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TEACHING LAW BY CASE METHOD AND LECTURE¹

BY JEROME HALL, PROFESSOR OF LAW, INDIANA UNIVERSITY ;
FULBRIGHT LECTURER, UNITED KINGDOM, 1954-55

CHRISTOPHER COLUMBUS LANGDELL did not discover the case method. The appreciation of universals in particulars, reasoning by analogy, and the verification of generalizations by testing them against the facts are at least as old as the Ancient Greeks. When W. A. Keener defended the case method in 1894 (28 *American Law Review*) he emphasized the fact that it was then a commonplace in other departments of the university. Nor was Langdell the first to apply the case method to the study of law ; for in England alone that goes back to legal apprenticeship in the thirteenth century and the studies prescribed in the Inns of Court. Langdell's accomplishment—a great achievement it was—was to introduce the case method into university legal education. Its general use in American law schools is hardly more than half a century old. Many varieties have developed and it has changed and adapted itself to new conceptions of legal education. The point has been reached when a fresh inquiry into its strength and limitations is necessary.

Proponents of case method emphasize the participation of the student in the solution of legal problems and the pedagogic superiority of that over lecturing. But one must be realistic about student participation. When Socrates discussed problems with the young intellectuals of Athens, it is rather clear that he contributed 95 per cent. or more of the participating ideas and solutions. Yet the conduct of the inquiry should be such as to encourage thoughtful discussion by students. This is a difficult atmosphere to create because the instructor's analysis must often be sharp, brief and quick as lightning, if he is to carry the inquiry most effectively to the heart of the issue. Besides, class time must be conserved, and the better students are entitled to some protection against excessive toleration extended to the poor ones. And if the teacher is also devoting himself to the research of his field, he has some definite feeling about the issues which cannot and probably should not be excluded. The scholar's dedication to the ultimate purposes of the inquiry transcends the difficulties ; and then, not the least advantage of the case method is that the students' discussion reveals detailed clues of their needs and, thus, indicates the precisely desirable course of analysis.

It is sometimes suggested that tutorials do the job of case method. Exactly what methods are used in tutorials is not clear to me. But the criticism of essays, the preparation of which required a study of cases, valuable as it is, is not case method. Case method is collaboration in the kind of thinking you do in your own research as a legal scholar studying cases relevant to the solution of a problem. It is a joint

¹ Paper presented at the annual meeting of the Society of Public Teachers of Law, Edinburgh, July 15, 1955.

inquiry qualified by the salient fact that the participants are in a teacher-student relationship.

Thus, in case method the student is not told the answers. What is suggested in ways which draw upon the student's potentialities is just enough of the answer to permit the student, if he has some knowledge of the relevant principles and has studied the cases, to recognize the clue, the connecting link, and thus to form a judgment which he can later amend or reject, should the materials require him to do so. There is also a qualitative difference in the knowledge acquired in this way. Case method reaches into the dynamics of the judicial process, especially the adaptation of generalizations to varying facts and social problems. Finally, the influence of authority is minimized and the test and criteria for verification are based on the cases. This impersonal, objective quality of case method analysis develops a searching, critical attitude, which is a perennial need of the profession. Indeed, one cannot help but be struck by the fact that students are not the only ones who all-too-frequently clip passages from opinions and cite them to support a point—in total disregard of the facts and issues.

The case method, because it includes much more than the common-sense recognition of factual similarities and differences (witness the complex problems concerning dicta, *ratio decidendi*, linguistic and social change, etc.) is a difficult method to use and a difficult one by which to learn. The most direct evidence of its difficulty is the fact that even the best students, graduates of excellent colleges, must put forth their maximum efforts to master it. I think the difficulties are unnecessarily aggravated because of doctrinaire beliefs regarding induction and consequent unwillingness to give even the briefest lecture on relevant principles. But even when knowledge of the general ideas, theories, and doctrines is imparted along with or prior to the case analysis, the problems raised require painstaking thought if defensible solutions are to be discovered.

Case method should be learned and used as soon as possible. The suggestion sometimes made, that case method should be postponed to the second or third year, ignores the fact that the study of law by a case-trained student is quite different than it would otherwise be. That is the reason for concentration upon the case method in the first year—to secure not only its immediate benefits but also those to come in the second and third years.

