

not only to the students but to the public whom they would serve. But his commitment to public duty was also manifestly an outgrowth of the democratic populism of the Barnburners and of the gentrified elitism of the American Social Science Association and its parent movement, abolitionism. From these impulses and out of this background, Bascom developed the concept that would become known a generation later as the Wisconsin Idea.⁵⁶

Bascom's idea was to make the whole university an instrument of enlightened democratic law reform. He sought to apply the widest range of intellectual talents found among the university faculty to promote, in as many ways as might be imagined, the practical well-being of the state. Accordingly, a feature of his Wisconsin Idea was direct involvement of the university faculty in a wide range of public affairs. His university led the way in providing social and technical services for Wisconsin farmers and their families; its impact on Wisconsin agriculture was measurable. Similar services were devised for industrial workers and even their unions. For the law and the legal profession, this idea pointed toward invigorated public responsibility.⁵⁷

The German immigrants who settled Wisconsin brought with them not only German ideas on academic freedom but also German conceptions of public ethics, expressed in America by Francis Lieber and his acolytes.⁵⁸ To many of them, the social responsibilities of the university and the professions seemed natural. The Idea was also enormously popular with young Progressives such as Robert La Follette,⁵⁹ even if it was not always appreciated by those whose interests were endangered by initiatives coming from university professors. We can easily imagine, for example, the response of Milwaukee's brewers to Bascom's temperance sermons delivered outside their breweries, or of industrialists whose employees Bascom exhorted to organize.

One obstacle Bascom faced was a militant Board of Regents that had harshly fired his predecessor, one regent proposing "that in view of the incompetency of President Twombly, he possessing neither the learning to teach, the capacity to govern, or the wisdom to direct, he [should] be, and is hereby, removed."⁶⁰ As this event suggests, the regents' oversight of academic administration was still intimate during Bascom's presidency; he handled the grading system and student discipline under their watchful eye; faculty were rarely consulted on appointments and were forbidden to supplement their salaries with outside sources of income; and the regents had ultimate control over courses, textbooks, and the granting of degrees.⁶¹ A prolonged pow-

56. See Charles McCarthy, *The Wisconsin Idea* (New York, 1912).

57. 1 Merle Curti & Vernon Carstensen, *The University of Wisconsin: A History, 1848-1925*, at 294 (Madison, 1949).

58. See Paul D. Carrington, *The Theme of Early American Law Teaching: The Political Ethics of Francis Lieber*, 42 *J. Legal Educ.* 339 (1992) [hereinafter Carrington, *Lieber's Political Ethics*]; on the Lieber revival of the 1880s, see Paul D. Carrington, *William Gardiner Hammond and the Lieber Revival*, 16 *Cardozo L. Rev.* 2135 (1995) [hereinafter Carrington, *Lieber Revival*].

59. La Follette, *supra* note 55, at 26-27.

60. 1 Curti & Christensen, *supra* note 57, at 244.

61. Curti & Carstensen, *supra* note 29, at 17.

er struggle between Bascom and the board resulted in Bascom's departure in 1887.⁶²

Bascom was followed by Thomas Crowder Chamberlin (president from 1887 to 1892) and then Charles Kendall Adams (president from 1892 to 1902). The university experienced rapid growth during their terms.⁶³ This may have been due in part to a calming of ethnic tensions in the state. In 1860 Wisconsin was heavily populated by immigrants, and in some counties German immigrants outnumbered everyone else;⁶⁴ by 1900 most of the population of the state was Wisconsin-born and spoke English.⁶⁵ It may also have reflected the maturing of the young state's economy,⁶⁶ its agricultural base had shifted from wheat, sheep, and hops to more remunerative dairy production. This change had been effected with the help of the university's College of Agriculture.⁶⁷ Also at work were forces operating at the national level, for comparable growth occurred in scores of public universities.

President Chamberlin's most significant contributions may have been the university extension program he launched in 1891⁶⁸ and the faculty he built. For example, he brought Joseph Jastrow,⁶⁹ Frederick Jackson Turner,⁷⁰ Richard Ely,⁷¹ and C. H. Haskins⁷² from doctoral studies and junior positions at Johns Hopkins to form an intellectual core of the Wisconsin faculty.⁷³

The university's library may have been President Adams's highest priority,⁷⁴ but he also increased faculty salaries and retained the distinguished scholars emerging under his wing.⁷⁵ It was during his time that the Progressive move-

62. William Robert Johnson, *The University of Wisconsin Law School, 1868-1930*, at 150 (1973) (unpublished Ph.D. dissertation, University of Wisconsin); Curti & Carstensen, *supra* note 29, at 19.

63. By 1900 there were over 2,000 students enrolled. McMurray, *supra* note 15, at 7-8.

64. Current, *supra* note 13, at 36-37.

65. *Id.* at 37-38; see generally *id.* at 34-66.

66. Curti & Carstensen, *supra* note 29, at 20.

67. William Francis Raney, *Wisconsin: A Story of Progress* 217-38 (New York, 1940). Indeed, the needs of farmers—who dominated the population in 1848—would influence the political landscape and the university for some time. *Id.* at 142-43. The agricultural element in Wisconsin provided fertile soil for populism and then progressivism. See *id.* at 241-54.

68. 1 Curti & Carstensen, *supra* note 57, at 547.

