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George L. Reinhard

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AMERICAN LAW SCHOOLS AND THE TEACHING OF LAW.

BY GEORGE L. REINHARD, L. L. D.,

Dean of the Indiana University School of Law.

LAW schools and law school teachers have doubtless something to learn from one another. As remarked by a Harvard law professor,—the knowledge of the science of teaching law is not to be found in any one particular law school. That we have in connection with the American Bar Association a section of legal education and an association of American Law Schools, is sufficient proof that at least we who are members of the same fully recognize the truth of the above proposition. Many of us travel hundreds of miles every year and listen to papers and oral discussions in the meetings of these organizations so that by the exchange of ideas we may become mutually better instructed about the best way to conduct law schools. But while these proceedings are doubtless of great value to those who witness them, they do not, after all, offer opportunities for observing and studying the methods applied in the different schools and their effect upon the students or the character of the students themselves with regard to previous preparation and other qualifications. There are many things said and done in other schools in which law is taught which we do not hear and see in our own. Some of these may and some may not commend themselves to our judgment; nor is it necessary that everything we meet with in prominent schools should receive our unqualified approval or be adopted in our own work. One may pick out that which impresses him favorably, and carry it away with him, if he chooses to do so. But even if he should conclude, after investigation, that he has not been introduced to much which is new to him or better than that of which he is already in possession, it will be a source of some satisfaction, at least, to realize that his

own school and his own methods are not very far behind those of others which are counted among the best in the land.

It was with some such feelings as these that I determined last year to visit some of the principal law schools of the country, provided I could obtain their permission to do so. It gives me great pleasure to be able to state, not only that I received favorable replies from the head of every law school to which I had directed a letter on the subject, but that those I actually visited extended to me every opportunity and facility for such observation and inspection as I felt inclined to make; and that my stay at each of these institutions was made pleasant and agreeable by the extension of the most generous hospitalities. My chief regret is that my duties at home did not permit me to include in my itinerary all of the schools I had intended to visit. As it was, I could only remain away a sufficient time to see something of Harvard, Boston University, Yale, Columbia and Pennsylvania.

One of the principal subjects in which I have been interested for some years, and which I may say engaged my special attention at these schools, is the practical working of the so-called case system in the teaching of law in law schools.

At Harvard and Columbia, the case method is employed almost exclusively. Indeed, as is well known to the profession, the case system originated in the Harvard Law School, it being first introduced there by Professor Langdell about a third of a century ago. In the Boston University, Yale and Pennsylvania law schools, it is employed only in connection with other methods, although some of the individual professors in

these schools teach law by cases entirely.

The purpose of the case system is to give instruction in law by means of judicial decisions as the basis of class room work. What are believed to be the most important cases upon a given subject, say contracts, insurance, constitutional law, or whatever it may be, are collected and published in the form of a case book, which is given to the student for study and preparation, so that he may be able to report upon and discuss in the class room the cases previously assigned to him for study. No syllabi or head notes are used or permitted in connection with the cases contained in the case book, and there is nothing to indicate the points of the decision, unless it be the title given to the subject under which the case is grouped. Copious notes are often added, however, referring to other decisions in which the same or kindred questions are determined, either in accord with or contrary to the adjudication of the principal case or cases furnishing the topic for discussion.

No one who has given this system of teaching law serious study can escape the conviction that it has become a potent factor in the world of legal education, and that it has greatly revolutionized the entire work of the law teacher. Formerly, written lectures and recitations from treatises on given subjects constituted the principal means by which a knowledge of law was imparted to law school students. Where the text-book only was employed great emphasis was placed upon the necessity of following the ideas and conclusions of the author; and the contents of the texts were usually recited by rote. The lecture system, as then practised, gave the student but little to do beyond storing up the utterances of the professor for use on examination day. It is true that the lectures contained many and frequent citations of authorities, but these were rarely ever reported on or even carefully examined by the student, and never discussed at length in the

class room. All this has now changed. The oral discussion in class has displaced the *verbatim* "recitation" and the written lecture. Neither the dogmatic statement of the text nor that of the instructor is any longer blindly followed, and the spirit of freedom of discussion and independence of thought prevades every well-conducted class in the law school. And this is true whether the teaching is purely by cases or not.