In those years case method is employed too widely in American schools, and it is notorious that the interest of students drops steadily. To meet that situation, the better law schools have recently added numerous seminars in the second and third years, as well as research programmes, drafting and writing courses. But the contention that instruction in case method should terminate in the first year seems to me too sweeping. Of course, the later training should not be of the same extent, type, and tempo as that of the first year, for now analysis need not be slow or stress the simple phases of case law. It can be rapid, subtle, and more critical. It can be developed much more thoroughly in relation to questions of sound policy, the background of social fact and non-legal disciplines, and it can also be made subsidiary to other work in synthesis and construction, which are dealt with in seminars and drafting courses.

One sometimes hears it said that it is preferable to send students directly to the reports, and the implication is that that is equivalent to or is even better than case method analysis in class. With deference may I say that there is a good deal of misunderstanding involved. First, it is assumed that the users of case method do not send their students to the reports; but, of course, they do, and in all good American law schools, students spend much time in reading cases to which they have been referred. But that is regarded as supplementing the case method analysis, not as a substitute for the class-room work.

Secondly, although reading the full reports may seem to be the important thing to do, as a matter of fact that is so impracticable as to be incompatible with case method study. Thus, it is significant that from the very beginning of the adoption of case method education in the American law schools, casebooks were compiled despite the fact that students were relatively few in number. Case method study is intensive; it requires the analysis of many cases; and it presupposes the ready availability of the case materials in class. Accordingly, it is not merely the limitations of libraries or the enormous amount of time that would need to be spent if students read the original reports, which accounts for the use of casebooks.

If due account be taken of the actual use of case method in tutorials and, also, of the 5- to 10-minute lectures with which courses labelled "case method" are actually interspersed, attention may be directed towards the distinctive characteristics of these methods. We must again note the frequent assertion that case method wastes time, while lecturing conserves it. But the best use of case method often focuses on a single aspect of the cases; and after the elementary skills have been imparted, it avoids routine summaries and other pedestrian accumulations. At the same time, a careful lecture may require detailed description and analysis.

I suggest that lecturing is especially suited (1) to introduce students very briefly to a branch of law, (2) to sum up at the end of an inquiry, (3) to impart information, (4) to provide preliminary insight into certain general ideas, and (5) to organize the knowledge of a subject. It would be a mistake, however, to think that case method should not be used at all for any of these purposes, *e.g.* in the introduction of a problem or to impart information. Often the problematical side of individual and social interests and the dynamics of the facts can best be communicated by case method.

It is when we deal with general ideas, especially with the principles and doctrines of a field of law and with their systematization, that we come to the essential contribution of the lecture. In disregard of that, the myth of case method, its "literary" theory, holds that the method is purely "inductive", *i.e.* that from an analysis of particular cases one discovers the governing rule or principle. And this has been made the basis of fictitious dichotomies separating the civilian, so-called deductive method from the so-called inductive one of the common law. But no scientist ever discovered a natural law by confining himself to particular experiments. Always the existing knowledge, its laws, theories, and hypotheses were drawn upon. There is an interplay between the general ideas and the specific experiments. So, too, in analysing any case or series of cases, legal principles are the guides; they are, indeed,

what gives sense to the cases. It follows that case method depends upon knowledge of legal principles and that is why a legal scholar is an essential participant in this type of discourse.

This takes me to a crucial question—should the instructor alone be in possession of the knowledge of the principles, revealing them only bit by bit from case to case, and then only indirectly by suggestion, or should the student be informed at the outset regarding the relevant principles and, if so, to what extent? While I should not wish to say that some form of the latter is always the better method, the plain fact is that the students often experience much frustration and a sense of unfairness until they have some grasp of the relevant principles. The ritual which rests upon a dogma of mythical induction is, in my opinion, the major defect in case method instruction at the present time. I think it is wiser to have some discussion and lecturing on the relevant principles before the cases are analysed. The preliminary objective may be aided by having the students read certain cases; indeed, I think this is the best sort of preparation for the lectures. The lectures are not case method analysis nor are they a substitute for it. They provide the necessary minimal understanding of certain general ideas which render the cases, to be analysed later, significant.

Nor is the later case analysis merely illustrative of the lectures on principles. There is a very important difference between using cases merely as illustrations of previous detailed lectures on principles, and exploring problems through the medium of searching case analysis which is rendered intelligible by preliminary insights into the guiding ideas whose incidence in the cases can be discovered in the form of narrower ideas, *i.e.* rules, functioning in diverse factual situations. The case analysis provides the testing ground and elaboration of the principles as well as the opportunity to discover other principles which occur to intelligent minds studying the interplay of tentatively held ideas and particular decisions. In sum, my thesis is that case method is at its best when dealing with rules of law, while the lecture is at its best in communicating principles and in the systematization of law.

