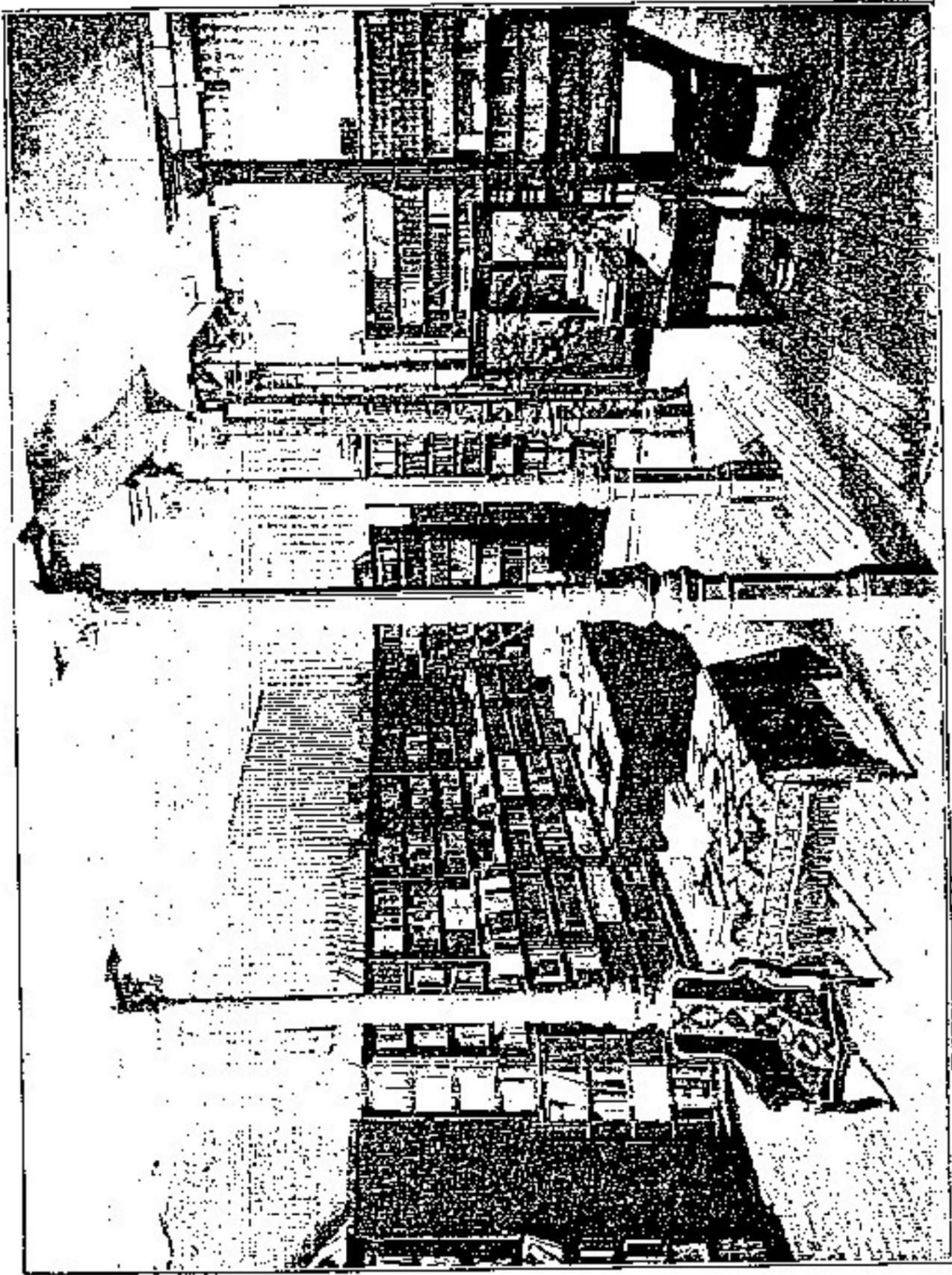


PLATE II
A VIEW OF THE OLIVART LIBRARY

vation, of course, was the method of instruction that he originated — the so-called case or problem method — but with it came also a series of new men and new measures.⁷ Among the measures was the rebuilding of the Library. As Langdell said 20 years later: "In 1869-70 the library was so nearly a wreck that it required to be reconstructed almost from its foundations." The office of full-time librarian was created and in 1872 John H. Arnold was appointed to the office, which he was to hold for more than 40 years. Working closely with Dean Langdell, Arnold developed new means of tracking down books in unlikely places, attending auctions, and developing close ties with dealers. Forty years of Arnold's devoted efforts brought a growth in the Law Library's holdings from 15,000 to 150,000 volumes.

