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## THE STUDY OF ELEMENTARY LAW, THE PROPER BEGINNING OF A LEGAL EDUCATION.\*

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The thought of our day moves mainly along two lines: the evolution in all things wrought by time, and the correlation of forces, whether of matter or of mind. To those interested in legal education, it has brought a new sense of the unity and permanence of what is essential in law, and of the passing and shifting character of all that is not essential in it. It has made law a larger thing. It has set in a larger place. It has correlated it to the whole family of social sciences, of which it is both child and king.

Legal science is the science dealing with the relations of man, as a member of organized political society, to that society and, through that society to mankind. But what is an organized political society? Out of what conditions does it arise? What differentiates it from human society at large?

These questions reach far. They belong to the domain of jurisprudence, and must be studied wherever and whenever that is taught.

But jurisprudence and law, as these terms are commonly used, are not convertible. Jurisprudence deals more with generals; law, more with particulars. Law schools have for their main office the imparting of such a knowledge of the legal principles and rules

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\*The greater part of this paper is taken from the annual President's address, delivered by the author before the Association of American Law Schools, August 26, 1903.

prevailing in some one particular political community as will justify the learner in professing his ability to expound and apply these in practice, against all comers, as occasion may arise.

What is it that has made the law of this particular society different from that of any other? In what does this difference consist? How shall principles and rules be so marshalled as best to show this? How shall their slow evolution be made clear? How much of accident, how much of order, has there been in their development? What light can be thrown on this by History, by the Philosophy of History, by Psychology, by Physical Geography?

But Law is both Science and Art—a philosophy and a trade. How does one best learn the trade-terms and trade-methods? How in a trade of word and argument does one best acquire that sleight of mind which takes the place of sleight of hand in the trades of handicraft?

Our trade-masters are the courts. How shall the apprentice be best taught to shape himself to such modes of approaching them as may serve most the advantage of clients—to such modes of learning the lessons they daily teach as will give him the real meaning of their judgments, the true *ratio decidendi* of their opinions?

Among English speaking peoples it is undisputed that Americans have thus far provided the best facilities for education for the bar. They were driven to it by the force of circumstances. Their system of government was one that rested, not on personal authority, not on historical tradition, not on political necessities, but on unwritten law, and it was a law higher than any which their legislatures could make or unmake. Who was to apply this higher law? Who was to say which, in any case of doubt, was the higher? On its proper understanding and execution, its just administration, its adaptation and re-adaptation, from time to time, to fast changing social conditions, hung the safety of the State. For all this it looked to its lawyers—made by inevitable circumstances both a creative and a conservative governing aristocracy. They were to lead in its Constitutional Conventions, in its legislatures. They were alone to officer its courts.

With these things in view, the American law student, as soon as the United States attained political independence, was subjected to a careful training. It was at first found in the office of some leader of the bar. Here was he first set to reading such works as Montesquieu, Grotius, Puffendorf, Vattel, Hale's History of the Common Law, the Institutes of Justinian, and perhaps a few books of the Pandects, and then given Blackstone's Commentaries, Wood's

Institutes, and the later volumes of the English Law Reports.\* Whatever else might be omitted, in any case, Blackstone's Commentaries never were.

Soon came the first Law School, that at Litchfield, Connecticut, first opened in 1784, where instruction was given by elaborate lectures on the whole field of law, supported by references to leading cases in the reports. Later Law schools followed first the same method, and then added to it recitations from standard text-books. The great aim was to acquaint the student with the principles of law in such an order of arrangement, and with such reference to their historical development, as would best impress them permanently upon his mind. Cases were used mainly to support or illustrate antecedent propositions. They were regarded less as sources of law than as channels of law.

So far as office instruction went, it was in the same direction. For nearly a hundred years this was the history—the stationary history—of legal education in the United States. It ceased to be stationary in the seventh decade of the last century. A forward movement came which was marked by three great events:

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\*To illustrate the methods of this period, the course of reading may be compared taken by three young men, of whom two afterwards attained distinction, and one died in early youth:

Ezra Stiles, Jr. Harv. 1778, at Portsmouth, N. H. under Judge Parker, and New Haven, Conn., under Chas. Chauncey.