Finally, may I say that I feel I should be lacking in appreciation of the generous hospitality I have enjoyed in Britain during the past year if I allowed my sensibilities as a guest to prevail over the opportunity of offering some possibly helpful criticism relevant to the subject under discussion.

Is it a correct impression that lectures are the soft spot in legal education here? A distinguished legal scholar told me that while he was a student at one of the great English universities, he did not attend a single lecture for a period of eighteen months. I gathered that they were not very interesting. A second question concerns the purpose of the lectures, and my impression is that for the most part, they are of an introductory nature, the assumption being that no preparation has been made by the students prior to the lecture. My third question is this—if these introductory lectures are given by the older scholars, the leaders among academic lawyers, and these scholars do not give tutorials or give them to merely a fraction of the students, is not the contact between these scholars and their students a rather superficial one?

With reference to these matters, case method has much to offer. I have heard many criticisms of it, but I have never heard a first year law

student say that it was dull. On the contrary, the students say it is dramatic, challenging, and absorbing and that the class hour literally flies. The fact of very high voluntary attendance attests their interest and their opinion of its importance.

Secondly, case method presupposes and requires careful preparation in advance of the class discussion. This is extremely important for several reasons, all of which need not be stated. The most important points concern timing and the consequent contribution of the instructor in the classroom. Where the students' work is timed to fit in with the classroom work of the instructor, both can go deeply into the subject matter, and that probing accumulates geometrically as the term proceeds. It becomes possible for the instructor in such a situation to develop the difficult aspects of a subject. Moreover, well-selected cases make very interesting reading. They breathe conflict and pose puzzles to be solved. And the give-and-take of case method discussion heightens all of that. It also provides incentives for careful preparation.

Emphasizing a particular method of legal education can give a false impression, and I wish there were time to relate all the methods to the objectives of university education in law so that a balanced perspective regarding the point of concentration might at least be suggested. One result of that would be a better understanding of case method itself. For example, case method in a narrowly gauged vocational school or in a practitioner's office—regardless of the competence of the instructors—is, I think, quite different from case method in a university law school. The differences result from the far greater breadth of view (*e.g.* including historical and scientific interests) which the legal scholar brings to the interpretation of the cases.

In a discussion which followed Professor Hall's address :

Professor R. H. Graveson (King's College, London), after thanking Professor Hall for his admirable address and also for the work he had done as visiting Fulbright Professor at King's College, London, alluded to the fact that the case method had always been used in the teaching of English law, though in its new American form it was probably Kenny who first introduced it as an alternative to our somewhat conventional attitude of lecturing. In fact, it was quite impossible to teach the common law without cases, and, moreover, in any country using common law the technique of handling law reports is essential for any lawyer, whether he is going to teach law or practise it. The adoption of one method or another of teaching law must depend on many factors, first its appropriateness to a particular branch of law, secondly, the type of student in the type of society with which one has to deal. Thus, the average American law student was a more mature person by several years than the average student in the United Kingdom, and the American case method might suit his requirements better than a pure lecturing system. There had been a good deal of misunderstanding on both sides of the Atlantic as to the nature of these various methods of teaching law. Thus the American case method was sometimes said to exclude any kind of introduction, of cohesion, of explanation on the part of the teacher—a narrow view which was completely false. On the other hand lecturing had been described as a passive handing out of information without any kind of indication as to the receptiveness, the value, the effect of it, on the student. That again took no account of subordinate, but very important additional teaching methods that we employ in England. Professor Hall showed that he knew better. American law schools were undoubtedly the more closely concerned with professional qualifications, whereas in England a university degree was not a necessary qualification for practice.

Even for us one must agree that the case Professor Hall had made for the case method was pretty overwhelming, but one had to count the cost in

comparison with the advantages. His personal impressions, after listening to some American professors using the case method, were, first, that the case method produces more quick thinking, less inhibited people, who were prepared to attack or defend a particular line of reasoning with the assurance that their views would at least be respected; but that the course covered relatively little law compared with the amount a lecture course could have covered in the time. Secondly, it was dependent on the accidents of litigation, or absence of litigation. Hence the material was inadequate; the whole of law, featured purely as case law, was just a giant jigsaw puzzle in which half the pieces were missing, and of which a student was expected to make a complete picture. Thirdly, the effectiveness of the system was in inverse proportion to the size of the class. The bigger the class the less opportunity there was for most of them to take part, and the brighter members tended to be called upon more often than they perhaps should have been. Nevertheless, we should be prepared to experiment, to combine some kind of case system with lectures and tutorial classes, and some recent experiments have had a moderate success.