This activity did not bring much benefit to the international and foreign law collection. Langdell himself laid great stress in his teaching and writing on the history of English law. James B. Ames and James B. Thayer, both of whom were appointed to the Faculty in 1873, were important historians of English law and maintained close personal ties with historians in England, led by Maitland, who had begun a great revival of English historical studies. But none of the three — Langdell, Ames and Thayer — made any extensive use of foreign systems of law, either their current solutions or their history, though Ames himself was familiar with French and German and a teacher of Latin in his youth. Under Langdell's strict personal controls, "no books were bought until the Dean could be convinced that they were actually needed and were going to be used."⁸ Librarian Arnold's assistant has testified that "Dean Langdell took very little if any interest in our foreign law books, which . . . had been kept in a poorly lighted, unheated storeroom."⁹ A distinguished English professor, Dicey, described the Harvard Law Library in 1899 as "the most perfect collection of the legal records of the English people to be found in any part of the English-speaking world."¹⁰ An expanded ambition to include the law of the world that was not expressed in English, had to await the appointment of Ames as Dean, in 1895.

It is not easy to reconstruct now all the reasons for the ambitious

⁷ The whole story is well told by Sutherland, *The Law at Harvard*, pp. 162-205.

⁸ Robert B. Anderson, "The Harvard Law School Library Under Langdell and Arnold," *Harvard Library Notes*, XXIX (1939), 281, 283.

⁹ *Ibid.*, pp. 281, 286.

¹⁰ Sutherland, *The Law at Harvard*, p. 193.

program that Dean Ames inspired. The collections of foreign and international law that Story and Livermore had contributed were still impressive, and there must have been some temptation to bring them at least up to date. The increased prosperity of the Law School, whose much larger student body brought income from fees, made more funds available for the Library. A motive for a more venturesome policy might have been created when, after prolonged search, an incumbent was found in 1898 for the new Bemis chair in public international law, the study of which properly should require a wide acquaintance with foreign literature. But this chair was difficult to fill and for much of the time in subsequent years it was in effect vacant.¹¹ The historical work of Maitland had shown, especially to the men at Harvard who followed his work with enthusiasm, that legal history in the grand manner required comparison with the experience of other societies. But of the law faculty assembled at Harvard at the turn of the century, despite its great distinction, there were very few whose interest extended beyond Anglo-American law. One of these was John Chipman Gray, a master of the English law of real property, who in writing an influential book on jurisprudence drew heavily on Continental writers, especially the Germans. Dean Ames must also have had sympathetic support from Joseph H. Beale, who was enormously interested in the Library and himself delved in European sources in the field of his special interest, the conflict of laws.¹² But on the whole the program of acquisition carried forward under Dean Ames must be ascribed to faith in a future as yet quite undefined. It also illustrates the truism that the building of a great library cannot be circumscribed by the interests and needs of the faculty as they exist at a particular point in time.

The addition of Roscoe Pound to the Faculty in 1910 and, still more, his appointment as Dean in 1916 ensured vigorous support for the expansion of the Library and for the enlargement of horizons in teaching and research. He had read extensively in foreign legal literature, history, and philosophy, had a prodigious memory, and wrote as voluminously as Story. His influence on the Law School and on the minds of lawyers can be compared with that of Story, with perhaps the

¹¹ *Ibid.*, pp. 211-212.

¹² There are numerous indications of Beale's interest in the Library and his personal aid to the Librarian in the acquisition of books. A tribute by Beale to Librarian Arnold, "How Mr. Arnold Collected the Law Library," appears in the *Harvard Graduates' Magazine*, XXII (1913), 38.

difference that by the time of Pound there were coming to be more persons who were eager to practice what Story and Pound preached.

Pound took the first steps in the major coup of buying, in 1911, the Olivart collection in public international law. Pound heard from the German bookseller from whom he purchased his own books privately that the library of the Marquis de Olivart might be for sale. This collection was widely known. The Marquis was a practicing lawyer, for a time professor of law at the University of Madrid, an ambassador and foreign minister in the Spanish government, and himself an active writer on international law. As early as 1899 he had published a catalogue of his collection, which with later revisions became the standard classification used by writers on international law; indeed, it is the basis for the classification, now much expanded, still used in the Harvard Law Library. He had given his whole collection to the Spanish Government, moved, as he later put it, "by a patriotism that was as ardent as it was sterile." The terms agreed to by the Government for its housing and for maintaining it by new acquisitions had not been adhered to, so that two years later he retracted the gift. He was fiercely determined that it not be broken up and dispersed.¹³

Pound reported this great opportunity to the Library Committee, where the Dean (by this time, Ezra Ripley Thayer) and Librarian Arnold urged that it be seized. There was enough opposition so that the proposal went to the Faculty, where John Chipman Gray gave it strong support. Most of the Law School's surplus was needed to buy this large collection of some 14,000 books. Finally the Faculty was persuaded and the matter was arranged, a credit was established with a Paris bookseller, and the books were smuggled out by night from the library of the Marquis in Madrid, in boxes so covered and labelled as to disguise their contents. One reason given for these unusual measures was a rumor that the Spanish Cortes was about to pass a statute prohibiting export of the books. Another plausible reason was that the Marquis was hard pressed by his creditors, for the Law School's agents had to arrange to pay the whole price in gold coin which could be more readily concealed from prying creditors.¹⁴

¹³ These events are described by the Marquis in the preface, dated June 1907, to volume I of the *Bibliographie du Droit International* which he published himself in Paris, 1905-1910.