Burlamqui's *Principes de Droit Naturel*; Montesquieu, *de l'Esprit des Loix*; Lord Kames' History of Law; Blackstone; Wood's Maxims; Wood's Institutes; Co. Litt.; Bacon's Abr.; Hawkins' Pleas of the Crown; Gilbert's Evidence, Devises, and Tenures; Law of Bills of Exchange; Molley *de Jure Maritimo*; Hale's Abridgement; Lex Testamentorum; Sullivan's Lectures; Bohun's Institutes; Boot on Suits at Law; Offic. Cler. Pac.; Burn's Justice; Dalrymple's Institutions of the Laws of Scotland, etc.; Institutes of Justinian and part of the Pandects; Puffendorf; Poulton's Crim. Law; Salkeld's Rep.; 1 and 2 Burrow; part of Lord Raymond's, Holt's and Shower's Rep. See Literary Diary of Ezra Stiles, III, 420.

James Kent, Yale, 1781, Poughkeepsie, N. Y., under Judge Benson.

Grotius; Puffendorf; Smollett's, Hume's and Rapin's Histories of England; Hale, Hist. of the Comm. Law of England; Blackstone. See Memoirs of Chancellor Kent, 19.

John Quincy Adams, Harv. 1787, Newburyport, Mass., under Chief Justice Parsons.

Robertson's Hist. of Charles V, vol 1 (to get his account of feudalism); Vattel; Blackstone (read three times); Sullivan's Lectures; Wright's Tenures; Co. Litt. Wood's Institutes; Gilbert on Evidence; Foster's and Hawkins' Pleas of the Crown; Bacon's Pleas and Pleading; Institutes of Justinian; Buller's *Nisi Prius*; Barrington's Observations on the Statutes. See Proceedings of Mass. Hist. Soc., 2d Series, XVI, 315, *et seq.*

1. The creation of a committee on legal education, representing the whole American bar, and its report on that subject to the American Bar Association in 1879, urging a more scholarly and thorough training for the profession.<sup>1</sup>

2. The extension of the term of study required for a bachelor's degree, in two law schools,<sup>2</sup> to three years, and the offer, in another, <sup>3</sup>which still adhered to the two years' term, of two years more of advanced study for bachelors of law, leading to the degree of Doctor of Civil Law.<sup>4</sup>

3. The publication, in 1870, by Professor Langdell of Harvard, of the first case-book, which was prepared solely for use in law school instruction.

I have named these events in the reverse order of time, preferring what I deem their order in relative importance.

The first brought an influence to bear on courts and legislatures, which has proved irresistible in advancing the requirements for admission to the bar.

The second helped greatly to make that advance possible, not only by leading to a general lengthening of the term of study, but by giving a higher legal education to those who were to become themselves law teachers, and forcing those who gave it to them, in order to be able to face their classes, to broaden their own reading and thought in new directions and in all directions.

The third proved to be the beginning of a new theory of legal instruction, according to which its main end from the beginning should be to encourage and assist the student in the study and analysis of judicial precedents, and he should be left to pick up and arrange the elementary principles of law, as he best can, for himself. This theory has been put in practice at several American law schools, and a system of instruction introduced, which is fundamentally different from that which formerly prevailed there, and from that which had ever prevailed at any seat of legal education in the history of the world.

"*Die Weltgeschichte ist das Weltgericht*" was the wise saying of a great poet. Was the world's judgment, formed and expressed

<sup>1</sup>By the American Bar Association, in 1878, *Am. Bar. Ass'n Reports*, II, 209-236.

<sup>2</sup>Those of Harvard and Boston Universities in 1876.

<sup>3</sup>That of Yale University in 1876.

<sup>4</sup>The history of the beginnings of the change of system, which has been since adopted in many other Schools, is given in the *Journal of the Am. Social Science Association*, XI, 123.

during the long course of ages before 1870, wrong on this point, so vital to the question of what a sound legal education is?

But let us limit the inquiry more narrowly. There has never been a country in which this new mode of teaching law could have been possible, except Great Britain and its dependencies, and the United States and their dependencies. In no other is it so fully conceded that judges, if they do not make law, make it certain what law is. In no other is there such a mass of authoritative judicial opinion on every branch of public and private law.

