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# IS THE CASEBOOK METHOD OBSOLETE?

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*The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy . . . have had a good deal more to do than the syllogism in determining the rules by which men should be governed.*

HOLMES, THE COMMON LAW 5 (1881).

In contemporary law schools the dominant method of educating students is through the use of the official reports of actual cases. Appellate decisions are selected and positioned in a "*casebook*" so as to represent general legal principles or to illuminate the evolution of a modern theory of law. As a rule lecturing by the professor is kept to a controlled minimum. The essence of the method is that by requiring the student to analyze actual cases, then exposing him to the Socratic form of interrogation, the instructor is able to engender a more lucid understanding of the relation between juridical theories and concrete legal problems.

That the casebook technique constitutes the basic medium through which aspiring lawyers are educated is beyond dispute.[1] As a matter of fact, the popularity of the casebook method has overflowed into other academic disciplines. Many graduate (and even some undergraduate) business schools use actual and fictional cases as a means of familiarizing students with the complexities of the commercial world.[2]

Yet, in spite of the acknowledged acceptance and dominance of the method, there resides in the background a swell of criticism. Doubts have appeared as to the degree of instructional efficacy contained in the casebook method. This paper is an attempt to analyze, through the history of the method, some of the basic objections and to offer recommendations.

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1. "In its principles and outlines it has remained to this day the prevailing system of teaching and learning law. . ." BLAUSTEIN & PORTER, THE AMERICAN LAWYER, 167 (1954).

2. In total, during his two years at the Business School, a candidate for the M.B.A. degree is confronted with close to a thousand specific situations. . . . Thus, case discussions make a major contribution to the development of administrative capacity. 60 OFFICIAL REGISTER OF HARVARD UNIVERSITY, 27 (1963 number 20).

## Historical Background

The ancestry of the casebook method is uniquely American. Its emergence as a teaching device can be traced to deficiencies in the three early systems of legal instruction—the office apprenticeship, the lecture and the use of the textbook.

The earliest and certainly the most persistent method of imparting legal knowledge was through exposure to the rudiments of practice under the guidance and supervision of an attorney. The candidate spent a specified amount of time in the office of a practitioner where he would read assigned material and be informed of the necessary mechanics of practicing law. The colonial lawyer was almost exclusively the product of this office-apprenticeship system of "reading law." The non-existence of a more formal mode of legal education was attributable to the frontier way of life and to the general disrepute in which lawyers were held in Colonial America. "The Colonist's feeling toward lawyers was not merely negative; they viewed lawyers with suspicion and distrust." [3] Whatever the origin of the prevailing distrust of lawyers, the result was that standards were low and anyone could label himself an attorney. There was, in short, small need for a formal legal education.[4]

Although "reading law" in a practitioner's office remained the basic avenue into the legal profession until 1850,[5] a change in methodology is discernable as early as 1779. On that date, Thomas Jefferson installed George Wythe at the College of William and Mary as the first professor of law in the New World.[6] Wythe "formulated a series of lectures which followed Blackstone in some regards, in which he contrasted English and Virginia law." [7] The importance of this appointment is of the greatest magnitude. It constituted a recognition and commitment to the theory that principles of law could be conveyed to students through the same medium, the lecture, that was used to teach other subjects.

The use of the lecture system did not immediately crystallize into popular usage. Apprenticeship still prevailed but the foundation for the new method was solid.[8] Wythe's successor at William and Mary, St.

3. Harno, Legal Education in the United States 18 (1953).

4. Warren, A History of the American Bar, 5 (1911).

5. Hurst, The Growth of American Law 256 (1950).

6. *Id.* at 257.

7. Aumann, The Changing American Legal System 111 (1940).

8. Reed contended that Jefferson's task in establishing a chair of law at William and Mary was made easier because of the absence of a firmly entrenched apprenticeship

George Tucker, made a valuable contribution towards furthering the trend of formal legal education with his publication of Blackstone in American form.

