DR. REDLICH ON THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS.[1]

A REMARKABLE document of compelling interest is the Eighth Bulletin of the Carnegie Foundation for the Advancement of Teaching, prepared by Dr. Joseph Redlich, the distinguished professor of law in the University of Vienna. To the work of preparing this bulletin Dr. Redlich has brought the resources of a keen and vigorous mind, trained in the continental systems of law, and a wide knowledge of continental and English legal institutions and methods of legal instruction. His investigation included the visiting of typical law schools in a number of our cities.[2]

The controversy between the adherents of the so-called case system of legal instruction and those who cling to the older systems of instructure by lecture or text-book, ceased to be a live one so far as law teachers were concerned, twenty years ago. When Professor Langdell in 1870 first put into operation his plan for law study by placing in the hands of the student the original sources of law, that is to say, the records and judicial opinions in selected decided cases, the innovation evoked a storm of criticism and discussion which did not subside until the last decade of the nineteenth century, after Columbia had established the case system in its Law School under the leadership of Keener, and the University of Chicago had adopted it in organizing its law school in 1902. Meanwhile Langdell, with the aid of the remarkable group of law teachers he had gathered about him at Harvard, had demonstrated the scholarly efficiency of the new method of instruction and its practical advantages as a method of professional training. In rapid succession the law schools of the country have adopted it, until today, as the later publications of the Carnegie Foundation will show, there is not a single university law school in the country which has adhered unqualifiedly to the lecture and text-book method of instruction. This result was brought about not merely by the process of blind imitation, but as the consequence of years of study and investigation and of weighing of results of legal educators.

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[1]By permission of the Columbia University Quarterly.

[2]Including the St. Louis Law School. Ed.

It therefore may be said that when the Carnegie Foundation began its investigation of legal education in the United States there was substantially but one opinion as to the efficacy of the case method of instruction in law among university law teachers. To them it was unthinkable that the law schools of the country should revert in any substantial degree to the archaic method of instruction by formal lecture or class-room quizzes, based on elementary text-books.

Whatever lingering doubt there may be among laymen as to the great advance in educational methods made by the adoption and development of the case system in American law schools should be dispelled by Dr. Redlich's remarkable commentary. He traces the origin and history of the case system, draws freely from the controversial discussion of it, and gives an intimate picture of its practical operation. His unqualified conclusion is that the case method is the scientific method of law study, that to an exceptional degree it kindles the student's enthusiasm for legal learning, and that, judged by its results, it has been exceptionally successful as a method of training lawyers.

"Thus," he says, "in the modern American law school, professional practice is preceded by a genuine course of study, the methods of which are perfectly adapted to the nature of the common law. The average student at Harvard or Columbia who starts with the requisite general education and capacity, who takes full advantage of his three years' course, and who proves this by his success in the yearly written examinations, enters finally into the practice of the law office—and a law office that is busy, too, with difficult legal questions—better prepared than a graduate of any other school in America, England, or on the European continent. In his practice he has only to continue to exercise and to develop the manner of thinking that he has already brought to a very high degree of perfection in the school."

Dr. Redlich shows that the case method as now applied in the American university law school is in some respects an improvement upon the system originally devised by Langdell. To Langdell the case system was a scientific method of acquiring legal knowledge. In his mind, although the decisions were of course very many, the legal principles on which these decisions were based were comparatively few, and the student could acquire accurate knowledge of those principles by the anaylsis and comparison of decided cases under the guidance of a competent teacher. To later exponents of the case

system it means much more than this. To them it is a method of training the intellectual faculties to do the work of the lawyer. By continual practice in the analysis and comparison of decided cases the law student is trained from the beginning of his course to do the kind of work which he will do as a lawyer or a judge throughout his professional career. Thus he acquires a facility in the application of legal principles to new combinations of facts which is impossible for the student who has studied law as a collection of abstract rules or principles neatly summarized in a text-book or formal lecture.