Mr. J. C. Smith (Nottingham) handed round copies of a duplicated case-book which he and Mr. J. A. C. Thomas had prepared at Nottingham. An experiment was to be made with it on fifty first-year students. He was pleased to find that Professor Hall agreed that the first year was the best time for the case teaching. He thought that a class of fifty was not too large. The case-book was copied from the American style of case-book and consisted not only of cases, but of relevant studies, quotations from articles and a number of questions and problems which tried to fill in some of the gaps in the law to which Professor Graveson referred by inventing hypothetical problems. They had cut the reports and had not attempted to cover the whole field of contract. They expected their students to read textbooks as well, and, of course, the law reports themselves. He appreciated that the case method was slow and would require three hours instead of the normal two hours lecturing a week. They would still use the tutorial method and would certainly not stop their present system of written work.

Professor Dr. Gerhart Husserl (Freiburg-im-Breisgau) said that he had taught in both Germany and the United States and had no doubt that the case method, if properly applied and understood—that was quite a qualification—was far superior to the teaching method used in Continental Europe. In the straight lecture method the student was entirely passive. It was old and traditional, having been based on the study of the Roman *Corpus Juris*, at a time when students had no books in their own hands. The Digest, above all, was interpreted very much on the same lines as the Bible. Thus the method was authoritative and amounted largely to dictation. One result was that in Germany the students frequented the university less and less. Although one had to qualify by attending a state university, almost 90 per cent. of practising lawyers really learned their law from coaches' courses outside the university. Of course, a small group of deeply interested students produced splendid scholarly achievements; but average and below average students had a very slight contact with the university. There were so-called practical exercises, where cases were discussed, but these did not change basically the picture. He had not been used to the case method when he went to the United States and so had to learn it the hard way; but he had taught the bread-and-butter courses and it had been an immense experience for him. They were now considering whether the American case method could not be used also in European, especially German universities, if properly adapted. He thought that the chief weakness of the case method was that it depended too much on decided cases in courts of last resort. These gave only one side of the picture. In fact, in the United States they were doing other courses where different techniques were used. A German publisher was about to bring out for him, for the first time, a German case-book on the law of obligations. It would be a case-book of a very different kind, for it would include not only German, but also English and American cases and explanatory notes. He was very grateful for the opportunity of hearing the different views which had been expressed, because they needed all the help they could get when making their experiments in Germany.

Professor F. H. Lawson (Oxford) after expressing satisfaction with the extraordinarily subtle treatment Professor Hall had given to American legal

education, said he wished to make two points, as an Oxford teacher. First, apart from the weekly tutorial, it was impossible to put pressure on a student. He would learn law in the way he wanted and usually attended comparatively few lectures. Oxford was essentially a reading university where people read as they wanted, and, secondly, a university where people lived together and did an immense amount of talking among themselves. The best results are obtained if a small number of very good men were in the same college and were able to sharpen each other's wits. Therefore anything in the nature of a system would be very hard to introduce, and yet on the whole very good results were obtained. Secondly, one of the most essential parts in legal education was to produce first-class books from which students could teach themselves. It seemed to him that one of the dangers of the case methods was that, on the whole, it did not produce them. There were, of course, admirable American law books, but on the whole far fewer than one would like. On the other hand Oxford had produced some books which were very valuable for teaching and it was hard to imagine what English legal education would be like today had some of them not appeared. However, he thought that a moderate injection of the case method would be very useful; nothing could replace the cut and thrust of oral argument. There was a good deal of it in England, in any case, whether formal or informal. He concluded by suggesting that as soon as a method of university teaching was perfected it was time to consider dropping, or at least modifying it, on the ground that once it is perfected, the life goes out of it. There was much to be said for the view that the teacher should teach what he was interested in and in the way that interested him.