69. Max Meenes, Joseph Jastrow, in *Dictionary of American Biography*, Supp. 3, at 383 (New York, 1973).

70. Ray Allen Billington, Frederick Jackson Turner, *Historian, Scholar, Teacher* (New York, 1973).

71. Benjamin G. Rader, *The Academic Mind and Reform: The Influence of Richard T. Ely in American Life* (Lexington, Ky., 1966).

72. Joseph R. Strayer, Charles Homer Haskins, in *Dictionary of American Biography*, Supp. 2, at 289 (New York, 1958).

73. 1 Curti & Carstensen, *supra* note 57, at 545; see Curti & Carstensen, *supra* note 29, at 24, for a complete list of changes under Chamberlin.

74. Clifford L. Lord & Carl Ubbelohde, *Clio's Servant: The State Historical Society of Wisconsin, 1846-1954*, at 104-08 (Madison, 1967). The Historical Society's American collection was second only to the Library of Congress.

75. Curti & Carstensen, *supra* note 29, at 25.

ment emerged as a powerful political response to the violent uprisings of railroad and industrial workers that threatened to overthrow the nation in the two decades beginning with the rail strike of 1877.⁷⁶ One response to the prolonged disorder of that time was the advent of social Darwinism and the English ideology of Herbert Spencer.⁷⁷ A reaction to social Darwinism was the advent of ethical economics, a school of thought having origins in the Christian gospel and German academic thought.⁷⁸ An early leader of the ethical economists was Richard Ely,⁷⁹ who came to Wisconsin in 1892, where he was joined in 1904 by his former Johns Hopkins student, John Commons, who was also an ethical economist in the 1890s,⁸⁰ and who became a major intellectual presence at Wisconsin as a founder of labor economics.⁸¹

In 1894 President Adams warned the graduating class that they would be “confronted with some of the gravest questions that have yet perplexed the American people. You will see everywhere in the country symptoms of social and political discontent.”⁸² That same summer, Adams’s former colleague and close friend, Thomas Cooley, made a presidential address to the American Bar Association, cautioning its members that it was their duty to lay that discontent to rest. They should, he said, “endeavor to have all laws which specifically affect the interests of laborers just and right, and to see that they are so administered as to secure to all whose daily labor must give to them and their families the means of support, the just rewards for their industry.”⁸³ Yet a leading Wisconsin Republican of the day, steeped in social Darwinism, would respond to such utterances as “crankism.” “It is,” he said, “as if multitudes of people had eaten of the insane root that takes the reason prisoner.”⁸⁴

II. The Law School

The university’s charter specified that it was to provide training in law, medicine, and education.⁸⁵ From the time of his appointment in 1850, Chancellor Lathrop sought to establish a program in law. His principal ally in this

76. See generally 1 Philip S. Foner, *History of the Labor Movement in the United States* 475–524 (New York, 1947); 2 *id.* (New York, 1955); Paul Avrich, *The Haymarket Tragedy* (Princeton, 1984); Almont Lindsey, *The Pullman Strike: The Story of a Unique Experiment and of a Great Labor Upheaval* (Chicago, 1942).

77. Richard Hofstadter, *Social Darwinism in American Thought, 1860–1915* (Philadelphia, 1944).

78. See Ross, *supra* note 6, at 98–122; Furner, *supra* note 6, at 49–57.

79. See Richard T. Ely, *The Past and the Present of Political Economy*, Johns Hopkins University Studies in History and Political Science, 2d ser., no. 3 (Baltimore, 1884).

80. See John R. Commons, *Social Reform and the Church* (New York, 1894).

81. Harter, *supra* note 42, at 69–86.

82. *Milwaukee Sentinel*, June 18, 1894, *quoted in* Thelen, *supra* note 50, at 66.

83. Address of the President, American Bar Association, Report of the Eighteenth Annual Meeting 181, 242 (1894).

84. Horace Rublee, *quoted in* *Milwaukee Sentinel*, May 9, 1894, *quoted in* Thelen, *supra* note 50, at 66.

85. 1 Curti & Christensen, *supra* note 57, at 53.

endeavor was one of his first appointments to the faculty, Daniel Read, who had previously taught law and politics at Ohio University and Indiana University.⁸⁶ Read and Lathrop sought to enlist the support of the rustic legal profession of the state, but they encountered considerable opposition.

The legal profession that had materialized in Wisconsin after the territorial judges arrived in 1836 was a motley group. As elsewhere in the territories, each judge was itinerant and was followed by a retinue of lawyers who “resembled a troupe of actors”⁸⁷ and often knew nothing about law.⁸⁸ Having access to few if any law books, most relied on theatrical skills. There is notable irony in the fact that the work of William Blackstone, a consummate snob who wrote to elevate the status of the English legal profession, served in America as the emblem of a democratic, classless legal profession.⁸⁹ But here and there one might find a lawyer such as Roujet Marshall, who was characterized by his fellow professionals as a “drudge”⁹⁰ compared to those others “not too much given to hard study.”⁹¹ What qualified Marshall for this opprobrium was that he had studied Blackstone and many other legal works besides. The unlettered rivals of lawyers like Marshall had no interest in elevating the state of learning in the profession. Lathrop argued fruitlessly that formal law study would exalt their science “by the constant suggestion of its beneficent social uses.”⁹²

Despite opposition, the Board of Regents proceeded in 1868 to establish a law school.⁹³ One of their purposes centered on the future financial well-being of the university. They supposed that lawyers educated in the university would be political leaders, and they saw the law school in part as an investment in future legislative appropriations.⁹⁴ It was expected, however, in keeping with

86. Jesse H. Coursault, Daniel Read, in 15 *Dictionary of American Biography*, ed. Dumas Malone, A21–22 (New York, 1935). Read’s activities in Indiana are recounted in James Albert Woodburn, *History of Indiana University, 1820–1902*, at 185–205 (Bloomington, 1940).

