

# Legal Legacies: A Brief History of the Stanford Law School

*Leland Stanford wanted the teaching of law to be at the heart of his new university. This year the Law School celebrates the first 100 years of that vision.*

BY HOWARD BROMBERG



“THERE HAS NEVER BEEN any law department organized on this basis,” exulted the founder of the Stanford Law Department, David Starr Jordan, shortly before the department’s opening in September 1893. A future one “would have to take its models and ideals from here.” The department indeed had a spectacular beginning. It represented a new model of legal education, emphasizing the role of law in public life, with a U.S. president, Benjamin Harrison, as its first professor. But its progress was slowed by the catastrophes that struck the entire University. When the Law School—as it

has been known since 1908—was strengthened in the initial decades of this century, it made important contributions to raising the professional standards of California lawyers and to the rapid growth of California’s economy and society. In recent decades, the Law School has become one of the nation’s leading law schools. It has also expanded its mission to understand, to teach and to improve the law in its central role in American life. Jordan’s bold prediction has come true.

Leland Stanford, himself a lawyer, wanted education in law to be at the heart of his new university. As governor of California and U.S. senator, he had become convinced that democracy would succeed only if Americans were better educated about their civil institutions. In the 1885 Founding Grant of Stanford University, he declared the University’s most important mission to be “teaching the blessings of liberty regulated by law, and inculcating love and reverence for the great principles of government.”

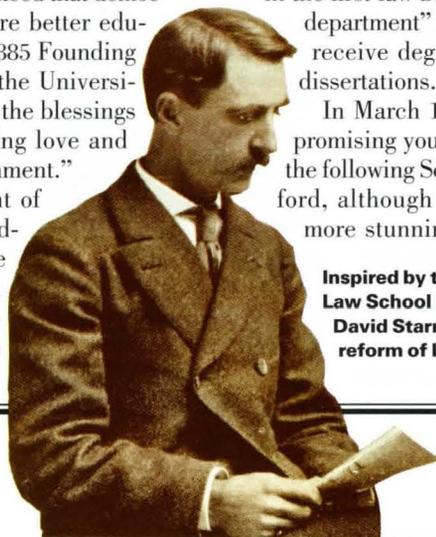
It was left to Jordan, the first president of Stanford, to realize this vision. A leading educator, Jordan had ambitious plans for the reform of legal education. He was appalled by the lawyers of his day—“highway robbers,” he called them. In an article in the

prestigious journal *Forum*, Jordan blamed the shoddy methods of contemporary lawyers on their inadequate legal education. Few had college degrees and their legal training—whether as apprentices in lawyers offices or in law schools on the fringe of university life—was confined to the narrow rules of courtroom practice. “Our lawyers are our rulers,” Jordan cautioned. “We can never hope to see our state well-governed till its lawyers are well-trained.”

Jordan proposed that the study of law resume its central place in university education. Legal education at Stanford, he wrote in the first law bulletin, would be “as a regular university department” in which undergraduates would major and receive degrees and graduate students would write dissertations. Public service would be encouraged.

In March 1893, Jordan recruited Nathan Abbott, a promising young law professor, to open the department the following September. A few days earlier, Leland Stanford, although by now quite sick, had made an even more stunning catch. He persuaded President Ben-

**Inspired by the teaching of Nathan Abbott (left), the Law School became the largest department on campus. David Starr Jordan (above) had ambitious plans for the reform of legal education.**



jamin Harrison to come to Stanford in the spring of 1894 as a professor of constitutional law. "For the last four years Mr. Harrison's business was to carry out the law; now he goes to lay it down to students," marveled the *New York Recorder* on March 12, 1893. The publicity given the appointment of Harrison drew attention to Jordan's innovative design for legal study.

However, on June 21, two months before the department was due to open, Leland Stanford died. Abbott requested a year's postponement of his duties, apparently to see if the fledgling University could survive without its patron. In desperation, Jordan asked the University librarian, Edwin Woodruff, who was also a lawyer, to fill in for Abbott.

Woodruff turned out to be a fortuitous replacement. Forty-six students, almost all undergraduates, registered in the new department. Woodruff taught them elementary law, contracts and torts. Harrison arrived in the spring, and delivered a series of lectures that traced the evolution of constitutional democracy in America. "A scene that the Republic had a right to be proud of," wrote the *New York World* of Harrison's classes. (The *World* was one of many newspapers across the country that printed Harrison's talks.) An elated Jordan gushed of future plans to import the famous legal scholars Woodrow Wilson and Sir Frederick Pollock, and to launch a complete law curriculum.