Dean W. F. Bowker (Alberta) alluded to Judge Jerome Frank's remark that Langdell "was a neurotic who was only happy when he was back in the cobwebs with the Year Books in the time of the Lancastrian Kings". Although he was not persuaded that the case system should be discarded he thought that Judge Frank's criticism was in part sound. Since in reading the cases we concentrated on the facts as found, there was a danger that the student would form the illusion that the facts were ready made for him, whereas, when he reached the first problem he had to solve, he would find that he has to go out and get his own facts and prove them. It was an interesting question to what extent law schools can teach students to marshal facts and work up a case. Another danger was that students might minimize statutes. In his experience the danger was a real one. Further, there was a danger that they would resent the existence of statutes which changed the common law. They were, however, in Canada, paying attention to the development of courses on legislation. Finally he thought that even though we complained of the habit of trying to run down cases on all fours with the problem under consideration, until we codify our law there was no help for it. We must then teach our students how to run down the cases and there was even a virtue in making them realize that there were a lot more cases on a great many subjects than we had ever been able to teach in law schools.

Professor O. Kahn-Freund (London School of Economics) in his turn thanked Professor Hall for the exceptionally convincing case that he had made for the case system, exceptionally convincing because it was so moderate. He had seen it at work in the United States and wondered how far it should be introduced in Europe, and had arrived at the conclusion that the truth lay somewhere in mid-Atlantic. He remembered that at one University he had said to a young junior teacher, "Well, so you use case method and you don't lecture at all?", and he said to him, "Of course we lecture", as if he was confessing a secret vice. At another law school he heard a straight lecture which lasted for a full hour and contained an admirably lucid exposition of the reconstruction of companies or corporations under the Federal Bankruptcy Act, a subject of almost unbelievable complications. He could not see, for the life of him, what else could have been done. Like Dean Bowker, he was worried, particularly because he happened to teach subjects in which statute law was all important. How could he teach, with the case method, the law governing the care of children deprived of a natural home? There were very few decided cases and they concerned marginal situations. On the other hand the law about Wards of Court in the Chancery Division was laid down in cases. Statutes were growing in importance and case law was going down in importance very rapidly because only a tiny fraction of the life of the law ever reached the courts.

He did not want to exaggerate. In the law of contract and torts there was a great case to be made for the case method, but we must beware of reinforcing the tendency towards over-emphasizing case law at the expense of statute law, and, therefore, of giving a false picture of the law to the student. In this country there was a difficulty which did not worry the Americans so much. We got our law students from school at the age of twenty, or even eighteen. "They don't know anything about anything at all, they don't know anything about life, and in their first contact with economic facts, for example, if done through cases, they are like medical students, who are shown the dead body, or are shown the sick body before they are shown the healthy body". We sometimes behaved like a medical school with a pre-clinical training. We showed a distorted picture of society, and even more so because the so-called facts found in the decided case are not the actual facts but those that plaintiff's counsel thought he would be able to prove or that defence counsel thought it necessary to admit. An excellent example of this was to be found in *Allen v. Flood*, where the fact that there was only one defendant did not mean that he acted only by himself but just that he was the only person who could be proved to have acted. The case method with all its merits could be very dangerous indeed. We could certainly do with more of it here, but we must be very careful.

Dr. E. I. Sykes (Queensland) thought that Australia might be perhaps a more suitable testing ground for the case method than England, inasmuch as the law school is the one direct gateway to professional qualifications. On the other hand like England they got relatively immature students, since there was no prerequisite of an Arts degree. He agreed with Professor Kahn-Freund that there were great difficulties in using the case method to teach some subjects, even such subjects as conflict of laws or torts. We should be cautious, even in torts. Most of the cases were decided on very narrow considerations and there was a tendency to make fine distinctions based on logical reasoning, without regard to the more important question of the social values decisions may have for the community. Thus the case method could not completely answer teaching needs even in a subject which at first glance would lend itself to such a treatment. It could never displace some preliminary examination, not only of the general principles of the subject but of the social needs which it should serve.

Professor Jerome Hall replied to the discussion. He had omitted a number of qualifications on the assumption that they might be brought out in the discussion. He did not want all members of a faculty to use case methods throughout. For instance, in teaching criminal law he started with what he would call discussion lectures on general principles and having armed the students with some of his own stock-in-trade brought them more on to a parity, so that when they got to the cases dealing with specific crimes they could have seven or eight general ideas in their heads to work with. However he still believed that the genius of the common law lay in case methods. After a great deal of travel in the past year, he felt that the Anglo-American world of legal thought had a peculiar contribution to make to world progress. We needed to develop the interplay between the tentatively held generalization and of the specific problem. To say that there was something evil or dangerous in the use of cases was tantamount to saying that there was something evil or dangerous about scientific methods. He was glad to find that a very valuable method of enquiry was held to merit close and careful study in subjects or parts of subjects where perhaps it had not previously received the thorough kind of examination that it merited.