87. William R. Johnson, *Schooled Lawyers: A Study in the Clash of Cultures* 28 (New York, 1978).

88. One veteran later reported:

I was, as I believe, the first lawyer who moved into the county, and I venture to say that for at least six months, and perhaps a year, after my arrival, there was not a lawbook in the county except an Old Michigan Statute Book owned by Esq. McKaig. At least to my knowledge there was not. During this time, without any law books or jail, law and justice were administered under some disadvantage, and not as was laid down in Blackstone or Kent.

Charles Minton Baker, Report to the Legislature by Commissioner, 1849, *quoted in* W. Scott Van Alstyne, Jr., *The University of Wisconsin Law School 1868–1968: An Outline History*, 1968 *Wis. L. Rev.* 321, 321–22.

89. Daniel J. Boorstin, *The Mysterious Science of the Law* 202 (Boston, 1958).

90. 1 *Autobiography of Roujet D. Marshall: Justice of the Supreme Court of the State of Wisconsin, 1895–1918*, ed. Gilson G. Glasier, 257 (Madison, 1923).

91. Johnson, *supra* note 87, at 27 (citing James Willard Hurst, *The Growth of American Law: The Law Makers* 277 (Boston, 1950)).

92. *Id.* at 2 (citing University of Wisconsin Board of Regents’ Annual Report, 1857, at 26–27).

93. Johnson, *supra* note 62, at 94. Student demand was manifested in the formation of a student law club at the university. *Id.* at 108. The school attracted fifteen students in its first year. *Id.* at 117.

94. 1 Curti & Carstensen, *supra* note 57, at 453; see generally Willard Hurst, *Changing Responsibilities of the Law School: 1868–1968*, 1968 *Wis. L. Rev.* 336.

Lathrop's earlier planning, that law teaching would be done by judges and practicing lawyers, and thus would require little if any expenditure from the university's very scarce funds. Like Columbia's, but unlike Michigan's, the regents expected their law department to be financially self-supporting.⁹⁵

The figure on whom the regents fastened in 1868 as the person to lead this effort was William Vilas. Vilas was then twenty-eight years old, a Madison lawyer, and one of the few Wisconsin lawyers who had attended a law school of any kind; he had studied for a year at the well-established proprietary school in Albany, New York.⁹⁶ He had been among Lathrop's few students at the university and had then achieved the rank of lieutenant colonel while serving in the Civil War. At the time of his university appointment he was reporter for the Wisconsin Supreme Court Reports and thus held a public office identical to that held by Thomas Cooley at the time of his appointment at Michigan a decade earlier.⁹⁷ Although Vilas later served briefly as attorney for a railroad, he was known in 1868 as "the people's lawyer,"⁹⁸ and his selection by the regents deflected populist concern for the possible elitist tendencies of professional training. He was, like Cooley, a Barnburner in his politics; this commitment entailed, in addition to the predispositions previously enumerated, a stern view of government intervention in markets. That commitment made his politics seem increasingly reactionary as the march of events revealed market failures associated with industrialization.

Because he had attended law school, young Vilas was regarded as an expert on legal education. His vision was likely shaped by the fact that the law school he had attended apparently resembled the old Litchfield Law School in Connecticut, which was not a university law school but had set a standard for formal legal instruction as a supplement to a law office apprenticeship. Accordingly, he expressed his aim to be the training of students in "stewardship"—a phrase seldom if ever elaborated, but one that seemingly implied narrow vocational training.

There appears to have been no one in Wisconsin in 1868 advocating legal education as moral training for public life. That had been the primary aim of university legal education, beginning with the law department established by George Wythe at William and Mary in 1779,⁹⁹ a department that had served as a model for the University of Michigan Law Department.¹⁰⁰ Such a moral purpose was reflected at Michigan in the teaching of Thomas Cooley, and in the fact that the Michigan program was conducted at public expense for

95. Johnson, *supra* note 62, at 94–95.

96. An account of the school is H. S. McCall, *The Albany Law School: A Historical Sketch* (Albany, 1877).

97. Jones, *supra* note 20, at 67.

98. Johnson, *supra* note 87, at 45 (citing Burr W. Jones, *Colonel Vilas and the Law School*, in *Memorial Service in Honor of William Freeman Vilas at the University of Wisconsin* 18 (Madison, 1908)).

99. See Paul D. Carrington, *The Revolutionary Idea of University Legal Education*, 31 *Wm. & Mary L. Rev.* 527, 527 (1990).

100. Elizabeth Gaspar Brown, *Legal Education at Michigan, 1859–1959*, at 5 (Ann Arbor, 1959).

the public's benefit, and for a time charged no tuition. Likewise, in Iowa, the teaching of William Gardiner Hammond was in keeping with the Wythe tradition. But there is no evidence that such a tradition was in the mind of Vilas.