That these reforms in the teaching of law are wholly the result of the case system, is, perhaps, too much to say for it; but that they are so in large part must, I think, be admitted by everyone at all familiar with the subject. Every case that comes before the class, if carefully studied by the student beforehand, will, from the nature of its *ratio decidendi*, call forth either the approval or disapproval of the student of law, if he is sufficiently advanced to entertain a rational opinion on the question decided, or will, at least, raise a question of doubt in his mind, if his views as to the underlying principles of the case are not already firmly fixed. This will supply the motive for an investigation beyond the immediate scope of the decision itself. It tends to arouse the spirit of controversy which is so useful to the student, not only in the class room and in his intercourse with the teacher, but also in the actual practice of his profession afterward.

If, then, the case system has done nothing more for the cause of legal education, its right to a permanent position in law school work seems to be firmly established. But its merit is not to be confined to the beneficial influence it has exerted over the methods of teaching in a general way. Its greater utility lies in its own intrinsic fitness to accomplish the most satisfactory results in the teaching of law as a science, under proper conditions. This is not to say that it can be employed successfully with all classes of students and in all circumstances. If the stu-

dent's mind is sufficiently matured and his previous preparation adequate, I believe it to be the consensus of the best opinion that he can be most successfully taught by means of cases. The great majority of law students, however, especially those just beginning the work in the law school, have not received the benefits of that preliminary mental discipline which is essential to an understanding of the involved language and legal terminology contained in the average judicial opinion, and instruction to these students must be given in a way which they may be able to comprehend more readily. Hence, it may be doubtful whether during the early portion of the course in those law schools which are not entirely or even chiefly made up of students who have received a college education, the exclusive use of cases as a means of teaching law is altogether practicable. Perhaps it may be true that even among advanced students all subjects in the curriculum can not be as successfully imparted by the use of the pure case method as it might be otherwise.

I believe, however, that much of the objection to the case system, as a whole, is largely due to an imperfect understanding of what is really meant by the term. Some people seem to entertain the notion that the use of the case system implies the exclusion of every other avenue of investigation and every other means of demonstration than that of discovering and discussing the points involved in the decisions contained in the case book. They insist that the student of pure case law is too often required to cudgel his brain by wading through a mass of incomprehensible stuff found in some old English case, perhaps, the sole object of which is that he may be able to reproduce the substance of it in the class, where he will receive more or less assistance from his instructor to enable him to fathom its contents. Of course, if this is what is

meant by the case method of instruction, its opponents are clearly justified in their objections to it. The study of judicial opinions without other aid, such as lectures, collateral reading of text-books and of other decisions of the courts, would be fully as unsatisfactory as was the old method of teaching law exclusively by the sole means of recitations or lectures read from manuscript. To take up a case in class and simply find in it the point or points which it decides, accomplishes only a minimum part of the benefits which the friends of the system claim for it. The truth is, there are as many different case methods as there are instructors who teach by means of cases. This fact was firmly impressed upon me while attending the different classes in Harvard and the other law schools I visited. One professor who has a strong predilection for extemporaneous exposition uses the system largely as a means of illustrating the points in his lectures. He does not confine himself to the cases assigned for study, but makes frequent reference to other decisions and text-books which either support or oppose the ruling of the case or the point in dispute, or treat of it in any manner. This instructor does not insist so strongly upon a minute recital of the facts of the case reported on by the student as others do, and while inviting discussion on the part of the students, seems inclined to do more lecturing, which, however, is always interesting and instructive. Another teacher does the greater portion of his work in the class room by asking questions and seems to succeed in obtaining a large variety of answers, which generally lead to satisfactory conclusions. Often the same student is called upon to report as many as two or more cases of the number assigned to the class, and is required to state his impressions as to the agreement or conflict between them, whether the one may be dis-

tinguished from the other in principle, and whether in the one or in the other or in all there is room for adverse criticism as to the correctness of the conclusion reached and the soundness of reasoning upon which it is based. Still another, while asking questions sufficient to direct and keep the trend of discussion in the proper channel, encourages a yet wider scope of discussions, thereby evoking the free expression of a great variety of views, some of which, it is not too much to say, even border on grotesqueness and absurdity.