In one respect, the United States offer a more favorable ground for putting Professor Langdell's theory into practice than Great Britain. Only in the United States do judicial opinions express the final word of the sovereign power. The courts of Great Britain must bow to the will of Parliament. The will of the Congress of the United States must bow to the courts of the United States. The will of the Legislature of each State must bow to the will of its highest court. Here, therefore, the opinions of the courts are, in Great Britain they are not, the ultimate source, in effect, of written authority.

On the other hand, the unity of the judicial system of Great Britain, with its one final court of appeals for all causes arising in the kingdom proper, and another final court of appeals for all causes arising in her dominions beyond the sea, avoids that conflict of authority which is the despair of American jurisprudence.

A prominent advocate of the case-book system said last year in a public address that whatever time students might devote to the study of elementary law was worse than wasted; that no knowledge was gained by it on which they could rely; and that the information acquired, if any, was necessarily superficial and misleading.\* In his view, and in the view of quite a number of American law teachers, no book should be made the direct subject of class-room instruction in an American law school except a case-book.

The case-book is always a collection of cases on some particular topic. From its pages, aided by such explanations and additions as the teacher may be able to crowd into his hour, the student, under the new theory of legal education, must extract his knowledge of the elementary law relating to that branch; and after wrestling in succession with twenty such books on twenty topics, must be left to construct for himself an ordered and systematic body of the elementary law relating to all subjects, or perhaps be referred to one from an authoritative source, only at the close of his third year, as

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\*Reports of the American Bar Association, XXV, 749.

the last thing to look at before entering the bar, or as a proper precaution before meeting the State examiners.

Instruction as to the proper study and analysis of cases, as to their place in judicial history, as to their authority and the limits of it; instruction on particular topics in detail based largely or even wholly on case-books, but coming after a general knowledge of the nature of the topic and the outlines of its field have been otherwise acquired;—all this is useful and right. But can it be safe, can it be scientific, to skim over in a few lectures or leave for consideration in the closing months of a law school course that orderly statement and classification of legal conceptions and propositions which it is the purpose of elementary treatises to make, and without some familiarity with which no one, with the amplest library to consult, can know where to look for authority on any point? There are few lawyers who have had any considerable practice at the bar who will be in doubt as to the answer. They have found that what has helped them most has been the possession of clear general notions as to the whole field of law and the manner in which part of it is related to the rest. To give that, law schools must set before each incoming class the outlines of law in general, substantive and adjective, in orderly and scientific arrangement; and it should be done, if possible, by the best teacher in the faculty. Let the student start right, and he will come out right. Let him lean first on those who are wiser than he for accepted definitions and systematization of knowledge. Let him look for them to those who have made it their business to set them forth with precision, rather than to those who are only trying to decide a law suit, and to state their reasons as briefly as they can.

The main argument usually urged in favor of what for convenience may be called the case-system is that it is the inductive method; and that only inductive methods can be tolerated by modern science.

What is the meaning of the term "inductive method," as thus used to describe a method of learning law? It must be the method of proceeding from a study of particular decisions in particular law suits to ascertain by induction from these some general rule or rules of action, the application of which to a particular state of facts it was the purpose of each decision to make. It is, in the language of the logicians, a formal illation of a universal from singulars, produced by the mere action of the mind. It has little resemblance to a material illation of a universal from singulars, dependent upon an objective process of investigating particular facts. In studying legal problems, facts are mere conditions upon which the reason is

to work, and have no intrinsic importance. Every judicial decision is, of course, a fact. But the fact that it was reached in a certain case is of no philosophic importance, except as it may illustrate the history of legal science; and that, to a beginner at least, is far more clearly shown by leading him to compare the institutional writers of successive centuries—Glanvil with Bracton, Blackstone with Kent.