Vilas lectured occasionally on evidence and pleading. As a law teacher for seventeen years, he was appreciated by his students for a strong sense of history, high standards of professional ethics, sound practical judgment, and high expectations for the professional attainments of his students. He would remain active in practice and in politics. He served as chief reviser of the state's statutes at large in 1878 and 1883, served on the Board of Regents, and was elected to the Wisconsin legislature. In 1884 he was elected chairman of the Democratic National Convention, and thereafter joined the cabinet of President Cleveland as postmaster general (1885–88) and secretary of the interior (1888–90). He would conclude his career as a U.S. senator. Meanwhile, from 1868 until his death in 1908, he served as the political champion of Wisconsin's law school, an institution to which he left the remainder of his estate as an endowment.¹⁰¹

Appointed with Vilas was Jairus Carpenter, also a Madison lawyer, a man acclaimed as having "a true judicial temperament," which may have meant little more than that he was unsuited to theatrical work of the sort required to make a living on circuit in the rural courthouses. Carpenter was a full-time teacher and lectured on the whole corpus of private law. The justices of the Wisconsin Supreme Court were also designated members of the faculty,¹⁰² apparently in the hope that one or more of them would lecture on constitutional law, a subject that was initially neglected, as it was at Litchfield and other proprietary schools. It appears, however, that none of the justices actually taught in the early years.¹⁰³

In 1870 the court, following a practice established by the New York legislature, ordered that all the school's graduates be admitted to practice in all courts of the state without further examination.¹⁰⁴ This "diploma privilege" somewhat stimulated enrollment at the law school.¹⁰⁵ But given the standards for admission to the Wisconsin bar at that time, it was not an overly generous gesture. And the court taking the action may have had a conflict of interest inasmuch as the entire membership of the court were listed as members of the law faculty and might have expected to receive compensation from revenue produced by rising enrollment.

101. It was alleged but never proved that the large size of the estate was largely the result of an embezzlement from the Madison Mutual Insurance Company. Horace Samuel Merrill, William Freeman Vilas: Doctrinaire Democrat 23–27 (Madison, 1954).

102. Johnson, *supra* note 62, at 114–15.

103. Chief Justice Winslow taught in the law school at a later time. He was appointed in 1888, before his appointment to the court in 1891. Johnson, *supra* note 87, at 87–88. He served as chief justice from 1907 to 1920 and died in 1921.

104. I Curti & Carstensen, *supra* note 57, at 456.

105. There was a noticeable jump in enrollment after 1870, probably attributable to the introduction of the diploma privilege. Johnson, *supra* note 62, at 155–57. The number of *graduating* students tapered off after 1875. *Id.* at 157–58.

The law school suffered in these early years because of the regents' insistence that it be chiefly fee-driven.¹⁰⁶ Although money was appropriated for the modest salaries of Vilas and Carpenter, there were no appropriations for books or space. As a result, the physical facilities were inadequate. In 1881 the department was "a small, dingy room in the posterior part of the third story of a business block on Main Street."¹⁰⁷ In this early period, the law department was also physically divorced from the remainder of the university; well into the 1880s, classes were held a mile from the main campus, and law students were subject to few university regulations.¹⁰⁸

Although the faculty and student body grew, and new subjects were introduced,¹⁰⁹ local practitioners and lower-court judges continued to provide most of the teaching,¹¹⁰ the courses were vocationally oriented,¹¹¹ classes were small, and students were admitted with a high school diploma. Academic standards in the school remained low in the early years, perhaps the lowest of any department in the university, yet comparable to standards of other law departments, including those at Michigan and Columbia.¹¹² In 1876, however, the regents required a public examination of the students, and by stages academic standards were elevated. Among the students were a small number of women, and by 1890 a mother-daughter law firm in Milwaukee claimed to be the world's first to be composed entirely of women.¹¹³

In 1889 Edwin Bryant, Vilas's law partner, was appointed dean of the school. Dean Bryant continued to regard his school as a refinement of office apprenticeship.¹¹⁴ In this, Bryant and Vilas remained somewhat out of step with other Midwestern state university law schools, such as Michigan, Iowa, and Nebraska, which were more closely following the Wythe tradition and providing law training as moral education and preparation for public life. That Wisconsin clung to the office model was due to the length of Bryant's stay at the school's helm.¹¹⁵

106. 2 Curti & Carstensen, *supra* note 57, at 425.

107. Johnson, *supra* note 62, at 142 (quoting U. Press, Nov. 25, 1881, at 4).

108. *Id.* at 123.

109. *Id.* at 118.

110. *Id.* at 123; 2 Curti & Carstensen, *supra* note 57, at 427.

111. Johnson, *supra* note 62, at 118.

112. Or Harvard before the advent of Christopher Columbus Langdell as dean in 1870. Arthur E. Sutherland, *The Law at Harvard: A History of Ideas and Men, 1817-1967*, at 154-55 (Cambridge, Mass., 1967).

113. Lelia Robinson, *Women Lawyers in the United States*, 2 Green Bag 10, 12 (1890). The first woman graduate of the law school, Belle Case La Follette (wife of Robert M. La Follette) graduated in 1885 but never practiced law. Johnson, *supra* note 87, at 79; Edward Newell Doan, *The La Follettes and the Wisconsin Idea* 18 (New York, 1947).

114. Johnson, *supra* note 62, at 207. Bryant's commitment to the apprenticeship model is well illustrated by Johnson. Bryant was known, for example, to write a personal check to lend a student tuition funds, or to call a student's family about excessive gambling—establishing a rapport, in short, "little different from the relationship one might expect between a lawyer and his apprentice." *Id.* at 246.