All these methods have the advantage of keeping alive the interest of the students in the work and of encouraging independence of thought and free criticism. If the views uttered happen to come in conflict with those of the court whose judgment is undergoing review, such views are not, on that account, either frowned upon or treated with levity, but are freely encouraged; for in all law schools it is understood to be the prerogative of both teacher and student to criticise the courts and excoriate their decisions whenever it is deemed necessary. One benefit accruing to the student from this, is to learn the importance and desirability of consistency in judicial decisions, and of the establishment of fixed rules and adherence to them rather than to avoid temporary hardships and inconveniences in individual cases.

But while it is true, as has been stated, that each teacher has his own peculiar way of applying the case system, there is one object which all instructors have in common, and that is the use of cases as the basis of instruction. Collateral reading is enjoined and lecturing and oral exposition by the instructor are by no means avoided, but all the investigation that has been made, and all the discussions indulged in hinge upon the question or questions decided in the case under review before the class. To illustrate: Suppose the course is one in dam-

ages. The particular doctrine considered by the class we shall say, is that of Proximate Cause. The teacher has stated the doctrine in a general way and perhaps some cases upon it had been previously taken up and discussed. In the case now called for the student makes a brief report as to the facts and the legal conclusion at which the court has arrived. Let us say the case is that of *Doe v. Roe*. Roe is a farmer, who, while gathering rubbish on his land, negligently set fire to the combustible material and permitted the fire to spread, as a result of which the house of a third person, say Jones, was burned. From the house of Jones the wind blew sparks of fire to the barn of Doe, the plaintiff in the case, causing a conflagration which destroyed or injured the barn, to the plaintiff's damage. The court holds that the defendant's negligent act of setting fire to the combustible material was not the proximate cause of Doe's injury, each conflagration being treated as a new and independent cause. The instructor then calls for another case upon the same subject from the same or a different student. In this case it is held that the fire which consumed the last building was the result of a continuous uninterrupted succession of events due to the negligence of Roe in setting the fire and permitting it to spread; that, therefore, such negligence must be regarded as the proximate cause of the plaintiff's injury, and that the defendant is liable. It may be that the point in the last case arose on demurrer to the declaration or plea, while in the former it was raised by a demurrer to the evidence. It is sufficient to know that the question of substantive law decided is the same in each case, and that in principle the decisions are squarely in conflict. It now becomes the function of the teacher, not so much to decide for the class which of these two cases states correctly the principle of law involved as it is to direct the discussion in such a

way as to bring each student to determine for himself which is the better decided case. In order to do this intelligently, he must, of course, have the subject well in hand, be informed as to the weight of authority, and what are the views of some of the better text writers. The student having expressed an opinion on the subject will be required to support it by such authority as he may be able to give. If he is not able to cite other cases or texts, some other student may be ready to do so, or the teacher may direct the members of the class or a portion of them, to make additional investigation and report at the next lecture.

Should the rule established by the case be peculiar to one particular jurisdiction, or only a few jurisdictions, as for example, the doctrine of mental anguish in damage suits, the class will learn that what may be regarded as good law in one jurisdiction may not be considered as such in another, upon the same subject. These are, of course, but a few isolated and, I fear, very imperfect illustrations of the working of the case system; but enough has been shown, I trust, to demonstrate its great advantage over the antiquated methods of the past, in which the student's own activity played but a very unimportant part.