> These men (Wythe, Tucker, Chancellor Kent) saw legal education as a proper part of a liberal framework of general ideas in jurisprudence; and they gave them some picture of the law of nations and constitutional law, not as a superficial adornment of more bread and butter matters, but as a necessary to a lawyer's proper grasp of his subject.[9]

Almost at the same time a few enlightened colleges and universities were recognizing the educational feasibility of formalized legal instruction another force of equal significance appeared. Sometime around the year 1784 Judge Topping Reeve began the operation of a school that was devoted exclusively to the teaching of law. This endeavor was unique in several respects. First, it was completely independent of any college or university. Second, and most important, it departed from the apprenticeship system by structuring its routine of instruction around the lecture.[10]

> The distinguishing characteristics of the school were its systematic course of lecture, delivered daily, and the fact that these were never published. Later college law school instructors, like Tucker, Kent or Story, having worked up lecture courses, were quick to publish their systematized results for the benefit of the profession at large.[11]

Primarily as a result of Judge Reeve's *Litchfield School,* the lecture system eventually became the major method of educating law students. Moreover, as universities and colleges gradually assumed the academic and financial burden of legal instruction it was only natural that their already established teaching device, the lecture, should be adopted by the newer law departments.[12] However, it was not until post civil war times that the lecture system solidified its position as the principal method of educating embryonic lawyers. The increased complexity of the law, the proliferation of recorded decisions, and the emergence of even more

system in Virginia. Reed, *Training for the Public Profession of the Law* 15 CARNEG. FOUND. BUL. 116 (1921).

9. HURST, *op. cit. supra* note 5, at 258.

10. BLAUSTEIN & PORTER, *supra* note 1 at 165.

11. Reed, *supra* note 8 at 131.

12. For an excellent general summary and analysis of the history and present position of law schools see, Reed, *Present Day Law Schools* 21 CARNEG. FOUND. BUL. (1928).

law schools were all significant factors. In addition, the new vitality of a formerly phlegmatic bar association was important. An effort was made to raise and tighten professional standards. And even though admitted weaknesses existed in the movement,[13] the fact remains that as standards were raised,[14] it necessarily followed that a more formal and systematic education, with its emphasis on lecturing, was necessary.

Thus the stereotyped lecture became the basic conveyor of knowledge to aspiring attorneys. The next method, the textbook, made almost a simultaneous appearance. It was merely an amplification of the already entrenched lecture policy and in its initial form constituted little more than published lectures. The use of textbooks in the law schools was stimulated by the fact that many of the professors published expanded versions of their lectures and naturally encouraged their students to use these texts as supplementary material.

The lecture and the textbook did not have sharp pedagogic differences. Both were summaries on a specified and defined area of the law and both placed a premium on pure memory. There was no question of critical analysis or separation of the relevant issues from the superfluous. And of more importance, the two systems demanded that the student accept as gospel the word of the writer or lecturer that his statement of the principles reflected a correct appraisal of the existing decisions. The law was dogmatically identified as it allegedly existed at that particular period. There was absolutely no recognition that any coeval legal doctrine is an ancient pyramid that has been pieced together with countless cases and decisions. Moreover, the combined lecture-textbook system contained two specific defects: first, the instructor-writer could incorrectly state the principle of law and secondly, the student could fail to grasp or misconstrue the principle even if it had been correctly stated. In summary, the theoretical qualities of the lecture and textbook methods failed to furnish the pupil with a complete and meaningful insight into legal problem solving. On the other hand, the apprenticeship method failed because it was tightly geared to the pragmatic mechanics of the law. It was clear that the atmosphere required reform.