115. Johnson, *supra* note 62, at 118-19; Stevens, *supra* note 9, at 22-24; 2 Curti & Carstensen, *supra* note 57, at 429.

Nevertheless, there was during Bryant's administration a gradual transition in the faculty composition from practitioners lecturing part time to full-time career law professors.¹¹⁶ The subprofession of academic law came to Wisconsin in his time; he hired six full-time teachers. All six were graduates of university law schools, and all were from other areas of the country.¹¹⁷ Eugene Gilmore was among them. President Adams was an enthusiastic supporter of this development, recommending in 1894 that Wisconsin follow the lead of such schools as Harvard, Columbia, and Cornell.¹¹⁸ But Bryant was cautious with appointments, avoiding anyone who might prove controversial.¹¹⁹ And respected part-time lecturers remained an important part of his institution.¹²⁰

As the faculty composition evolved, a breach developed between the academic members and their practitioner colleagues. The tension was reflected in the changing curriculum. The adjunct faculty, supported by the Wisconsin State Bar Association,¹²¹ had emphasized vocational training. As career academicians joined the faculty, the tone of the institution began to change—at least in the catalog.¹²² At the same time, however, other forces pushed the school to add more practical training. Specifically, the university was increasingly emphasizing “scientific” or applied work over liberal arts.¹²³ In addition, in part because of the diploma privilege, law school was increasingly viewed as the *primary* method of preparation for the bar.¹²⁴ Accordingly, instruction on drafting documents was added, as was a moot court.¹²⁵

At the suggestion and perhaps the insistence of President Adams, Dean Bryant in 1893 employed as his associate dean Charles Noble Gregory.¹²⁶ Gregory would stay only until 1901, when he left to take the deanship at the State University of Iowa. While at Wisconsin, Gregory championed the case method, the more rigorous form of instruction developed at Harvard in the 1870s.¹²⁷ That method has often been associated with formalist or apolitical legal theory and technocratic professional training of the sort that Dean Bryant generally favored. But it was widely embraced by academicians such as Gilmore, who were by no means apolitical or technocratic in their profes-

116. Johnson, *supra* note 62, at 232.

117. *Id.* at 237–38.

118. 2 Curti & Carstensen, *supra* note 57, at 427–28. On the hiring of full-time teachers, see Stevens, *supra* note 9, at 38.

119. 2 Curti & Carstensen, *supra* note 57, at 429.

120. Even in 1900 a political brouhaha erupted over the replacement of two eminent practitioners on the faculty. See 2 Curti & Carstensen, *supra* note 57, at 428–29.

121. Johnson, *supra* note 62, at 180.

122. *Id.* at 257.

123. *Id.* at 150. This is in part reflected in the arrival of Turner and Ely. See *id.* at 196.

124. *Id.* at 271. This itself may be linked to something as mundane as overcrowding in Madison and Milwaukee law offices. *Id.*

125. *Id.* at 251, 257–59.

126. Stevens, *supra* note 9, at 61.

127. See Paul D. Carrington, Hail! Langdell! 20 Law & Soc. Inquiry 691, 736 n.238 (1995).

sional work.¹²⁸ And Bryant the technocrat, like many lawyers of his generation, opposed it. He began to express doubts about the method as early as 1894,¹²⁹ characterizing it as “narrow, slow, and unprofessional.”¹³⁰ He told the Wisconsin State Bar that the method taught “*how to learn law*,” rather than the law itself—that it “well fit [the student] for the profound work of historical and archaic studies, rather than the alertness and nimbleness of the active practitioner.”¹³¹ Despite these objections, by the end of Bryant’s term the school was heavily committed to case study.¹³² After Harry Richards became dean in 1903, the school would use the case system almost exclusively.¹³³

There were other changes as the century drew to a close, notably the lengthening of the academic program and construction of a new building. Arguably, Dean Bryant’s vision of the law school as a complement to law office training had suited its physically isolated building.¹³⁴ But there is no evidence that the initiative in constructing a new building on the campus was motivated by the desire to integrate the law school into the university,¹³⁵ or to enhance its ability to achieve the vision of President Bascom. When the new building was occupied in 1893,¹³⁶ it also held the School of Economics, where Richard Ely was housed and where John Commons would preside.¹³⁷ The move nurtured “growing ties between the College of Law and other departments of the university,”¹³⁸ and foreshadowed greater cooperation after the turn of the century, cooperation that would be directed to social and political reform.

The curriculum was expanded to three years in 1895,¹³⁹ and soon thereafter came the introduction of rigorous grading and student ranking. These changes clearly reflected changing attitudes about entry into the profession¹⁴⁰ that in turn manifested the advent of technocratic professionalism everywhere in

128. On the ironies of the alignments for and against the case method, see generally *id.* at 735–59.

129. Johnson, *supra* note 62, at 280.

130. Stevens, *supra* note 9, at 61.

131. Quoted in Johnson, *supra* note 62, at 281.

132. *Id.* at 285.

133. *Id.* at 310.

134. *Id.* at 144.

135. The regents decided two years of legal study would be necessary for the LL.B. in the early 1890s, *id.* at 166–71, and the legislature provided for the construction of a new building at about this time. 2 Curti & Carstensen, *supra* note 57, at 425.

136. 2 Curti & Carstensen, *supra* note 57, at 426. The building would later prove inadequate in part because the library could not accommodate the volumes spinning off the presses in St. Paul. *Id.* at 417.