This "shift of emphasis" has not always been recognized by the opponents of the case system, and there are doubtless still many lawyers of the old school who do not understand why the student should familiarize himself with a rule of law by the laborious process of reading the cases by which the rule has been haltingly evolved, when he could find and read the rule stated in its complete form in a standard text. The answer made by the adherents of the case system is that the student who has learned the rule of law from a text-book knows little of its history and development, and nothing of its application to concrete problems. He is wholly without that mastery of legal principles which comes with constant practice in the analysis of cases and the class-room discussion of them. Dr. Redlich's treatment of this phase of the subject in a separate chapter gives an interesting account of the development of the case system by the followers of Langdell, and will do much to clear up certain misapprehensions on the part of those who are not intimately acquainted with the work and methods of the modern law school.

No less are we indebted to Dr. Redlich for pointing out the error into which some of the more zealous advocates of the case system have fallen in asserting that the law is a science. Law should doubtless be studied by the case system because, as Dr. Redlich more than once points out, this is the scientific method. The likening of law to the natural sciences, and of the case system to the laboratory method, possesses a certain illustrative value, of which some of the earlier advocates of the system were quick to make use. It is quite possible that those making use of it were in reality only seeking a useful analogy, and not attempting to establish the identity of law with science. If so, the zeal of advocacy has carried them beyond their original purpose and committed them to the support of a proposition which will not bear critical examination. The study of positive law, that is to say, the body of rules of conduct which are

made legally controlling because of state sanction, is not a study based on observation of the various manifestations of the phenomenon of uniformity in nature which constitutes the basis of true science. It is, rather, the study of the underlying principles ("norms," Dr. Redlich calls them, which form the subject matter or basis of the so-called intellectual sciences, or the *Geisteswissenschaften*) upon which rest the specific commands or prohibitions of judicial decisions. These constitute an artificial system, artificial in the sense of being not subject to natural laws, but wholly the product of the human mind and will, consciously created and developed for the purpose of establishing the order and promoting the cooperative effort of civilized communities. While therefore not constituting the subject matter of true science, those principles may nevertheless be discovered by the student from the decided cases by the inductive or scientific method. But, as Dr. Redlich indicates, they are deductively applied by the lawyer and the judge, and it is at this point that the supposed analogy of law to science breaks down completely. Dr. Redlich's admirable discussion of this phase of his subject is of great value, not only in the interest of sound and accurate thinking, but in making clear that our approach to the great problems of law reform and law development should be uninfluenced by the specious analogy between substantive law, a purely artificial human product, and the unalterable laws of the natural universe which constitute natural science.

It is in Dr. Redlich's constructive criticism of our methods of applying the case system that law teachers, and indeed, educators generally, will be especially interested. These may be briefly summarized as follows: (1) that the larger schools (he mentions Harvard and Columbia specifically) are generally giving instruction to too large classes; (2) that there should be an introductory lecture course on the fundamentals of law at the very beginning of the course of law study in the American law school, and that there should also be a lecture course given during the third or last year of the course covering the field commonly known as jurisprudence; (3) that the course should be extended from three to four years.

It is obvious that classes should not be so large in numbers, nor should the lecture room possess such characteristics, as to preclude any member of the class from hearing easily all the classroom discussion as it proceeds. These requirements, however, present no difficulties in classes numbering from one hundred to one

hundred and fifty. The end sought by the case method of instruction is not practice in dialectics or public speaking, but the leading of the entire class, step by step, through the intellectual processes by which the cases are analyzed and compared and their true legal significance developed. This is accomplished not by having every member, or indeed any large number of members, of the class participate orally in the discussion, but by insuring that every member of the class is a sharer in it intellectually. This problem presents no difficulty to the competent instructor. With him every member of the class knows that he may be called on at any moment, at any stage of the discussion, to participate in it, to present his own views as critic or coadjutor of those who have already contributed to the discussion, and who may be called upon to resume it.