Against the above background Professor Christopher Columbus Langdell of the Harvard Law School introduced his revolutionary and at that time controversial casebook method. The innovation was predicated

13. Reed, *supra* note 8 at 212.

14. All was not harmony between law schools and the emerging bar. The principal conflict was over bar admission requirements. Reed, *supra* note 8, at 254.

on the theory that law, all law, was contained in a few basic principles and that these doctrines could be absorbed by the student through the study of actual cases. Langdell effectively summarized the purposes and scope of his method in the preface to *A Selection of Cases on the Law of Contracts.*

> Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied. But the cases which are useful and necessary for this purpose at the present day bear an exceedingly small proportion to all that have been reported. The vast majority are useless and worse than useless for any purpose of systematic study. Moreover, the number of fundamental legal doctrines is much less than is commonly supposed; the many different guises in which the same doctrine is constantly making its appearance, and the great extent to which legal treatises are a repetition of each other, being the case of much misapprehension. If these doctrines could be so classified and arranged that each should be found in its proper place, and nowhere else, they would cease to be formidable from the number.[15]

## LANGDELL'S METHOD

Under the casebook method the student, when confronted with a decision, is expected to analyze it in terms of a knowledgable separation of superfluous facts from those issues impregnated with legal significance. Langdell considered this to be the student's personal intellectual responsibilty. Moreover, the student had the burden of successfully defending his position from attack by both faculty and fellow students.

The casebook itself was composed so that each decision had a discernible relation to those coming before and after. Each case appended some new element or twist to current legal theory. Hence the cases flow in a single stream that eventually culminates in the contemporary position of the law. The role of the instructor was vital since his ques-

15. Redlich, *The Common Law and the Case Method* 8 CARNEG. FOUND. BUL. 11 (1914).

tions were supposed to encourage the student to analyze, with intelligence and scholarly execution, each case in terms of overriding legal doctrine.

But the intrinsic effectiveness of the casebook method resides in its scientific approach. "The fact seems to be that his was an extremely early attempt to apply the inductive method of the laboratory to matters foreign to the natural sciences." [16] Each case presents a new exercise in the systematic classification of relevant factual material, legal theory, and the extraneous. After the classification has been effected, the controlling principle is identified and explored. The ultimate result, at least theoretically, is that an appreciation for *method* is cultivated. Rather than being committed to rigid boundaries of memorization, the student relies on a general reasoning pattern (empirical classification) that can be applied to any problem.[17]

## Modification of the Method

The first modification of the casebook method came from the originator, Langdell, when he added to his Cases on the Law of Contracts a summary which was, in effect, "a dogmatic presentation of the common law contracts, strictly limited. . . to the preceding cases and therefore not exhaustive." [18] As the method gained prominence the emphasis on selecting appropriate cases shifted somewhat to the editing and restatement of the fact situation involved.[19] Moreover, it was thought desirable to add introductory discussions amplifying the doctrines contained in the recorded decisions. This trend has continued unabated so that modern casebooks contain portions of law review articles, brief statements of law from recognized treatises, and other

16. Wambaugh, *Professor Langdell—A View of His Career*, 20 Harv. L. Rev. 1 (1906). Dicey said of Harvard Law School and the casebook method: The essential doctrine, therefore, of the school may be summed up in two statements—first, that English law is no mere handicraft or art, but a science to be deduced from a limited number of principles, and secondly, that the nature of the application of these principles are to be learned . . . from law reports. Dicey, *Teaching of English Law at Harvard*, 13 Harv. L. Rev. 429 (1900).

17. Dean Ames summarized the method as follows: The object . . . is the power of legal reasoning, and we think we can best get that by putting before the students the best models to be found in the history of English and American law, because we believe that men who are trained by examining the opinions of the greatest judges the English Common Law system has produced, are in a better position to know what legal reasoning is. . . . Redlich, *supra* note 15 at 25.