137. Johnson, *supra* note 62, at 215.

138. *Id.* at 216. Johnson also links to this the joint degree option (LL.B. and M.A.) first available in 1892, and the fact that faculty (such as Turner) were cross-listed by multiple departments of the university. *Id.* at 216–17.

139. *Id.* at 256.

140. Ranking students may have reflected a shift to an “objective, test-oriented, and impersonal method of certification” and away from the “immediate and personal” means whereby a young lawyer “‘proved’ himself in the arena of the courtroom.” *Id.* at 188.

America. It may be that some who favored these changes elevating the academic status of the profession also favored bringing the law school to the campus in the hope that the move would magnify that effect. But it is unlikely that anyone in 1893 foresaw the social and political consequences that would result from the influence on the law school of Commons and others on the faculty who remembered and sought to sustain the Bascom vision.

III. The Progressive Movement at the University

Except for a Democratic surge during the Civil War and a brief period of Democratic control in the early 1890s, Wisconsin was a Republican stronghold for its first half-century of existence.¹⁴¹ In the nineteenth century, however, the Republican machine was tainted by bossism, connections to organized crime, and unscrupulous patronage patterns.¹⁴² It was in this setting in the 1890s that Robert La Follette emerged, a strident voice opposing the entrenched machine and old-style Republicans such as its late-century governors were said to be.

Not only did La Follette attack the Republican machine, but he spent the 1890s developing and advocating a Progressive platform¹⁴³ befitting the optimism of Daniel Coit Gilman.¹⁴⁴ Central to the La Follette program were reforms of the political process in the state to achieve direct democracy, including the primary election, regulation of lobbying, limits on political spending, and the establishment of a legislative reference service to provide drafting and information for legislators. While not necessarily hostile to the earlier agrarian politics of Barnburners,¹⁴⁵ Progressives forsook the principle of *laissez-faire* expressed in Jackson's bank veto message and proposed instead to use government to regulate business in the public interest. Among the regulatory measures favored were progressive taxation, environmental protection, compensation of workers for industrial accidents, collective bargaining,¹⁴⁶ and regulation of railroad rates.¹⁴⁷ Wisconsin Progressives also favored comprehensive vocational education to elevate the value of labor, and the dissemination of information to voters through extraordinary library services. By 1900, the state, which was heavily agricultural and already inclined towards populism,¹⁴⁸ was ready for the La Follette message. La Follette served as governor from 1901 to 1906, and then U.S. senator from 1906 to 1921. During most of those years, he was the most eminent presence in the state and a vital force in the university.

141. See Raney, *supra* note 67, at 171–77, 272–75.

142. *Id.* at 263–65.

143. On the forces available for him to marshal, see generally Thelen, *supra* note 50.

144. See *supra* text accompanying note 2.

145. On the connection between agrarian politics and late-century Progressivism, see Thelen, *supra* note 50.

146. Robert W. Ozanne, *The Labor Movement in Wisconsin: A History* (Madison, 1984).

147. Current, *supra* note 13, at 193.

148. See Raney, *supra* note 67, at 217–38, 241–54.

As governor, La Follette was able to implement many of his ideas—establishing in 1903 both the direct primary and an ad valorem railway tax,¹⁴⁹ and in 1905 a railway commission authorized to control rates and quantity of service, and to prevent discrimination.¹⁵⁰ Also in 1905 he secured the passage of a civil service act designed to lessen the effect of patronage practices, and he set up a state board of forestry.¹⁵¹ In all these measures, he was opposed by the older generation of Republicans and their supporters, who became known as the Stalwarts.¹⁵²

James Davidson, a native of Norway, was governor of Wisconsin from 1906 to 1911. Though also a Progressive, Davidson was less charismatic than La Follette. Nevertheless, under his administration all public utilities were made subject to the railway commission.¹⁵³ The state also amplified the regulation of insurance companies¹⁵⁴ and took steps towards conservation of natural resources.¹⁵⁵ Under Francis McGovern, governor from 1911 to 1915, Wisconsin experienced an explosion of social and economic reform legislation. McGovern focused on urban issues, limiting workers' hours and setting up a system of industrial accident compensation; he also established a comprehensive scheme regulating the insurance industry.¹⁵⁶ And he promoted vocational education and a minimum wage for women.¹⁵⁷ None of the major reforms introduced while La Follette was governor would be repealed during his tenure in Washington.¹⁵⁸

La Follette had been an admiring student of Bascom's,¹⁵⁹ and as governor he sought to bring new life to Bascom's vision of the university. His first and most important step in that direction was to influence the selection of a new president to replace Charles Kendall Adams in 1902. La Follette's candidate

149. *Id.* at 289–91; see 1903 Wis. Laws 754 (primary elections); 1903 Wis. Laws 491 (rail tax).

150. Raney, *supra* note 67, at 293; see 1905 Wis. Laws 549.

151. Raney, *supra* note 67, at 288; see 1905 Wis. Laws 570 (civil service); 1905 Wis. Laws 161 (forestry board).

152. Raney, *supra* note 67, at 288.

153. *Id.* at 344; see 1907 Wis. Laws 1130.

154. 1909 Wis. Laws 564. For the antecedents to this legislation, see Spencer L. Kimball, *Insurance and Public Policy: A Study in the Legal Implementation of Social and Economic Public Policy, Based on Wisconsin Records 1835–1959* (Madison, 1960).

