Book Review. Gavit, B.C., Cases and Materials on an Introduction to Law and the Judicial Process

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BOOK REVIEWS


Until recently, the abandonment of "elementary law" as an introductory course in the typical "class A" law school had not been followed by the proposal of a different type of course for the specific purpose of inducting the beginning student into his new discipline. Generally speaking, the task of orientation, of developing a preliminary acquaintance with the methods of courts and other legal agencies, and of cultivating a philosophical approach to law has been left to the ordinary first-year courses in particular subjects. There it must be carried out, if at all, as an adjunct to the study of the fundamentals of substantive law and procedure.

The course in personal property and that in first-year procedure have been favorite ones in which to suggest the implications of particular examples of judicial method. In the former, the development and manipulation of the concept of possession could be used to illuminate the origins and uses of legal doctrines. In the latter, obviously, the technique and procedural terminology employed in courts of common law, and perhaps of equity, are laid bare. There has been a slight tendency, also, to introduce material relating to the legislative process into the first-year curriculum and, by inserting constitutional law and enlarging the course in agency, to extend the territory covered by the first year's study so as to bring substantially all of the major fields of law within its scope. Basic courses in contracts, torts, procedure, property, business relations, constitutional law, legislation, criminal law and family law are now definite candidates for inclusion in the first-year curriculum in many schools. Under the prevailing semester system it is not necessary to omit more than two of these. Thus the foundations of almost all of the work that follows can be laid and a bird's-eye view of the domain of law be obtained.

Certain weaknesses in the foregoing scheme as practiced are, however, apparent. The type of procedure course usually given has already been criticized adequately from the standpoint of its value for introductory purposes. A growing impatience with the pettiness of cases involving ferae naturae, lost articles, and the like, coupled with the transfer of the subject of liens to later courses in credit transactions, has eliminated personal property as a separate course in many schools. With it has gone the doctrinal study of possession, mentioned above. Chiefly, however, many persons have felt that the development of the student's critical faculties has received adequate attention in few, if any, schools. For these weaknesses two remedies, which are not mutually exclusive, are possible. Either the teaching of the present courses can be improved so as to remedy the defects, or a new type of introductory course, designed to orient the student and to acquaint him with critical methods and standards, can be devised. Dean Gavit's casebook is intended to supply the materials for such a course. "The attempt is in part to furnish materials for an elementary course in legal philosophy," in order to guard against having the usual Eighteenth Century philosophy obtain an irrevocable hold upon the student, as it will "if he is left alone on that score." In addition, however, the course for which the book is intended embraces legal bibliography and procedure, so as to combine the avowedly introductory courses into one.

As to procedure, the editor is convinced that its "strictly adjective" aspects, except for such basic information as is necessary to understand "the place of pro-

1 Atkinson, Book Review, 44 Yale L.Jour. 378 (1934).
procedure in our legal system" and "the common law and modern procedural language
and their devices for raising jurisdictional and substantive questions," belong in the
final year of the curriculum. His first-year course, therefore, includes only a
dehalf-page text defining and setting forth the functions of the leading procedural
devices, coupled with cases and a brief text which develop the substantive scope
(as distinguished from the adjective side) of the various types of actions. For the
common law actions, reference simply is made to the first 228 pages of Cook and
Hinton's Cases on Pleading at Common Law. Cases which serve to define the
extraordinary legal remedies are supplied2 and Equity's place in the general scheme
is indicated.3

Whether Dean Gavit has achieved a desirable combination of materials on pro-
cedure for introductory purposes is debatable. The reviewer would prefer at least
a fuller textual treatment of equity procedure and the substitution of an incisive
text for the present cases on the extraordinary remedies. The presentation of an
outline of these remedies to first-year students is, on the other hand, a desirable
innovation. More important, however, is the question of whether introductory
procedure and the effort to help the student build a legal philosophy belong in the
same course. In the reviewer's opinion, after two years' attempt to combine them
in a course of his own, they do not. Many details of the Anglo-American system
of procedure, even as simplified for introductory presentation, are formal and
arbitrary and hence do not coordinate well with a generalized critical approach to
law. The system of common law actions is a historical creation whose significance
is purely technical. One can not teach these topics without losing sight of those
philosophically important matters whose inclusion in Dean Gavit's course gives point
to his book.