It may safely be asserted that in the hands of the competent instructor, the attention of the members of the class and their comprehension of the class-room work bears very slight relation to their numbers, provided these do not exceed the physical limitations already indicated. Indeed, there is some incidental advantage to be gained from the student's experience in being constantly prepared to state his position and defend it before a very considerable number of his fellows. Dr. Redlich emphatically supports this conclusion in his description of class-room methods in the case sytem law schools. He says:

"In the actual class exercise the professor calls on one of the students, and has him state briefly the content of the case. Then follows the interchange of question and answer between teacher and student; in the course of the discussion other students are brought in by the teacher and still others interject themselves in order to offer objections or doubts or to give a different answer to the original question. The whole exercise generally moves quickly and yet with absolute quiet and with the undivided attention of the class. It must indeed make a strong impression upon every visitor to observe, as, for instance, in the Harvard or Columbia Law School, classes of one hundred to one hundred and fifty students engaged in this intensive intellectual work; all the students intent upon the subject, and the whole class continually, but to a certain extent imperceptibly, guided by the teacher and held to a common train of thought. The thing that specially impressed me was the general intense interest displayed by the whole class in the discussion, even by those who did not take part in it themselves. I do not remember

that a student, when called upon, was confused or unable to reply, although, of course, not all gave an adequate answer. The transition from one case to another followed quickly, and indeed in general the tempo is a rapid one, and always only the matter in hand is discussed and superfluous generalities are avoided. Digressions from the theme are, as a rule, dismissed by the lecturer with a short remark; pauses seldom occur, for if the professor notices a general lack of understanding of the case, he then interposes with a lengthy explanation. The great majority of the students make notes during the course of the discussion. I looked at many of these note-books and found in them the principles of the case jotted down, almost always briefly but intelligently, and for the most part in ordinary longhand writing."

In another portion of the report Dr. Redlich emphasizes the importance and the difficulty of securing instructors who apply the case system in a thorough and efficient manner. In view of this difficulty, it seems probable that the lectures of the competent instructor will continue to be attended by classes of very considerable size, and that the benefits which may be conferred upon his classes by such an instructor entirely outweigh the minor inconveniences, if such there be, of classes numbering from one hundred to one hundred and fifty.

Theoretically Dr. Redlich makes out a sound case for the addition to our law-school curriculum of an introductory course in law and a concluding course in jurisprudence. The suggestion of an introductory course is not altogether novel. Columbia has maintained such a course for the past nine years, but its example has not been very generally followed. It is easy to overestimate the importance of the introductory course in Elements or Institutes of Law. The primary object of such a course is preparation for the more difficult legal problems presented in concrete form by the cases. It is thus a means of giving the student such incidental information and such notions of fundamental legal concepts and legal history as will enable him to pursue more effectively the study of the larger legal problems. As a matter of fact, the work which Dr. Redlich would assign to the introductory law course is already largely accomplished by the introductory portions of the several first-year courses now offered in most law schools, which, by lecture, combined with classroom discussion and collateral read-

ing, make somewhat easier and more intelligible the students' first experience with judicial decisions.

That this method has proved to be effective, and, on the whole, satisfactory, Dr. Redlich himself gives most convincing proof. He calls on Mr. Justice Holmes to bear witness to a fact well known to law instructors by the case method that, "after a week or two," when the first confusing novelty is overcome, students taught by this method examine legal questions "with an accuracy of view which they never could have learned from text books and which often exceeded that to be found in text books." Dr. Redlich also speaks of his experience in visiting third-year classes in our law schools, in which members of the class analyzed cases "with great readiness and grasp of subject matter, classes in which there stood out strongly not only excellent logical training, capacity for independent study, and especially for quick apprehension of the actual point of law involved, but also indisputable knowledge of positive law." His own impression is that "law students of the third year in our European law schools, would hardly ever be found competent for such work."