¹⁴ The acquisition of the Olivart collection is described in the annual report of Dean Thayer (*Reports of the President and the Treasurer of Harvard College, 1911-12*, p. 140) and by Roscoe Pound, "The Harvard Law Library," *Harvard*

For a period that can be roughly defined as 25 years (1900–1925), whenever other great private libraries became available for sale, the Harvard Law Library was almost alone in the field of purchasers. One such library was the Dunn collection of early English law books. For this no cloak and dagger work was needed, as with the Olivart enterprise, for the problem was to raise the money for a bid that would be likely to prevail in a public auction. Pound and Beale responded by raising \$10,000 in a month through their own personal solicitations. Thus in 1913 the Law School added an extraordinary collection which, with existing holdings and later additions, gives Harvard a total of more than 80 per cent of the English law books printed before 1601 and still extant.¹⁵ Other collections acquired on the European continent likewise included great quantities of historical material. To fill the gaps in these collections, small-scale acquisition through offerings from dealers and the tracking down of individual items was steadily pursued. Toward the end of the critical 25 years other American law schools began to reach out beyond the traditional sources of Anglo-American law, but Harvard already had so much that it was easy to arrange cooperative purchases, Harvard taking only what it lacked. Acting just in time, the Library thus acquired a collection on foreign and international law, the historical portion of which, reaching back for centuries, could not be duplicated now at any price.

There was by no means perfect harmony over the commitment that was being made. During this crucial period decisions as to acquisitions were subject to review by a Library Committee, composed of the Dean, the University and Law Librarians, and members of the law Faculty, the latter composing a majority of the Committee. One of the Faculty members of the Committee, whom Dean Pound later described as "strong-willed" and who is easily identified as Edward ("the Bull") Warren, strongly opposed buying foreign materials and protested that the Library was becoming "a cemetery for dead books."¹⁶ Oral tradition has it that to this comment Dean Pound replied: "Not for those of us who think of ourselves as alive." Important questions,

Library Bulletin, V (1951), 290, 294–295. The motive of evading creditors rests entirely on oral tradition derived from Dr. Lichtenstein, the Law School's special agent.

¹⁵ Eleanor N. Little, "The Acquisition of the Dunn Collection of Early English Law Books," *Harvard Law School Bulletin*, VII (1955), 10.

¹⁶ Pound, *Harvard Library Bulletin*, V (1951), 290, 293.

as in the case of the purchase of the Olivart collection, could go from the Library Committee to the Faculty for decision, and opinions there were often divided. The whole program pursued by the Law School, however, had the strong support of President Lowell.¹⁷ The control of the Library Committee over acquisitions was eliminated in the 1930's. Time brought agreement on the objective that, so far as means permitted, the Harvard Law Library should provide the resources for studying and understanding the domestic law of every country as well as the law and practice of international relations.

After the Second World War many reasons converged in inducing the Law School to undertake a much more ambitious program in its own teaching and research that in some degree would match the range of library resources already acquired. Before that time comparative and historical work had of course been carried forward, especially under the influence of Dean Pound. Perhaps the mere possession of great library resources exerted some pressure to exploit them more fully. But there were other good reasons. The increased involvement of the United States in world affairs, the need for lawyers to contribute to the solution of pressing problems that transcended national boundaries, the educational value of close study of foreign legal experience — all these reasons in various nuances and combinations led the Law School in the late 1940's to establish a high priority for international legal studies. A considerable fraction of the Faculty and of both graduate and undergraduate students are now engaged in this enterprise, which is a vital part of the work of the School.

The objectives now defined make it proper that the holdings of the Library and the efforts to turn them to good account should both be concerned primarily with modern law and its literature. To maintain the Library's modern holdings of itself calls for strenuous effort. New countries produce new law in various forms and the output of law and analytical literature in older countries increases progressively. The impulse to see law more broadly as the product and the instrument of the societies it serves brings still heavier demands on the Library. One index of success in this effort is the testimony of visitors from abroad, who repeatedly say that nowhere in their own countries can be found a collection so complete on the modern law and legal literature of their own countries.

¹⁷ Sutherland, *The Law at Harvard*, pp. 226-227.

Lawyers, however, have better reason than most to preserve the record of the past. Especially when the comparison of legal systems is pursued, divergences appear that in part, at least, must be explained by history. The effort to see law in a broader context likewise compels a search for the inherited values and needs that find a lasting deposit in the law of each of the countries studied. The wealth of material for historical studies is the most astonishing feature of the collection of foreign and international law. Very rare volumes and many manuscripts are deposited in the Treasure Room which was completed in 1948 and adjoins the main reading room in Langdell Hall. But this is only a sample. Most books published before 1800 are housed separately in a nearby basement, where they are available on short notice. It is an experience to wander through this space, past the filled-up shelves that seem to cover an acre, and see the physical evidence of the long struggle of human intelligence to control its destiny through law. These materials are being increasingly used but they should be more widely known. So should the foresight of the men who brought them here, long in advance of any evident need, through confidence that in a later generation the past could be made to serve the future.