155. Raney, *supra* note 67, at 344; see 1911 Wis. Laws 139.

156. Current, *supra* note 13, at 194; 1913 Wis. Laws 991.

157. Raney, *supra* note 67, at 347.

158. Current, *supra* note 13, at 197–98. This is not to say that he or his programs were universally popular. He became quite unpopular in Wisconsin on account of his opposition to the First World War, despite the large German population in the state. Doan, *supra* note 113, at 84. Indeed, a resolution signed in 1918 by most of the faculty (led by Richard Ely and including President Van Hise) formally repudiated him on account of this stance. 5 *The History of Wisconsin*, ed. William Fletcher Thompson, 39–42 (Madison, 1990). He was also burned in effigy by the students of the university. Current, *supra* note 13, at 200.

159. See, e.g., La Follette, *supra* note 55, at 26–33.

was his classmate¹⁶⁰ and fellow admirer of Bascom,¹⁶¹ Charles Van Hise. The search was contentious. Candidates included Henry Pritchett (later director of the Carnegie Foundation for the Advancement of Teaching),¹⁶² Nicholas Murray Butler (whom Columbia hired), and Edward A. Birge, within the university.¹⁶³ Vilas, then on the Board of Regents, bitterly opposed Van Hise¹⁶⁴ and openly objected to La Follette's having stacked the Board of Regents to ensure Van Hise's success.¹⁶⁵ Through the efforts of La Follette and Frederick Jackson Turner, Van Hise was awarded the position.¹⁶⁶ Vilas would later approve the choice.

Van Hise served as president until 1918. He remained active as an academic geologist even while running the university, publishing a well-regarded treatise in 1904¹⁶⁷ and taking the reins of several scholarly societies during his career.¹⁶⁸ His version of the Wisconsin Idea was influenced by his scientific background. He believed the scientific method applicable to the social sciences: "economic and social questions like minimum wage law and tenement legislation could be dealt with much as questions of wheat hybridization or livestock breeding could be dealt with, as problems to be investigated by the inductive method."¹⁶⁹ In his own work, he turned to economic issues, writing a book in 1912 in which he opposed the dissolution of trusts, arguing that large-scale industrial organization regulated by experts would best provide for the efficient use of natural resources in the public interest.¹⁷⁰ As had his teacher, Bascom, he proposed to subordinate the scholar's interests to the public

160. Robert C. Nesbit, *Wisconsin: A History* 427 (Madison, 1973). La Follette's degree was a bachelor's degree from the general university; he attended the law school for one term only. McMurray, *supra* note 15, at 22. His son, Philip F. La Follette (later governor as well), would earn his LL.B. in 1922. *Id.* Philip taught briefly at the law school. *Id.* at 28.
161. In his inaugural address, for instance, Van Hise spoke of the "obligation of a state university to serve the social and spiritual well being of all citizens" and the obligations of the "University as a leader . . . in service to the people." Curti & Carstensen, *supra* note 29, at 28.
162. Henry Pritchett would later commission the Reed report at the request of the ABA Committee on Legal Education. Ellen Condliffe Lagemann, *The Politics of Knowledge: The Carnegie Corporation, Philanthropy, and Public Policy* 78 (Middletown, 1989).
163. 2 Curti & Carstensen, *supra* note 57, at 12, 12 n.13. Birge was dean of the College of Letters and Sciences at the time, *id.* at 24, and would finally take the presidency when Van Hise died in 1918. Curti & Carstensen, *supra* note 29, at 36–37.
164. 2 Curti & Carstensen, *supra* note 57, at 13 n.17.
165. *Id.* at 11–12; see also Merrill, *supra* note 101, at 253 (Vilas steadfastly opposed "what he considered undue political influence in university affairs on the part of La Follette").
166. 2 Curti & Carstensen, *supra* note 57, at 13.
167. *Id.* at 15 (A Treatise on Metamorphism).
168. He was president of the Geological Society of America in 1907, the International Geological Congress in 1910, the National Academy of Sciences in 1915, and the American Association for the Advancement of Science in 1916. *Id.* at 16.
169. Gearity, *supra* note 41, at 137.
170. See 2 Curti & Carstensen, *supra* note 57, at 23–24. The book was *Concentration and Control: A Solution of the Trust Problem in the United States* (New York, 1912). In the introduction Van Hise credits several university faculty members for contributions to the work, including Ely, McCarthy, and Gilmore.

interest.¹⁷¹ He believed that the university's mission was to train specialists and to lend them to government for research and reform; it was also to instruct the people to accept, support, and facilitate widespread democratic involvement in this reform.¹⁷²

The Wisconsin Idea required university faculty committed to public service and empirical work; but it also required state government officials committed to reform; and it envisioned reform on a large scale, emerging as a result of close cooperation between university and government. Eugene Gilmore described it as "an earnest attempt to realize democracy through an intelligent and independent electorate which is at the same time industrially and economically trained and efficient, such attempt being aided by the utilization of the expert knowledge and best skill of the community."¹⁷³ Others would write that the boundaries of the campus simply extended to the boundaries of the state.¹⁷⁴ University faculty, administrators, and students worked for the state in a variety of capacities from statistics gatherer to legislation drafter, from agricultural extension teacher to economic policy adviser. One list shows forty-one professors working for one state agency or another in 1908.¹⁷⁵ Another list shows forty-six in 1911.¹⁷⁶ The peak was probably reached between 1912 and 1914.¹⁷⁷ Several individual faculty members drafted bills reflecting their own expertise; for example, T. S. Adams of the political economy