It was not to be. The new department was derailed by the turbulence of the law itself. On June 3, 1894, the federal government filed a \$15 million lawsuit against the estate of Leland Stanford. As the Stanford estate was the sole source of income to the tuition-free University, Jordan found himself strapped for funds to continue, much less expand, instruction.

Abbott arrived the following September to a despondent department. Harrison had not returned, and Woodruff chafed that Jordan considered him only a substitute. (He would soon go to Cornell Law School, where he would eventually become dean.) For replacements, Jordan hired instructors that he himself disparaged as "temporary supplies." Abbott found himself carrying the department. With no money for books, Abbott installed his personal library in the department's offices—and even built the wooden bookcases to hold them. "I occupied not merely a chair of law," Abbott jested, "but a whole settee."

During the next few years, the Law Department offered no graduate courses, and the enrollment remained almost entirely undergraduate. (California had no degree requirements for lawyers.) Combining the rigor of law studies with the enthusiasm of undergraduate life, the law students left a permanent legacy to the University.

In October 1896, instructor Frank Polley, to the surprise of his students, distributed a torts exam to be taken out of the classroom, leaving the class to its "honor." The Honor Code, the rule of the Law Department from that point on, would be

adopted by the entire University in 1921.

In 1898, George Crothers, the first recipient of an MA in law from the department, while negotiating a fraternity lease, discovered a fundamental flaw in the University's legal structure. Because Leland Stanford had organized the University as part of his personal estate, the University had in effect no independent legal status. The financial consequences of this arrangement had become clear upon the senator's death, when his debts had crippled the University. Even more alarming, Crothers realized that the University's novel legal arrangement violated California law, and would almost certainly collapse upon the death of the surviving co-founder Jane Stanford.

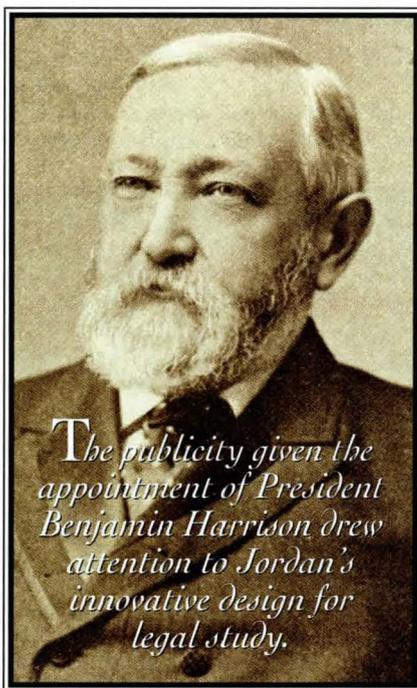
With the assistance of Francis Keesling and Jack Sheehan—law graduates who would eventually go on to prominent careers in California politics—Crothers organized a remarkable campaign for a constitutional amendment to cure the defects in the Stanford charter. On November 6, 1900, the voters of California overwhelmingly ratified the measure. The University "should be proud of the little band of alumni who . . . fought so steadily and courageously to save the life of the newborn University," wrote Abbott.

With the University's foundation secure, the Law Department was able to undertake its much delayed expansion. A crop of talented young professors was hired—Clarke Whittier, Jackson Reynolds, Arthur Cathcart, Charles Huberich. The department added second- and third-year courses, such as evidence, agency, corporations, trusts and California practice, to its first-year curriculum of elementary law, torts, prop-

erty, criminal law and contracts. "This department offers such courses in Law as are usually given in professional law schools," the 1900 law bulletin proudly announced. With Abbott's inspired teaching, the department became the largest on campus, registering 308 students in 1905-06, nearly 20 percent of the University's enrollment.

But the new professors were not content with Jordan's cultural approach to law studies. Both lawyers and law professors were growing in professional identity, specialization and status. The American Bar Association had emerged as a powerful national organization, and the Association of American Law Schools was founded in 1900 with Stanford as a charter member. The law faculty itched to produce skilled lawyers, not just virtuous citizens.

As a result, the department gradually began to divest itself of its undergraduate and nonprofessional components. In 1901, it granted its first professional degree, an LLB. In 1906, it replaced the LLB with a JD (juris doctor) to emphasize the graduate nature of the degree. The following year the undergraduate major in law was abolished, although undergraduates could still study in the "pre-legal curriculum." The law program must "cease to be the Department of Law and become



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the Law School of Leland Stanford Junior University," insisted Professor Huberich in the May 1908 *Stanford Alumnus*.

