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THE CASE SYSTEM—A DEFENSE

Recently I received through the mail a pamphlet containing an article reprinted from the *United States Law Review* on the subject "The Case System—A Criticism" by Professor Robert E. Ireton of the Portia Law School of Boston. I also have before me a copy of a book entitled "The Case Method of Studying Law—A Critique" by Professor Jacob Henry Landman of the College of the City of New York. This book was favorably reviewed in the November (1930) number of the NOTRE DAME LAWYER by Joseph Wetli, a senior in the College of Law.

I do not know whether or not it is the desire of the above authors to re-open the discussion of the merits and demerits of the Case System of instruction. I do not know whether my experience in practice, in administration work, in politics, and seven years experience as a law teacher, qualifies me to enter the discussion. Twenty-six years ago I was a student at a law school where both the Text-Book Method and the Case Method were employed. I well recall the contest between the two methods and I frankly admit that the student's reaction was in favor of the Text-Book Method because that method required less reading and less effort on the part of the student. But, I learned later that the principles deduced from Case study and Case discussion in class stuck longer. From these personal experiences and with little or no investigation as to what others have contributed to

the controversy, I propose to state what I think about the matter even though by so doing I may add fuel to the embers.

The Case System of instruction is now generally used in all of the law schools belonging to the Association of American Law Schools, in all of the law schools that have an approved rating by the Section on Legal Education of the American Bar Association, and in many other law schools. True, a general use of a system does not necessarily prove that it is the best, but it is nevertheless significant that the system must have some merit. To criticize merely to find fault will serve no purpose, but a constructive criticism will lead to improvements. If the Case System is worth having, it is worth discussing and defending.

A brief statement as to the methods of studying and teaching law in the past and present may aid. Prior to the advent of the law school, a legal education was acquired by study at the law office, by a sort of an apprenticeship. There are still a few who prepare themselves for the bar in that manner, but no one will contend that that is the best method of acquiring a legal education. Then, came the law school and at first the instructions were wholly by the lecture method. The lectures were usually delivered by practicing lawyers and judges. Even as far back as the middle of the last century, this method was criticized as inadequate and was soon partially superseded by the full-time teachers who taught law from text-books and treatises. I do not think that anyone would contend that the lecture method alone is a satisfactory way of teaching law and especially if applied to the present-day college student. With the coming of the full-time teacher the text-book method was generally accepted as the best. The use of the text-book in the law school was the same as in other colleges of the university. It consisted of the study and learning of the principles and rules as found in the text, with occasional discussions and illustrations.

Later, more and more interest developed in the discussions and illustrations than the abstract learning of the rules of law and the cases cited in the notes of the text-books were read and discussed. It was because of the manifest interest in the concrete cases, rather than in the abstract rules in the text, that led Professor Langdell to reverse the order in the method. He proceeded to have the students read and study the concrete cases first, and from these deduce and witness the application of the abstract rules of law. Thus came into being the Case System of instruction which has now been in use for over a quarter of a century.

After all, does not the Langdell System conform to the recognized psychological and pedagogical principle of proceeding "from the concrete to the abstract"? I do not like to refer to psychology and pedagogy as there are professors in our colleges who believe that these sciences are all right for teachers in the grades and high schools, and persons in other trades and occupations, but have no application to the college professor.

In the very first paragraph of his article Professor Ireton says:

"The principle came first, antedating the case. It had to be discovered and accepted, case or no case. When accepted or sanctioned by competent authority, it had the force of law and became a precedent. No one with common sense can question the accuracy or the full meaning of his statement; no one endowed with clear understanding can controvert its implication. It meant that one about to enter the portals of the legal profession, must first be instructed in the principles of the law and then be given cases to illustrate them."