Any commendation, therefore, of the inductive method as the only scientific manner of investigating natural phenomena and physical problems is irrelevant to the question of applying the inductive method in legal education. That method is all important in deriving certainties from uncertainties, the knowable from the unknown. But it is worthless, except as a mode of mental discipline, when applied to deriving known principles of law from recorded opinions of certain judges, of which these principles are, or are intended to be, the foundation, and in which they are generally named and stated with more or less of formal precision. When thus used, it becomes more properly a deductive method, proceeding from analysis to synthesis.

Bacon revolutionized the processes of philosophy with respect to the study of the physical world. He left them where Aristotle left them with respect to the study of reasoning from assumed premises to logical conclusions by pure laws of thought.<sup>1</sup> He left them as Aristotle left them, in their application to methods of legal education, and we have his own word for it. In his *de Dignitate et Augmentis Scientiarum*, the father of the inductive philosophy devoted a separate title<sup>2</sup> to the Sources of Law. Unless, he says, law is certain, it cannot be just. Hence, that law is best *quae minimum relinquit arbitrio judicis*.<sup>3</sup> His ideal to aim at was the formation of an official code of written law, stated with such clearness that he who runs might read it.<sup>4</sup> Meanwhile, for the better understanding of what the written law might leave doubtful, the judgments of the highest courts were to be looked to as the surest guide. They were to be arranged and digested in order of time, not in that of their subject-matter, since not only the decisions, but the times in which they were pronounced, were to be considered in estimating their due authority. This work was to be done at public cost, and not by any of the judges, lest they should stuff the book too full of their own opinions.<sup>5</sup>

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<sup>1</sup> See Sir William Hamilton's Lectures on Logic, Lect. XVII.

<sup>2</sup> Lib. VIII. Cap. III.

<sup>3</sup> Works, Ed. of 1803, VII, 441.

<sup>4</sup> *Ibid.*, 453, Aphorism LXVIII.

<sup>5</sup> Works, VII, 457, Aphorisms LXXV, LXXVI.

Such works, however, were for the information of the lawyer or the citizen. So far as they set forth the rules of public law, they were also proper to be put in the hands of the student of law. Not so as to private law. This must be taught by institutional treatises, set out in clear and plain order, "not omitting some subjects and dwelling too long on others, but touching upon each briefly, so that to a student afterwards coming to read the whole body of the law nothing may appear wholly new, but as that of which some little notion had been previously imparted (*levi aliqua notione praeceptum*).<sup>1</sup>

No one who reads this chapter of Bacon's philosophy will question his attitude towards the teaching of elementary law. To quote his very words: "Youths and novices are to be prepared for receiving and imbibing more deeply and conveniently the knowledge and the difficulties of jurisprudence by institutes."<sup>2</sup>

He would also have in each country a book setting forth its legal rules, and after each of them, which is to be stated in brief and comprehensive words, adding illustrations and decisions of cases best fitted to explain it (*decisiones casuum maxime luculentae ad explicationem*).<sup>3</sup>

In the same vein, he has a word of caution for us who are law teachers. Lectures, he says, on law, and the exercises of those who are devoted to the study of law, should be so framed and ordered as all to tend rather to quieting than exciting questions and controversies as to what the law is. For now, and from a remote antiquity, too, it has been a kind of contest between all law teachers how to multiply doubts and questions as to law, as if for the sake of showing how bright they were.<sup>4</sup>

Bacon took pains himself to prepare an elementary law book for the benefit of students. His *Elements of the Common Law*, published in 1630,<sup>5</sup> came at once into use as a text-book, and held its place as such until the close of the next century.<sup>6</sup> In his preface to that work, he observes that he could think of no way in which he could essay to pay his debt to his profession so well as by collecting the

<sup>1</sup> *Ibid*, 458, Aphorism LXXXI.

<sup>2</sup> *Praeparendi sunt juvenes et novitii ad scientiam et ardua juris altius et commodius haurienda et imbibenda per institutiones*. *Ibid*.

<sup>3</sup> *Ibid*, 459, Aph. LXXXIV.

<sup>4</sup> *Ibid*, Aph. XCIII.

<sup>5</sup> Works, IV, 1-81.