18. Redlich, *supra* note 15 at 28 n. 1.

19. Blaustein & Porter, *supra* note 1 at 169.

explanatory material. This is a conscious acknowledgment of the ever expanding scope of the law and an attempt to cope with this problem by adding new material. Some of the "additional material" is not purely legal in content. This is due to the modern attitude "that other disciplines are intimately related to law; and that materials of law study and law instruction must be broadened to give the legal neophyte insight into the interplay of the complex forces that create the need for law." [20] Another modification is that the type of cases used in present casebooks differ from what Langdell included in his first book. He selected cases of historical significance that were considered to be landmarks. Today's editors, operating on the theory that students can better grasp modern fact situations, select cases that express the conflicts of what Patterson calls "contemporary culture." [21] Llewellyn summarized the general scope of the modification in the following language:

> And most new casebooks are inordinately better than we realize. The level of performance has been creeping up, and up, with no one noticing where the gauge stood ten years back, or twenty. The modern editor, you find, has not only put cases together in interesting patterns, and with fresh lines of emphasis which make you think, but he has also, in his annotations and his passages of text, provided material you had not previously seen at all.[22]

The modifications have not destroyed the essential quality of the casebook method. No matter what or how many alterations have been made the spirit of Langdell's approach remains. A remark by Scott and Simpson in the Introduction to *Cases on Judicial Remedies* reflects the persistent commitment to the method: "But, when all that is said, cases are the backbone of the course which this book contemplates, *as of any course in the common law tradition.*" [23] The complexity of contemporary society, the fecundity of reported decisions and the passage of countless statutes have not erased the casebook method as the central teaching device in American law schools. But this does not mean that

20. HARNO, *supra* note 3 at 69.

21. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL ED. 1, 15 (1951).

22. Llewellyn, *On the Problem of Teaching "Private" Law*, 54 HARV. L. REV. 775 (1941). See generally, Enrenzweig, *The American Casebook: "Cases and Materials,"* 32 GEO. L.J. 224 (1944).

23. SCOTT & SIMPSON, "CASES ON JUDICIAL REMEDIES," *Introduction* viii (1938) (Ital. added).

criticism has been absent. Furthermore, entrenched usage does not necessarily indicate complete efficacy. The writer feels that a change in emphasis is necessary.

## Criticisms of the Method

The first reaction to Langdell's method was not a criticism but instead a rejection of the method. It was more of a preference for the lecture than a criticism.[24] This mood soon dissolved into acceptance and therefore does not bear scrutiny. However, there are precise contemporary criticisms that reveal, in some cases, strong defects in the exclusive use of the casebook.

1. The method's major strength—a scientific procedure in problem solving (Wigmore contended that "Langdell's method was an unconscious product of the scientific spirit of realism" [25])—tends to ignore and exclude any other scheme of conveying the essence of law to the students. It is doubtful if a rigid and narrow case method view can engender in the student a complete awareness of the social, economic and political implications involved in resolving a contemporary legal conflict. Hence there is some substance to Judge Frank's contention that Langdell's system developed a "primary emphasis on the library" [26] to the detriment and exclusion of the practicalities of the actual legal world. The scientific method, because it is based on inclusion and exclusion, must by necessity exclude important material from related disciplines.

2. The student is not exposed to the required practical techniques necessary to the practitioner. In brief, the method is too theoretical. Dicey, as early as 1900, accused the exponents of the method of forgetting "that law must always be partially a handicraft and that even a scientific knowledge thereof is increased by the intimate acquaintance with the actual working of the law." [27]

3. The time required to analyze each case thoroughly is disproportionate to the amount of knowledge gained by the student. For the method to be effective each case must get complete and exhaustive treat-

24. Baldwin, *Teaching Law by Cases,* 14 Harv. L. Rev. 258 (1900).

25. Wigmore, *Nova Methods Discendae Docendaeque Jurisprudentiae,* 30 Harv. L. Rev. 812, 816 (1917).

26. Frank, Courts on Trial 227 (1949). Judge Frank's criticism is supported obliquely by the person who was responsible for Langdell's appointment. "To Professor Langdell books had a kind of sacrosanct character" Eliot, *Langdell and the Law School,* 33 Harv. L. Rev. 518, 522 (1920).