I deny that "the principle came first, antedating the case." True in earliest times, the absolute monarch made and promulgated the rule first and it was necessary for the subject to learn the rule and abide by it. But, that has not been the practice in England for over seven hundred years and never has been the practice in America. From the time of the Magna Charta the rule and law-making power passed into

the hands of the legislative branch of the government. But, in our law schools we do not teach statutory law (excepting of course a few general enactments such as the Statute of Frauds, Statute of Limitations, etc.). We teach the Common Law and the source of that law is derived from the customs and *cases*. I believe it was Lord Coke who once said: "If I am asked a question of common law, I should be ashamed if I could not immediately answer it; but if I am asked a question of Statute law I should be ashamed to answer without referring to the Statute book." No law school worthy of the name spends much time teaching the statutes. If it does, as has been tritely remarked, the legislature may come along and "repeal that knowledge."

Referring again to the quotation from Professor Ireton's article; ". . . must first be instructed in the principles of the law and then be given cases to illustrate them." Why first be instructed in the principles of the law? Where are these principles of the law to be found? Where is the source of the Common Law? Professor Ireton's contention is that the principles of law should be taught first and then cases given to illustrate. Recently a representative of the American Law Book Company in a lecture before a class in the College of Law at Notre Dame stated that there were about 300,000 separate and distinct principles of law. How many of these can be taught? How many of these principles can be learned in a three-year period of study? To teach a small fraction of these principles would require a life-time. Shall we in our law schools devote the major part of our time in cramming into the mind of the student the abstract principles of law? Cardinal Newman in an address before Oxford University said that, "The end of a liberal education is not mere knowledge or knowledge considered in its *matter*. . . . storing the memory is tyranny."

I think we sometimes lose sight of the purpose of school-work in education. The purpose is not simply to impart

knowledge but to train the student to think and thus prepare him to meet the problems of life. So too, the purpose of a law-school is not simply to impart knowledge of a few principles of law, but to prepare the student for the legal profession. The purpose of a law school is not to send to the profession a walking encyclopedia of legal principles, an automaton with a memory stored with rules, but to recruit the profession with young men who can think legally and who will take their place in organized society and aid in the administration of law and justice.

What is a principle of law? What is the basis of a principle of law? Is it not after all a rule that deals with human conduct,—the conduct of man toward his fellow man in an organized society? Are not the principles of law based on the ethics of that conduct? The student when he enters the law school knows the ethics of that conduct. He knows what is morally right and wrong; and usually what is morally right and wrong will be legally right and wrong. The great body of law may be classified into three great fields: 1. Crimes; 2. Torts; and 3. Contracts. Any rational human being knows that if he robs another the State will punish him, and compel him to make restitution; that if he breaks his word with his fellow man the law will compel him to perform or pay damages for the breach. If law deals with human conduct and is based on the ethics of that conduct, and the student knows the ethics of that conduct, is it not true then that the study of law is the study of human conduct? Where can we get more and varied and multifarious illustrations of human conduct, than in the actual cases that have been before the courts?

The study of cases is the study of concrete examples of human conduct. In the study of the facts of a case the student learns how men and society act; he learns how to arrange and analyze facts. (This he will have to do in daily practice of his profession.) The study of the contentions of

the parties shows him ways of legal thinking and the study of the decision gives him the principle of the law and teaches him how it is applied. Under the Case System in the discussion of a case in the lecture room does not the professor have the students discuss the reasons for the rule and its application? Does not the professor by a suggested change in the fact here and there present other problems which lead to the discussion of other possible decisions and rules and reasons therefor? Is not this a concrete and a logical way of preparing a law student for the practice of law? Is this not a better system than to load the memory with abstract principles? Professor Landman in Chapter IV of his book suggests the Problem Method of studying and teaching law. The procedure suggested is "1. Significant problem; 2. Induction; 3. Tentative hypothesis; 4. Deduction; and 5. Conclusion." The procedure under the Case Method carries out every process suggested by Professor Landman. The only difference is, that under Professor Landman's system the "significant problem" is a suggested one while under the Case System it is one taken from actual human conduct. I believe the many cases that have been actually decided, give us and suggest to us many more, better and more concrete "significant problems" than can be otherwise thought out or suggested. I think that Professor Landman's system is worthy of study.