<sup>6</sup> Theophilus Parsons dissuaded John Quincy Adams, when a student in his office, from reading it, saying that it taught rules rather than principles. Proc. Mass. Soc., 2d Series, XVI, 412.

rules and grounds dispersed throughout the body of the laws of England, for—to quote his words—“Hereby no small light will be given in new cases and such wherein there is no direct authority, to sound into the true conceit of law by the depth of reason; in cases wherein the authorities do square<sup>1</sup> and vary, to confirm the law and to make it received one way; and in cases where the law is cleared by authority, yet nevertheless to see more profoundly into the reason of such judgment and settled cases, thereby to make more use of them for the decision of other cases more doubtful; so that the uncertainty of law, which is the most principal and just challenge that is made to the laws of our nation at this time, will by this new strength laid to the foundation, somewhat the more settle and be corrected.”<sup>2</sup>

His book sets forth certain rules, it will be recollected, each being followed by a number of illustrations, often taken from reported cases. To these cases, however, he did not refer,<sup>3</sup> for, he says, “I judged it a matter undue and preposterous to prove rules and maxims, wherein I had the examples of Mr. Littleton and Mr. Fitzherbert, whose writings are the institutions of the laws of England; whereof the one forbearth to vouch any authority altogether; the other never reciteth a book but when he thinketh the case so weak in credit of itself as it needeth surety.”<sup>4</sup>

A great American lawyer and law teacher, speaking in the same vein, has said that cases do not make principles: they only illustrate them; and that the well trained student has a higher learning than they can furnish. “He does not,” to quote his words, “need to wade through hundreds of volumes of books to see whether a particular point has been somewhere or other decided. He knows how it was decided, if it ever was, and how it *ought* to be decided if it never was.”<sup>5</sup>

The term “case-lawyer” is justly one of reproach. What does it mean? He is a case-lawyer to whom the natural appeal to authority is to a volume of reports. He is a case-lawyer to whom a reported case is anything more than a statement of how a particular court decided a particular cause by applying particular rules to particular facts. If any such rule was a new one, the decision was wrong,

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<sup>1</sup>i.e. in modern phrase, “square off,” as one pugilist confronts another in fighting attitude.

<sup>2</sup>Works IV, 10.

<sup>3</sup>In the original edition.

<sup>4</sup>Op. cit., 13, 14.

<sup>5</sup>Edward J. Phelps, *Orations and Essays*, 83.

unless it be a rule consistent with and flowing from the reason of the law.

To what end is an opinion formally pronounced by a court of last resort? Certainly its primary office is not to constitute a source of supply from which law can be dug out by pains and difficulty. It is, on the contrary, at its best when it makes what the law as to a certain point is and how it applies to the case in hand most clear and easy of apprehension. Lord Bacon well observed that judgments "*anchora legum sunt, ut leges republicae.*"<sup>1</sup> They serve, that is, to hold the law firm in its place, just as the law serves to hold the State firm in its place. But the State was before the law, the law before the judgment. A case is worthless unless there is something which underlies it.

Fortunately for the student of law, these underlying propositions or principles are neither numerous nor obscure. In the words of the late Chancellor Hammond, in the able report to the American Bar Association in 1892 of its committee on Legal Education:

"No conception held in common by a large number of men such as the members of a State or great community can be very complex in its nature or difficult of comprehension. This may be taken for granted as one of the laws of thought. Consequently the fundamental notions out of which the rules of law are derived must be of this simple character, since it is in the general acceptance and uniformity of these notions that the common law exists as such."<sup>2</sup>

The case-system turns judges into oracles—or idols. It tends to put the student back into the ranks of those of former generations who thought of law only as a rule prescribed by a superior authority. If that be all of it, it may well be sought by going to the highest source of authority, and with us it is the courts that have the last word for the decision of every right or duty. But it was the right, the duty, or the absence of it, on which the decision hung: it is these that must be known before it can be comprehended.

In all instruction by the case-system, indeed, in actual practice, the teacher is compelled to supplement and support his work by reference to text-books, and statements of elementary propositions, and more or less of the proper classification of such propositions. The case-book may not begin, but conclude such a statement.<sup>3</sup>

<sup>1</sup>De Augmentis Scientiarum, Aphorism LXXIII.

<sup>2</sup>Reports of the American Bar Association, XV, 342.