27. Dicey, *supra* note 16 at 429.

ment, thereby reducing the amount of time possible to devote to additional decisions, legal principles and theoretical legal problems.

4. The student's interest level drops sharply after the first year of exposure to the method. The challenge involved in analyzing and defending a position in classroom discussion fades rapidly as the student gains greater legal insight and confidence. The student desires exposure to more refined legal doctrines that the case method, because of time limitations, cannot offer.

5. Sometimes the casebook itself[28] is ineffective as a teaching device. The cases should provoke and challenge the student into intellectual activity. But too often the book is a gigantic conglomeration of facts and judgments with no connecting trend of legal doctrines. The burden, often insurmountable, is on the instructor to guide the class through the labyrinth of confusion.

6. The final criticism applies only to large law schools. The class might grow to such size as to make the method impractical from a standpoint of maintaining student attention. If the student does not anticipate being called on frequently to discuss a case he tends to lose interest and his motivation deteriorates.

## RECOMMENDATIONS

The overall tone of the above criticisms indicates that the casebook's effectiveness as a teaching device is reduced by a blanket three-year overexposure. It must be stressed that the method is effective as long as its defects are kept in mind and proper adjustments are made. Just as the law is in a constant state of evolutionary flux, likewise the casebook technique is susceptible to new academic pressures and tensions.

It is mandatory that the first year student be exposed to the full thrust of the method. His introduction to law can be effected in a more meaningful way if he is required to scientifically analyze cases that reflect actual legal conflicts. The already aroused interest for the study of law that every new student possesses is expanded by classroom discussion against a background of meaningful Socratic interrogation. Moreover, a year of intense saturation of the empirical classification technique will supply a sound basis for more advanced legal study.

The diminishing returns in the use of casebooks occur after the first

28. An early critic of the casebook method contended that a wide hiatus existed between the laws of the various jurisdictions and the decisions in the typical casebook. Kales, *The Evolution of the Casebook*, 21 HARV. L. REV. 92 (1907). Such a view is obviously not a germane criticism.

year. Hence it is submitted that at the beginning of the second year of study an almost complete dilution of the casebook method should occur. Only highly significant cases—recently decided cases that reflect new appendages to existing principles—need be discussed in class. The major portion of class time would be devoted to lectures with minimum class discussion of points covered.[29] Lectures should be supported by textbook and treatise reading assignments.

It should be obvious that the recommended plan for the second year of study is merely a synthesis of the lecture system, the textbook method, and to a subsidiary extent, the casebook system—with major emphasis on the lecture. As a matter of fact, many book editors have anticipated the trend away from complete casebook exposure by increasing the proportion of text material used in their casebooks.[30] And it is likely that in books designed for second and third year courses the emphasis toward text material will be more pronounced.[31]

The final year of the formal study of law would include as much seminar exposure as the limits of time, expenses and staff would permit. Ideally the seminar program should be prefaced by an explanatory lecture with the seminar discussion coming after. *The third year of study would be devoid of casebook exposure.* Instead of an emphasis on the scientific approach the seminar would develop an awareness of the impact of other disciplines upon the practice of law. Moreover, it is through the seminar that an appreciation and understanding can be developed for the everyday problems that confront the practicing attorney. In other words, the law student's last year of study should be directed toward establishing rapport with the courtroom.

The above three-level plan suggests a curtailment in the scope and application of the casebook method. The contemporary process of legal education, with its increased demand for a broad exposure to the influences of other disciplines, cannot accomplish its purpose through an exclusive commitment to casebook methodology.

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29. *Cf.*, Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL ED. 1 (1964).

30. [T]he inclusion of extra-legal materials in the casebooks represents a trend in legal education that during the last two or three decades has become more apparent. HARNO, *op. cit. supra* note 3 at 69.

31. *E.g.*, BAKER & CAREY, CASES AND MATERIALS ON CORPORATIONS (3rd ed. abr. 1959).