What are the sources of the Common Law? Are not the decided cases the real sources of the Common Law? Where did our commentators and authors of text-books and treatises go for these principles of law? Where did Blackstone, Kent, Story, Daniels, etc., find the principles of law which they so well expressed? Surely in the decided cases. Are we to condemn the student of the law and the professor of the law if they study and discuss the sources of the law? Are we to condemn a system of instruction that takes us to these sources? For example, take the method of teaching His-

tory. Twenty-five years ago, the teaching of History was largely confined to the study of text-books, where the student read and studied what the author of the text-book said about the Magna Charta, the Stamp Act, the Monroe Doctrine, etc. Now the student of History goes to the source. He reads the Magna Charta, the Stamp Act, the Monroe Doctrine, etc., and finds out for himself what their provisions were. Should not the student of the law go to the cases—the sources of the law? I do not mean that the Commentaries, the Treatises, and the Cyclopedias are to be discarded. They are not banned under the Case System of instruction. Nor is it a crime to refer to them and read them. I agree that the mere desultory reading and study of the cases in a case-book without any classification and co-ordination of the subject is confusing. The law professor does more than merely hear recitation of the cases in the case-book. If he does not, it is not the fault of the Case System, but the professor. The case-book is not an end to be sought. It is merely a means to an end.

Another reason why I think that the Case System of instruction gives the student a better preparation for the bar, is that the study of cases keeps constantly before the student's mind the processes and procedure in the courts. After all, the ordinary citizen knows his personal and property rights. He knows when these are violated. He does not need a lawyer to advise him as to his rights. He needs a lawyer to help him vindicate these rights, and it is the lawyer's job to represent him in the processes and procedure in the courts. Under the Case System of instruction examples of procedure are constantly before the student. True in our case-book, the procedure problems are sometimes emasculated by the compiler of the case-book. But that is not true in the majority of cases.

Complaint is made that under the Case System the student is overloaded with reading material and too much ef-

fort is spent in searching for the principles of law. I have yet to find a present-day college student who overworks. Education is not acquired by work-saving devices. The ironer may iron but an education without work is unworthy of the name. Some critics of the Case System claim and deplore the fact that the system curtails the production of text-books. Many lawyers will doubt the fact of curtailment and there are many that will welcome it. If there is a curtailment, what of it? What is the content of a large number of our modern text-books? Are they not merely restatements of the principles of the law as found in the cases? Page after page of an ordinary text-book consists of mere quotations, taken verbatim from the decided cases. With our Digest Systems, with the excellent Cyclopedias and with the coming of the Restatement of the Law by the American Law Institute, is there really much need for text-books?

Let me summarize the few thoughts that I wish to convey in this brief article:

First: The Case System has now been used for a quarter of a century and is quite generally used in the approved law schools. The ability of the lawyers of to-day, largely a product of that system, will compare very favorably with the lawyers of previous centuries.

Second: The purpose of a law school is not merely to impart knowledge of the principles of the law—to simply stuff the memory of the students, but to train students to think legally and thus prepare them for the practice of their profession.

Third: Principles of law are rules of human conduct. That conduct is best and most concretely illustrated by the facts in the decided cases.

Fourth: The decided cases are the authoritative sources of the Common Law. The study of the law should proceed from these sources.

Fifth: The study of cases trains the student to analyze and arrange facts, and keeps him constantly in touch with the procedure in courts, and thus prepares him for what he will have to do as a practicing lawyer.

Sixth: That the cases studied and the case-books are not the end but the means to an end. They are the aids.

Seventh: Finally the Case System does not ban the use of text-books or treatises. After all it is but a system of teaching law. The fact that it is improperly utilized by a few is not the fault of the system nor an argument for its abandonment.

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