<sup>3</sup>See, for an example of this, Professor Beale's Cases on the Conflict of Laws, at the end of the third volume of which comes a general exposition, covering forty-five pages, of the elementary conceptions and rules relating to that subject.

The instructor is forced to begin with one, oral and therefore necessarily meagre, inadequate, and imperfectly apprehended.

Is he taking up a case-book on Torts? What are torts? Why are these cases classified together? The instructor or the case-book must first explain the division between Torts and Contracts, the nature of Quasi Contracts, of a legal obligation, of any obligation.

Is he carrying his class through a case-book on Criminal Law and Procedure? How do public wrongs differ from private ones? How does our law define this crime or that? What is burglary? Why send the inquirer to some ancient case for the answer, when the definition is better stated in every elementary treatise on the subject? It is a definition to be learned by heart. Let him learn it in its best form.

Is it said that he will remember it better or understand it better if he digs it out for himself from a series of cases? Is there not more danger that the conceptions acquired from the earlier ones may pre-occupy his mind, and obscure the closer and fuller ones given in the later? He is dealing, we must remember, with the grammar of law; with things that cannot be controverted; with things that every lawyer must know and have at his instant command.

The young man who has learned by heart a legal maxim or definition, of acknowledged authority and unexceptionable phrase, weighing every word, as weigh he must, in order to learn it, has put an arrow in his quiver that he will find his best weapon on a sudden call. I know I found it so when at the bar. I know that no argument now impresses me from the bar more than one proceeding from settled principles, with no reference to reported cases.

Who has ever opened the first book of the Institutes of Justinian, or of the Digest, without feeling his mind impressed by that stately sequence of definitions and foundation rules? They need no explanation, or at least to the Roman, they needed none. To him they proved themselves, and for the most part they are true for all men and all times.

In any country governed by an official code, it will hardly be questioned that that must be read by and, so far as it may need it, explained to every student of law. That code will have gathered into an orderly whole whatever is most important in such rules of conduct as may have been established by proper usage, judicial precedents, legislative action. Thereafter, all prior usage, precedent, legislation, will be studied by the beginner mainly for the help

they give in understanding the just meaning and effect of the language of the code. The day may come when he will have the leisure and ability to look at them as part of national or universal history, but if it comes while he is yet preparing himself for admission to the bar, it will be in the closing stages of his preparation.

The same reasons, though with a less necessity, apply to the student of law in a country whose law is still unwritten. It is, as Sir Henry Maine has so well said, always and in every land written out unofficially by private hands, before it becomes a matter of public record. Courts are its echoes.\*

The European system of legal education has always been founded on that of the Roman Empire. Roman law was taught as a system of deductive science. The *Corpus Juris* proceeds from assertions of principles to their application to various cases. The Institutes are a compendium of elementary law, prepared by law school professors, avowedly as a law school text-book. They are followed by the Digest, in which the same principles are more fully stated and illustrated. Then came the statute laws of recent times.

Can, indeed, in the nature of things, a science like law be intelligently taken up by one who has never been introduced to an acquaintance with its fundamental terms and conceptions?

It is said that Professor Agassiz was accustomed to begin his instructions in ichthyology by giving each student a fish and telling him to describe it. It was not a bad way. The teacher of physical science has this advantage over us. But can we learn algebra by having a quadratic equation flung at us, at the start, and being asked to explain it?

Some of our educational theorists undertook, a few years ago, to carry the "inductive system" into our primary schools. The multiplication table was no longer taught. Children were to be gently led to construct one for themselves, should they deem it useful, and only after fully apprehending the methods and processes on which it rested. They tell a story of a little girl—the product of this era—who was asked by an aunt how much seven times six made. "Oh, dear," was the reply, "I worked a week over that, last winter. I made up my mind it was either 40 or 42. I've forgotten which, and I don't care now, for we have got through multiplication."

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\*The respect which the courts feel for "elementary treatises of acknowledged authority," it may safely be said often exceeds that paid to any judicial opinions except their own. See *Pennsylvania Co. v. Roy*, 102 U. S., 451, 456; *The Majestic*, 166 U. S., 375, 386.