171. Some have argued, however, that there is *necessarily* an academic freedom corollary to the Wisconsin Idea, citing the ultimate vindication of Professor Ely when he was charged with economic radicalism. Current, *supra* note 13, at 191–92; see Doan, *supra* note 113, at 14. President Adams's statement exonerating Ely ("[W]e believe the great State University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found.") is often quoted as proof of the university's commitment to academic freedom. *Quoted in id.* at 14–15. Its commitment seems less obvious when one recalls that the Board of Regents found Ely "innocent" of the charge, on the merits (i.e., found him conservative, rather than "entitled" to the radicalism of which he was accused), and that for years the university refused to mount a class gift of a plaque bearing the famous Adams quotation. See Harter, *supra* note 42, at 53–54; Vernon Carstensen, Wisconsin Regents: Academic Freedom and Innovation 1900–1925, 48 Wisc. Mag. Hist. 101, 107–08 (1964). Ely did not argue the academic freedom issue. See Theron F. Schlachbach, An Aristocrat on Trial: The Case of Richard T. Ely, 47 Wisc. Mag. Hist. 146, 156–58 (1964). Van Hise himself was quite cautious about the concept of tenure, being convinced that the institution existed for the students and the public, not for the faculty. 2 Curti & Carstensen, *supra* note 57, at 50–51. Similarly, he opposed the implementation of formal procedures for demotions and dismissals of faculty. *Id.* at 55.

172. See Current, *supra* note 13, at 191.

173. The Wisconsin Idea, 4 Philippine L.J. 271, 284 (1918). It has also been defined as "governmental reform and administration by, or at least on the advice of, academic experts." Current, *supra* note 13, at 191.

174. See, e.g., Current, *supra* note 13, at 191.

175. Curti & Carstensen, *supra* note 29, at 30.

176. Nesbit, *supra* note 160, at 427. Most faculty served in regulatory agencies; for example, B. H. Meyer (political economy) served as member and then chair of the Railroad Commission from 1905 to 1911, and Edwin E. Witte (economics) served as secretary of the Industrial Commission.

177. McMurray, *supra* note 15, at 51. Detailed lists are available in McCarthy, *supra* note 56, at 313–17 and in McMurray, *supra* note 15, at 54–60.

department helped to draft the state's income tax law in 1911.¹⁷⁸ La Follette also turned often to John Commons for drafting.¹⁷⁹ Charles McCarthy, a student of Turner's, was appointed to run the Legislative Reference Library of Wisconsin, a nonpartisan research and drafting service.¹⁸⁰

IV. Eugene Gilmore and Harry Richards

Gilmore came to Wisconsin in the year Van Hise became president of the university. He soon became a central figure in the law school and the central figure in its participation in the Wisconsin Idea.

Gilmore was born in Brownville, Nebraska, in 1871.¹⁸¹ He graduated from DePauw University in 1893. He took with him to DePauw a typewriter he had learned to use in a business course, and he earned enough money to pay all his expenses by working as secretary to the president of the university.¹⁸² After graduating, Gilmore read law in Indianapolis and was admitted to the Indiana bar in 1895.¹⁸³

Soon after his admission to the bar, Gilmore went to Harvard Law School for further education. He again took with him his trusty Remington, and secured a position in the office of Dean James Barr Ames.¹⁸⁴ He was a member of the Harvard Law Review and, as the dean's secretary, made several suggestions to improve administrative procedures at the school—installing, for instance, a card catalog system to keep student records and a “letterpress” that helped keep track of school correspondence.¹⁸⁵ In 1899 he received the LL.B.¹⁸⁶ and married a college classmate from Indiana to whom he remained married for the remaining fifty-one years of his life. He was admitted to the Massachusetts bar and practiced law for three years with a Boston firm. In 1902, at the age of thirty-one, he accepted an invitation to join the Wisconsin law faculty.¹⁸⁷

178. McMurray, *supra* note 15, at 40.

179. Harter, *supra* note 42, at 58. Commons would work on the Workmen's Compensation Act and would draft the 1911 Industrial Commission Act. McMurray, *supra* note 15, at 39.

180. Harter, *supra* note 42, at 58. Gilmore approvingly described the library as a much needed “source of reliable and unbiased information for honest legislators [and a body of] expert draftsmen to formulate proper legislation.” It was, he contended, “a veritable storehouse of very practical information on every conceivable subject.” Gilmore, *supra* note 173, at 278–79.

181. See Eugene Allen Gilmore, in 44 *National Cyclopædia of American Biography* 56 (New York, 1962).

182. George B. Manhart, *DePauw Through the Years* 224, 298–99 (Greencastle, Ind., 1962); Leonard K. Eaton, *Two Chicago Architects and Their Clients: Frank Lloyd Wright and Howard Van Doren Shaw* 118 (Cambridge, Mass., 1969).

183. Eaton, *supra* note 182, at 118.

184. *Id.* at 118–19.

185. *Id.* at 119.

186. He later received, as honorary degrees, the LL.D. from DePauw (1922), the LL.D. from the State University of Iowa (1941), and a D.C.L. from the University of Pittsburgh (1942).

187. Gilmore started as an assistant professor, earning \$2,000. In 1903 he was promoted to professor and his salary raised to \$2,500. Johnson, *supra* note 62, at 236–37.