The following fall, Huberich got his wish. On December 18, 1908, the Board of Trustees changed the Stanford Law Department to the Stanford Law School. Professor Frederic Woodward was appointed the first dean.

Woodward was a man of tremendous energy and administrative ability. He recruited top college graduates throughout California, opened a summer law school, established a chapter of the Order of the Coif (legal equivalent of Phi Beta Kappa), and moved the Law School into expanded quarters on Stanford's inner quadrangle. Having raised the standards of his school, he strenuously lobbied the California legislature to raise the standards of his profession by requiring, for example, three years of law study and a written examination for admission to the bar.

The law faculty also began to make a decided impact on legal scholarship. Professors J. Walter Bingham and Wesley Hohfeld contributed to the emerging "legal realist" movement. A celebrated article by Hohfeld, appearing in the 1913 *Yale Law Review*, provided an analytical terminology that allowed the realists to sustain their first attack on traditional legal concepts.

The U.S. entry into World War I disrupted the school's momentum by emptying it of many students and professors, but it introduced a new dimension as well. Two professors served on the War Trade Board, and the Law School ran a Legal Aid Bureau for soldiers stationed at Camp Fremont in Menlo Park. Previously, the Law School had thought of "service" solely as assisting in the administration of the University. Now it discovered that a larger community could benefit from its expertise. Although the Legal Aid Bureau would be discontinued after the war, it was the forerunner of the present Law School's community services, such as the East Palo Alto Community Law Project.

In the years following World War I, dominated by the boom and bust of the nation's economy, the Law School, like many institutions, gave increased attention to business affairs. Whereas Jordan emphasized the role of lawyers in government, the Law School now stressed the role lawyers played in modern industry.

"More and more [the lawyer] is becoming a business counselor," Marion Rice Kirkwood, the school's much-respected dean from 1922 to 1945, wrote in 1933. Experts in property and corporate law were added to the faculty, courses such as office practice, legal accounting and creditors' rights added to the curriculum, and a postgraduate law program created to train lawyers "to understand the business client's point of view but also his business problems." With a bar passage rate in the

1930s of 83.6 percent—the best in the state—law alumni filled the ranks of California's leading law firms and businesses.

The New Deal and World War II transformed the nation and ultimately the Law School. The wartime student population included a large percentage of women, but this was seen as an anomaly, and not until the 1970s would women students again comprise a large portion of the student body. (Women have made up 38 to 50 percent of recent entering classes.) The faculty began wrestling with the legal implications of increasing government regulation of the economy, introducing courses in administrative law, trade regulation and labor law. In a comprehensive plan that the Law School developed for its postwar years, the law faculty added "training for leadership in policy-making," to its traditional objective of "training for leadership in professional practice."

Although the Law School was ranked with Berkeley as the best in California, the University administration had even more ambitious plans. In 1945, Stanford President Donald Tresidder sent academic vice president Alvin Eurich on a nationwide search for a dean with a new vision of a postwar law school. After a year of searching, Tresidder appointed Carl Spaeth, a State Department diplomat who had studied law at Yale and Oxford.

Under Dean Spaeth, the Law School experienced perhaps its most profound changes. G.I. Bill veterans filled the Law School, bringing it at one point to an enrollment of 500, close to its present size of 550. Several students of those first few postwar classes would go on

to become among the Law School's most distinguished alumni: Warren Christopher, Shirley Hufstедler, Frank Church, Pete McCloskey, Sandra Day O'Connor and William Rehnquist. (Rehnquist and O'Connor, both of whom graduated with high honors in 1952, are the only Supreme Court justices in U.S. history to graduate from the same law school class.) The *Stanford Law Review* was begun in 1948, and immediately made its mark with innovative pieces on such topics as the legality of rainmaking and the history of the 14th Amendment. The law library was placed under its own administration, a pioneering program in legal writing was initiated and, with help from Spaeth's affiliations with the Ford Foundation, grants were received to develop programs in international law and to bring Japanese and South Asian lawyers to Stanford.

Spaeth also professionalized fund-raising and alumni relations. George Crothers gave a gift of a quarter of a million dollars to pay for the Law School's first dormitory, which opened in 1948. This gift also spurred the school's move in 1950 into refurbished quarters on Stanford's outer quadrangle.

