



# THE HARVARD LAW SCHOOL REVISITED

REFLECTING ON LOUIS D. BRANDEIS'S  
HARVARD LAW SCHOOL REFLECTIONS

*Elena Kagan*

**H**OW SHOULD A LAW SCHOOL go about teaching students to think like lawyers? What should we be teaching students and at what stage of their legal education will it be most helpful for them to learn it? In 1870, when the virtually unknown Christopher Columbus Langdell took the helm of Harvard Law School, the answers to these questions appeared fairly settled. Like other law schools of the era, Harvard offered instruction primarily through lectures that illustrated and explained an assigned text, with students enrolling in the various subjects in no particular order. But that was about to change. A firm proponent of the view that law was a science, the new Dane Professor of Law insisted that it could only be learned by returning to original sources, using them to teach students how to reason from legal principles. Over time, the new case-method approach transformed legal education, establishing the framework for our nation's

---

*Elena Kagan is the Charles Hamilton Houston Professor of Law and Dean of the Faculty of Law at the Harvard Law School. Copyright © 2008 Elena Kagan.*

law schools for well over a century – a testament to the enduring value of Langdell’s legacy.

But even the farsighted Langdell could not have been expected to predict the needs of 21st-century lawyers. In light of this reality, four years ago, Harvard Law School embarked on a major curricular review aimed at determining what changes might help us to prepare our students even more effectively for the complex global challenges of this new millennium. Like Langdell, we asked ourselves how best to go about teaching students to think like lawyers. But while this basic question remained the same, the world itself had changed dramatically – and with it, the question’s answers. The results – which, I’m delighted to say, received unanimous faculty approval and are now in the process of being successfully implemented – are the most far-reaching reforms at Harvard since Langdell laid down his blueprint.

Given HLS’s recent focus on curricular reform, it was with no small interest that I recently read Louis D. Brandeis’s account of Harvard Law School’s early history, an essay published in 1889 in the first volume of the original *Green Bag*. At the time of writing, Langdell’s case study-based curriculum had been in effect just 18 years – Harvard Law School itself had been around for just 70 – but Brandeis had no doubt as to its effectiveness. “Those who have had an opportunity of putting the legal education thus acquired to a practical test are perhaps best qualified to speak of its merits, and almost without exception they pronounce in its favor,” he averred. In illustration of this point, he quoted one James C. Carter, a leading member of the New York Bar, who reported that the young assistants he hired from Harvard Law School who had been trained through the case method showed “an accuracy and precision of method far superior to anything which the students of my day exhibited.”

The point Brandeis is making here – not a surprising one – is that the key measure of value for Langdell’s reforms was the extent to which they equipped students for their future work. While this is equally true now, today’s Harvard Law School graduates face far different – and I suspect far greater – challenges than did their late-

19th-century counterparts. It's our privilege and our responsibility to see that students gain the needed tools for all the roles they will be called on to play – roles that include shaping and participating in the most complex global business transactions, establishing regulatory approaches and governance structures to meet problems ranging from climate change to terrorism to economic insecurity, crafting frameworks that enable scientific and artistic creativity, and devising workable approaches to chronic conflicts around the world. Our mission is not simply to train lawyers; more broadly, we must seek to train leaders – visionary thinkers and practitioners capable of designing new institutions to meet individual and societal needs.

During our intensive curriculum review – a process that lasted several years and took us around the world to meet with alumni, professors, and practitioners – we concluded that while Langdell's case method still works remarkably well in honing many forms of legal analysis, it is not so good at others. For example, while the case method does a great job teaching students a certain type of legal reasoning, it fails to equip them fully to serve as active problem solvers, able to engage a range of resources and strategies to come up with creative solutions. As my colleagues Martha Minow (who chaired our curricular review committee) and Todd Rakoff have observed, by taking a “retrospective view of facts already found and procedures already used by a court,” the case method fails to nurture what they describe as “legal imagination” – “the ability to generate the multiple characterizations, multiple versions, multiple pathways, and multiple solutions, to which [students] could apply their very well honed analytic skills.”<sup>1</sup> This failure is of particular concern since these are among the capacities most in demand for 21st-century lawyers.

Our goal, then, has been to keep the strengths of Langdell's curriculum while also introducing reforms that will better equip graduates to be proactive and creative problem solvers, able to operate effectively in a context where statutes and regulation (not just

---

<sup>1</sup> Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 600, 602 (2007).

cases) play an increasingly important role and to work with a global perspective whether the particular problem involves a local contract dispute or an international treaty. To this end, the HLS faculty decided to overhaul our 1L curriculum, introducing three new required classes for first-year students: one focusing on the statutory and regulatory aspects of law, one that looks at law in a comparative or international framework (we have devised several to choose from), and finally, a course where students work in teams, not just as individuals, to address the complicated amalgams of facts, law, and ethical issues that arise in the work of today's lawyers – a course now being piloted with upper-level students for introduction to 1Ls within the next year or two. (We made way for these courses by slightly paring the courses in our traditional 1L curriculum, reducing them from five to four credits.)