There are those who would conduct our high schools on the same theory, and let the scholars study what they like and as they like, without the drudgery of laying a foundation first. A Massachusetts Latin school teacher has recently complained of the captious way in which college examiners mark the papers presented in English, and condition applicants for admission for mistakes in spelling or diction. Even if they were bad ones, he thought they should be overlooked, if the paper showed a sound appreciation of the subject from a literary point of view.

Germany, a few years ago, yielded somewhat to suggestions of this kind. In 1892, her system of secondary education was revised so as greatly to increase the use of the inductive method of instruction, and lessen the amount of grammatical and logical training previously required. The results were disastrous. Those who passed from the school to the university were found to be lacking, as compared with those of previous years, in clear thought and close reasoning. A general conference of the educational authorities was held at Berlin in 1900, to consider the situation, and in 1901 a new "School Order" was adopted, showing a decided reversion to the old usages, by adding seven hours a week more of gymnasium instruction in the Latin language.

If then we are to trust the experience of the world, to teach law by cases only, or by cases mainly, without first grounding the learner in the elements of the subject is, so far as scientific methods of instruction are concerned, to begin at the wrong end. It is to explain the foundation of a building by examining the roof, or rather by scrutinizing a few of the shingles.

Is the "case-system" to be adopted as a mode of mental discipline, or as strengthening the analytic faculty.

No serious study fails in some measure to discipline and reinforce the mind. But at the time of life which the law student has reached, and at the stage of education to which he must have attained, in order to be fit to enter on professional studies, mental discipline must be relegated to a secondary place.

The American high school or academy has pushed itself forward until the best of them now hold half the field formerly occupied by our older colleges, and the entire field now occupied by our weaker colleges. They have come to give to every American boy his best chance to acquire that texture of the mind which is the best gift of general education. It is, since the modern extension—the undue extension, I venture to think—of the elective system, in the fitting school, more than in the college, that habits of intellectual discipline

are impressed. There are certain studies which must be pursued there, for the simple reason that entrance to college cannot otherwise be gained. Whether the boy likes them or dislikes them, he must become their master.

The best things we learn in early life are the hardest things and the least agreeable. Every man's life has its irksome duties, and he who has not learned in boyhood to do unwelcome tasks, and do them well, enters on his later years under a sad handicap. James Martineau said that the college study which had done him the greatest good was advanced mathematics, and that he took it because he hated it.

The students in the principal American law schools have had at least a high school education and that discipline, from enforced tasks performed during a course of years, for which it stands. If they have added a college course, further discipline has been also gained. High school and college are fields for discipline. It is, or ought to be, one of their main and peculiar ends. It is not and cannot be a main end for a law school to pursue. The law school requires, as a condition of entrance, what presupposes the possession of a fair degree of it. Its object is to teach law, and to invigorate the mind only as every science faithfully pursued strengthens the pursuer in the chase.

The report to the American Bar Association in 1892 of its committee on legal education, to which reference has been made, well expressed what then was, and I believe still is, the conviction of the legal profession, regarding the subject under consideration. The modern view (to summarize its conclusions) of the nature of human law leads directly to a natural and practical plan of elementary study. Its subject matter is those relations of men to the State or under the State to each other which are the necessary result of membership in a political community. These relations exist before the law and are regulated, not created, by it. They give rise to rights and duties. It makes no difference in practical effect whether the right or duty is so plain that all must own it, or one resting on some positive enactment. In either case, courts enforce it; in neither case do they create it. The elements of the law, therefore must be taught, and formally taught, to every student, with due regard to their history, but with first regard to their essential character.

There is a juristic encyclopedia, as the Germans phrase it, that must be mastered by whoever would be a true lawyer. It must receive his attention at the beginning of his course, and also at the

close: at the beginning, as one must put every subject before a beginner, in outline; at the close, as he reviews his work, in its totality, scientifically considered, and yet in outline, too.

It is the natural and proper aim of the law-teacher to impress upon his classes the elements of law. If he has done that, and set them in their due relations, he has done well. It is not superficial work. It is the only foundation work. Principles, not cases, are the building stones of law, here and everywhere, now and always.

*Simeon E. Baldwin.*