The procedural materials which Dean Gavit has supplied do not, however, bulk
large. It is possible to consider the remainder of the volume upon its own merits
for the chief purpose in hand. The following materials are included: 66 pages on
the court system and organization; 91 pages on "What is Law?"; 50 pages on legal
concepts and classification; 14 pages on the authority of the common law in the
United States; 88 pages on the functions of the judiciary in relation to individuals
and other governmental agencies; and 104 pages on judicial methods.

As to the quality of the specific material included, much might be said by way
both of praise and of dispraise. Thus, it is convenient to have the English, federal,
and typical state court systems briefly described, although one could wish for a
more adequate chronology of the English courts;4 the constitutional and statutory
provisions of three selected States in regard to their court systems seem too heavily
weighted with deadly detail;5 the reviewer sees little point in devoting even seven
pages to the question of when a court is sitting as such;6 it clearly requires good
teaching to develop the significance of the three cases on the conceptual nature of
law—if that is what they are on—with which the section on "What is Law?" begins;7
the articles by Jerome Frank, Hutchins, Michael and Adler, and Goble, which occupy
the remainder of the same section, are excellent expositions of differing views of
the influence of logical and non-logical factors in the judicial process but, standing
by themselves, they are entirely too devoid of illustrative material to be interesting


2Pp.297-316.
4Pp.68-82.
6Pp.103-110.
7Pp.135-144.
or understandable to first-year students; the cases which are included\(^8\) to illuminate the Hohfeldian classification of jural relations as previously outlined by Cook, are well selected; the matter of legal classification is clearly presented, thanks largely to the excellent passage from Hicks;\(^9\) the correlation among those functions of the courts which are selected for treatment and the relevance of some of the cases to the topics they are intended to illuminate is not apparent to the reviewer;\(^10\) the article by the editor, defending the judicial device of stretching legal concepts to fit new situations, and the cases which follow, are excellent;\(^11\) in general, the first five sections of Chapter IX, on The Judicial Process, are the best part of the book and, if studied before the chapter on "What is Law?", will serve to illuminate it; the cases on constitutional interpretation, which conclude the volume, are too few to be useful; and so on.

One's view of the adequacy of this collection of material must turn in part, of course, upon one's conception of the desirable content of the course for which it is intended. Dean Gavit's own course requires five semester hours. If the procedural material were eliminated as suggested above and the course were shortened to three hours, there would be room, according to the reviewer's experience, for the following additions at the beginning: (1) a section relating the role of the State and of law to the functions of other agencies which direct human activity; (2) a consideration of legal sanctions and the foundations upon which they rest; (3) an account of the governmental agencies whereby law is formulated and applied; and (4) a consideration of the extent to which the judicial branch of the government is distinctive in its functioning. The examination of judicial methodology, to which Dean Gavit's material so largely relates, might then follow. It may be suggested that, for the purposes of beginning students, the inclusion of some of Holmes's essays and of excerpts from Cardozo's writings, with their wealth of illustration, would be desirable. There should also be material specifically designed to reveal the character of the work of the trial courts and of lesser law enforcement officials. Finally, conception of the legislative process should be made, at the expense, if necessary, of less a course in legislation is offered in the first year, an effort to build up a con-material relating to statutory construction.

Unquestionably, it seems to the writer, Dean Gavit is on the right track. Even if all first-year courses were ideally taught, there would still be need for a deliberate, generalized relating of the student's prior study and experience to his law study; for his systematic introduction to legal methodology; and for the conscious development in his mind of standards of criticism of legal institutions. Attention to these matters at the outset should illuminate the remainder of his study and prepare the way for that thorough course in jurisprudence and legal philosophy which ought to come in the final year of the curriculum of any school that purports, as university law schools should, to teach their subject, as Holmes once said, "in the grand manner." The publication of Dean Gavit's book will advance the day when Holmes's ideal will be put generally into practice.

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\(^8\)Pp.243-256.
\(^10\)Pp.335-422.