The students who arrived last September – members of the HLS Class of 2010 – are the first to experience these new offerings, and I'm pleased to say that our early reports are everything we could have hoped for. Through intensive work with statutes and regulations from the start of law school, they are developing rich understandings of the institutional frameworks and modes of the regulatory state – and they and their professors have been happy to find fertile connections between these materials and the rest of the first-year program. Indeed, this course – which students call LegReg for “legislation and regulation” – was the most favorably evaluated of any course in the first-year program last year. The courses in international and comparative law are opening up new questions and possibilities, showing choices made by different societies and challenges that arise from globalization, while also helping every student to locate American law in the larger map of laws, politics, and histories across the world.

Turning to the upper-level curriculum, we found an array of offerings unrivaled anywhere, including more courses taught to groups of fewer than 25 students than many other law schools have as total courses – offerings that range from “The Venture-Backed Start-Up Company” to “Race and Justice” to “Ethics, Biotechnology and the Law.” We developed this rich array both to reflect the

## *Harvard Law School Revisited*

scope of interests and aspirations of our students and to mirror the variety of law's promise in the world in terms of disciplinary approaches and practical strategies, as well as substantive issues.

But alongside this cornucopia of courses, seminars, clinics, and reading groups, we realized that we had been offering too little in the way of guidance for students attempting to construct a coherent program. To address this issue, we came up with five suggested paths through the curriculum – clusters of courses, clinics, cross-registration options, and internship opportunities – that can guide students in course selection while more generally showing how law school can foster the development of depth and breadth in various fields. We call these five suggested paths “programs of study,” and their purpose is to sketch out ways for students to advance from introductory to truly sophisticated work in areas that interest them, while also providing a planning tool for HLS faculty. (These are not intended as the equivalents of undergraduate majors or concentrations – students do not sign up for them nor do they appear on a transcript.) The idea is to ensure, through a real focus on real progression within the curriculum, that students no longer have the feeling of “same old, same old” when they get to their third year of law school – that in each year, they are doing things they could not have done previously and stretching themselves in new and previously unimagined ways.

Our initial programs of study include: Law and Government; Law and Business; International and Comparative Law; Law, Science and Technology; and Law and Social Reform, and we may offer more down the line, depending on the interests of students and faculty. Each program of study has an associated group of faculty members, basic and advanced courses, and clinical and research opportunities, and each offers new ways for students to forge connections among themselves and with faculty members. Each also incorporates important interdisciplinary dimensions, reminding students to see the world broadly and through a multitude of perspectives – or to make the point somewhat differently, to see the world through the eyes not only of a lawyer but also of a potential client.

Brandeis began his *Green Bag* essay by citing “the much-debated question [of] whether the law school or the lawyer’s office affords the better opportunity for legal training” – a question that he viewed as conclusively settled in favor of the law school. Of course, today that goes without saying – the law degree is a basic prerequisite for engaging in legal practice. At the same time, even as we explore ways to expand and retool our academic offerings, we also have embarked on a major expansion of our clinical curriculum, which we consider absolutely integral to legal education in the 21st century. Confronting real legal problems is one of the best ways to foster the sort of “legal imagination” that our graduates will need if they are to become the very best lawyers, problem-solvers, and leaders that they can be, and we are committed to providing students with every possible opportunity to hone their skills in real-world settings. Over the past five years, we’ve hired eight new clinical faculty members, and the number of students enrolling in clinical work has more than doubled. Our new clinics address a variety of subjects – from immigration to environmental law to intellectual property – and provide students with the opportunity to participate not only in litigation but also in transactional and public policy work. What I think of as our “clinical renaissance” is one of the most exciting things happening at HLS today, and I have no doubt that it will continue for many years to come.

Along with looking to practitioners to assess the success of Langedell’s reforms, Brandeis also looked to the law school’s students, noting approvingly that

[t]here could be no stronger proof of the excellence of this system of instruction than the ardor of the students themselves. ... The students live in an atmosphere of legal thought. Their interest is at fever heat, and the impressions made by their studies are as deep and lasting as is compatible with the quality of the individual mind.

As I talk with our students – hear their passionate engagement with issues ranging from international human rights to cyberlaw to corporate governance reform – I am convinced that the same can be

## *Harvard Law School Revisited*

said of HLS students today. Students are the heart of Harvard Law School, and our goal is to provide them with the very best possible experience during their time with us. Our recent curriculum reforms reflect a major – though hardly final – step in this direction, and I like to think that Brandeis would give them the same approval he gave to those of Langdell. I like to think he would see in our recent efforts a reflection – and extension – of his own commitment to innovation, public service, and creative problem solving. And I like to think that, if he were with us today, Brandeis would come to the same conclusion he reached in 1889, when he observed: “The Harvard Law School has done a great work in the past. May we not venture to hope that the work of the future will be immeasurably greater?”