Recalling Jordan's vision, Spaeth promoted interdisciplinary research, reintroduced law courses for undergraduates,



Posing for their Class of '52 picture, William Rehnquist (back row, far left) and Sandra Day O'Connor (front row, second from the left) were the only Supreme Court Justices in U.S. history to graduate from the same class.

and encouraged students to consider careers in government and international affairs. But not everyone was happy with the direction in which Spaeth led the School. In 1955, at the tail end of McCarthyism, a sensationalist radio broadcaster aired an investigation of a foundation grant to Stanford Law School. Spaeth "is a great friend of the Alger Hiss . . . clique," he warned. (The study developed into a 1962 book by law professor Herbert Packer, *Ex-Communist Witnesses—Four Studies in Fact-Finding*, which ironically demonstrated the implausibility of Hiss's "second typewriter" defense.)

There could be no doubt, however, that under Spaeth Stanford became one of the premier law schools in the country. Many of his plans only reached fruition after he stepped down in 1962. Bayless Manning, his successor, wrote of his "own period of deanship, as . . . institutionalizing that which had been begun under Carl's leadership." It is a sentiment that could be echoed by subsequent deans—Tom Ehrlich, Charles Meyers, John Ely and the current dean, Paul Brest.

In the school's early days, professors who showed talent were swiftly swallowed up by more prestigious schools. The tables eventually turned, and distinguished scholars arrived from Berkeley, Wisconsin, Columbia and Harvard. They brought renown in traditional fields like torts, criminal and constitutional law, as well as in newer ones like tax, legal history, intellectual property and international law. The faculty would also become more diverse in background as well as in scholarship. Presently it counts ten women and six members of ethnic minorities among its 45 members.

The student body was changing as well. From 1960 to 1970, the average GPA of entering students climbed from 2.90 to 3.39. By 1983, it had reached 3.79. The median GPA of 1992's class was 3.68. Likewise, LSAT scores soared from 590 (out of 800) in 1960 to 682 in 1970 and to 745 in 1983. Applications to the school have risen from 598 in 1960 to 6,006 (for 180 places) in 1992. The student body is increasingly comprised of groups underrepresented in legal education. In recent classes, minority enrollment has approached one-third. And although tuition has climbed steadily, as it has throughout higher education, the Law School provides financial assistance to 70 percent of its students and has initiated a loan-forgiveness program for those who choose low-paying public interest careers.

In 1975, the school moved into its first home specifically designed for legal education, the well-equipped Crown Quadrangle, named for a family pivotal in its funding. Its increased resources have enabled the school, despite its small size, to develop a diverse curriculum. Adding to its traditional strengths in business law, public law and—more recently—clinical education, the school is pioneering programs in envi-

ronmental law, health law, alternative dispute resolution, lawyering for social change, and law and technology.

With the strength of its faculty, students, facilities and programs, Stanford Law School has enjoyed a sharp rise in prestige. For the last two years, *U.S. News & World Report*, in the most widely read rankings of higher education, has rated Harvard, Yale and Stanford as the top three law schools in the country. Although the Law School has not been associated in particular with any of the great movements in U.S. jurisprudence, it has gained a reputation as a collegial forum for diverse disciplinary and methodological approaches to law; and this is telling at a time when numerous law faculties have been rent by internal divisions, most publicized perhaps being that between "traditional" and "critical" legal studies.

On May 9, 1992, former Soviet President Mikhail Gorbachev delivered a lecture on the "Rule of Law" as the Herman Phleger Visiting Professor at Stanford Law School. Harkening back to the themes of Harrison's lectures, which traced the history of the rule of law in the United States, Gorbachev summarized the painful lessons of his country's history: "The state must act only according to the law and according to justice, and any act of the state authority must have a basis in law."

If the world is coming to a belief in the rule of law, Americans have long debated the central role of law in their civilization. In addition to their recent prominence on the Supreme Court and at the head of the State Department, graduates of Stanford Law School are working throughout state and federal government, in universities, corporations and international relations; in careers such as writing, administration and finance, where legal training often proves invaluable; and, of course, in law practice of all kinds. But they are doing so at a time when searching questions are being raised about the efficiency, justice and direction of our legal system.

Stanford Law School has much to contribute to this discourse. Throughout its history, it has tried to reconcile the demands of professional training with the need of all citizens for education in their legal and political institutions. It has emphasized the leading role lawyers play in business and public affairs. And with the momentum of its recent rise in reputation, it has taken on some of the more challenging and diverse questions facing legal education.

Wrote Dean Brest recently: "We have achieved our stature by keeping faith with the past, working hard in the present, and being ambitious for the future." ■

*Howard Bromberg is a lawyer and former instructor in legal writing and research who is writing a book on the history of the Law School.*

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