Whether it will ever be adopted as a uniform means of teaching law, however, may well be doubted. In teaching procedure its exclusive use has many drawbacks, although it is employed even for this purpose by such eminent educators as Dean Ames and others of high rank—a fact which I must admit renders the expression of any doubt as to its absolute utility somewhat hazardous. One of the manifest disadvantages in the teaching of pleading and practice entirely by cases, is the length of time required to accomplish any preceptible results. An entire case covering a large number of pages may contain but a single point on the proposition under

investigation, which might have been comprehensively stated in a single sentence or at most, in a few short sentences in a text-book. It is quite true that if the cases are well edited much of the objectionable or superfluous matter will have been eliminated; but after all, there must, in many cases, remain a large quantity of such matter which is only remotely connected with the specific principle to be taught, and much time will necessarily be wasted in its consideration.

Another subject of growing interest and importance to law schools and those engaged in the teaching of law in this country, is that of the law school student's preliminary education. The Association of American Law Schools, which is the creature and mouthpiece of the American Bar Association, has placed the requirement at graduation from a high school having a four years' course, or the equivalent of such a course. Harvard and Columbia demand of practically all their law students a collegiate course in some recognized institution. In the law schools of Yale and Pennsylvania, a considerable proportion of law students in attendance are not graduates of colleges or universities, although all are required to have the prescribed high school course, and quite a number have received more or less academic training. A somewhat careful observance of the evident efficiency and ability of the law students in the eastern law schools leads me to believe that the young man with a good high school education and two years more of college training is about as well prepared to enter upon the study of law in the law school as the one who has spent four years in college, and has received an academic degree. Of course, it may be conceded that the additional two years devoted to the study of the arts and sciences are not without their special benefit at a later period in life, as in fact, all education must be, to the lawyer. But while every lawyer's general educa-

tion should be broad and liberal, it is neither just nor practicable to extend the requirement beyond the practical necessities. Richly endowed institutions can afford to set up their own standards and live up to them, but they are not necessarily the criterion for others not so favored, or who are required to rely upon public approval of the standard established by them. It is not, and perhaps never will be, the policy of the average American law school to close its doors to those who have not received a college education covering a period of four years. Public educators, it is true, should be the leaders of public opinion in matters pertaining to public education, but they must not be too far in advance of the main column if they hope to render practical service to their day and generation. What the average law school aims to accomplish is to make good practising lawyers and not jurists. Of course, it is proper enough to provide schools for the training of jurists, and the same is true as to schools for the training of statesmen and diplomats, but these are not essential for the education of men for the practical business of the lawyer. Such schools as Columbia and Harvard and others with equally high class requirements for entrance will continue to be models for the teaching of law to the great majority of the other law schools of the country; but in respect of their entrance requirements few other schools can ever hope to follow their lead. Indeed, it is by no means the unanimous verdict of the best educators of the country, that a four years' college course will prepare the student materially better for his work in the professional school than a course of say, two years, in the study of the arts and sciences judiciously arranged for him. When such men as President Hadley seriously advocate the reduction of the college course for professional men to two or three years, the

suggestions cannot be brushed aside with indifference. Judge Simeon E. Baldwin, for many years an eminent instructor in law in Yale University, and himself a university trained man and a ripe scholar, in a paper read before the American Law School Association at its meeting in August last, among other very excellent things had this to say: "The time has come when we must confess that our American university system has attempted the impossible. It has aimed at adding to the education furnished at the English university the education furnished at the German university, and at requiring both from all. The American people have been strangely patient under the strain. They are patient no longer. They are glad that those whose life is to be that of the scholar, should have these ample opportunities for culture. They are determined that those of their sons who are to live less among books and boys than among men, should begin their life-work in time to reap some of its rewards before the flush and joy of youth are past."

It is a hopeful sign for the future of our profession that the American Bar Association is exerting its great influence in behalf of more stringent requirements for admission to the practice. The wonderful progress made in this direction during the last ten or twelve years is due almost wholly to the organized effort of the American Bar. Much of needful work still remains to be done. In many States the unsatisfactory patronage of the better class of law schools is due to the indifferent requirements for admission to the bar.

That every additional year in the life of the Republic will bring new and gratifying reforms can not be doubted, in view of what has already been accomplished; but they can come only through the untiring efforts of the American lawyer who has at heart the good of his profession.