Still less convincing is Dr. Redlich's insistence that the introductory law course must be given by means of formal lecture. Every argument which he advances for the use of the case method of instruction in the major law courses is an argument against the pure lecture or text-book method of instruction, and an equally cogent argument against the use of formal lectures in the introductory law course. In a broad sense the "case method" of instruction is not necessarily confined to the study of judicial decisions and opinions. The essential of the method is only that the student who is to study scientifically shall have placed in his hands for intensive study the materials which constitute the sources of those intellectual concepts or "norms" which constitute the real subject matter of his inquiry, and that he shall then be forced, by means of class-room discussion, under the guidance of the instructor, to go through the intellectual processes by which these concepts are developed. Only by this method does the student make these concepts intellectually his own in such a way as to be capable of using and applying them. Contrasted with the lecture method, it tends steadily to stimulate and develop the intellectual powers of the student and his mastery of the subject, whereas the formal lecture, while it enables the instructor to display the extent and brilliancy of his own training, has very little meaning and vitality to the student who sits at his ease and

receives in "waste-basket" fashion the material which is thrown out by the lecturer.

There is an abundance of material to be placed in the hands of the student taking the introductory law course by the case method. Much of this material may be found in judicial opinions, but it need not be limited exclusively to that source. Collected material to be culled from standard authors on law, jurisprudence, and legal history, dealing with fundamental legal notions and the functions of courts, should be arranged in proper sequence and placed in the hands of the student for study before attending the lecture. Especially should this collection include all material of a purely informational and historical character. The practice of assembling bodies of students in lecture rooms to receive information imparted by word of mouth in formal lectures is a species of educational medievalism which has been without any substantial justification since the invention of the printing press.

In preparing this type of "case book" the instructor will not be unmindful of the importance of so arranging the material as to bring the students face to face with the "problems" of the subject. These problems will naturally become the subject of class-room discussion, and will be further developed by the application of the Socratic method. As in other law courses, the discussion will be accompanied by the instructor's explanation and suggestion, directed, however, toward removing those difficulties of the students which their previous study and the discussion itself have developed. That this method of study is superior to the formal lecture method when applied to any of the intellectual sciences cannot be seriously doubted; for it is based on the fundamental truth that all education is merely an aid to intellectual self-help. The instructor who prepares the formal lecture in its most perfect form may in the process become a learned and educated man, but its educational effect on the mere listener is comparable with those benefits of physical exercise which are supposed to be conferred upon the "athletes" who adorn the bleachers at our modern inter-collegiate contests. Should American law schools adopt Dr. Redlich's suggestion by establishing introductory law courses, it is hardly to be supposed that they will throw aside the teachings of experience and return to the formal lecture as a method of instruction.

That the student should conclude his course of formal law study with a course in jurisprudence, in connection with which he should

add to his knowledge of legal history and of other legal systems than our own, is a proposition with which most law teachers will cordially agree. The practical difficulties, however, of adding to the already over-burdened curriculum of our law schools, are serious. In 1821, when all the law reports of the United States were comprised in one hundred and seventy volumes, we find Judge Story lamenting the rapid increase in the mass of the law; and Kent, in his *commentaries,* spoke of the "multiplicity of law books" as "an evil that has become intolerable." It would be difficult to imagine what would have been the reflections of Story and Kent if they had forseen that the law reports in the United States in 1915 would have reached a total of about nine thousand volumes, and that there would have been a corresponding increase in the volume of statute law. Not only has the last century witnessed an enormous increase in the mass of legal literature of all classes, but the substance of law itself has increased more rapidly than in any other like period. The greater part of the law of corporations, public-service companies, interstate commerce, life and accident insurance, bankruptcy, constitutional rights under the Fourteenth Amendment, not to mention many other branches of modern law, was unknown to Kent and Story. Upon the modern law school is thus thrown an ever-increasing burden of subject matter, which must be properly distributed among its several courses. In the Columbia Law School there are offered today forty-three courses during the three years' program of studies. Practically all these courses deal with subject about which the well-trained lawyer should know something, but obviously no student could successfully study them all in a period of three years. Naturally, the law teacher looks with apprehension upon any program which would add new courses to an already over-crowded curriculum.

Dr. Redlich suggests, although it is fair to say he does not urge, a fourth year of law study as the proper solution of this problem, and he credits Harvard with taking a forward step in legal education by establishing an optional fourth year of law study. When Harvard established its fourth year in law in 1905 it followed the example which Columbia set in 1895 when it established an optional fourth year of law study leading to the Master of Laws degree. At neither Harvard nor Columbia has the optional fourth year been successful, judging by the number of students taking the course, or by its educational influence. The number of students registered for the fourth year at Harvard during the year 1914 was four, at Columbia five.

Nor is such a course likely to be successful under existing educational conditions in this country. It is very generally agreed among educators that a man entering any of the so-called learned professions should have received the benefits of a liberal education, and this he acquires, under normal conditions, during the four-year college course, upon which is then superimposed his training in the professional school. Students who graduate from college at the average age of twenty-two complete their law course at twenty-five and begin the final phase of legal education by taking up practical work in the lawyer's office at the age of twenty-five or twenty-six. There is ground for believing that the young lawyer should enter upon this final phase of his professional training at an earlier age, and there is certainly no opinion among professional men that the combined period of liberal training and law study should be prolonged by even a year. Nor is there any reasonable expectation that it will be prolonged generally among law schools. If the fourth year of law study is ultimately established, as apparently it ultimately must be by reason of the mere volume of subject matter with which the law course must deal, this year must be saved from the time at present alloted to the liberal and professional courses, and not added to it.

Owing to historical reasons, there is little or no correlation between the college course and the professional course except in those universities which have adopted the so-called combined college and professional course, and even with them this has resulted merely in eliminating from it a year of liberal study, without any substantial correlation or unification of the two courses. The colleges have practically ignored the general educational value of the introductory law course and of the history of legal institutions, and their curicula are too often developed without reference to any definite educational aim or purpose on the part of the student. Because of this fact, and of the demands of the activities of "college life," undergraduate study seldom exhibits that thoroughness and intensity which characterizes the work of the professional student.

These observations indicate that the fourth year of law study may in the university, under proper conditions, be nearly or quite rescued from the college course as at present established, without any substantial loss to the college course in thoroughness and efficiency. By treating the college course as the preliminary step to the professional course, and thus giving it a definite purpose from the start, and by setting the same standards of scholar-

ship as are now set by the professional school, the waste of time and misdirected effort which has characterized education in the American college may be largely eliminated. During the third year of college the student should begin the introductory law studies, which may be so arranged and developed as to serve the double purpose of liberal training and preliminary preparation for technical law-school study. There will then remain three years for intensive professional law study, in which more will be accomplished than at present because of the better preliminary training of the student and his experience with law study during the third year. It is believed that the training of a student who had pursued such a course covering a period of six years, if the course were properly devised and administered, would be quite as satisfactory from the viewpoint of both liberal and professional training as would that of the average college graduate who under present conditions follows his graduation from college with four years of study in the professional school. The next great step in the improvement of educational methods in this country is the transformation of the American college from the position which it now occupies as the convenient meeting place for the youth of the country who wish to enjoy "college life," into institutions for intensive intellectual cultivation, and the combination and intimate correlation of this work with that of the professional school.

For historical reasons, law study in England was never developed as a part of the general educational system as it has been developed in this country, but has remained on the whole a system of "craft guild" instruction under the guidance of the Inns of Court. It is to the American law school, therefore, as the product of a great educational movement, that Dr. Redlich would have us look for the scientific development of the English common law, and for the great contributions to the solution of the problems of law reform. To those who read his report attentively there can be no doubt that to this great work which the American law school is carrying on in the interest of scientific methods of study Dr. Redlich has now made a contribution of great and permanent value.

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