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Walter F. Dodd

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WALTER F. DODD
MEMBER OF THE CHICAGO BAR

THE LAW is a constantly changing and developing body of rules. The development of law takes place through statutory enactments and judicial decisions. The relative importance of these factors varies from one field to another of the law, and to some extent from one jurisdiction to another. The law of the United States government is primarily statutory. The law of the states, and the law administered by federal courts in controversies between citizens of different states, is a combination of common law and statute.

Constitutional law is theoretically a body of enacted law, though of course superior in authority to acts of legislative bodies. Yet in the constitution of the United States, judicial construction overweighs the enacted text; and the constitutional law of the United States can therefore be taught almost exclusively from cases. State constitutions are more detailed documents, but as to them also there is a vast mass of judicial construction covering substantially all subjects. Little effort has been made to use this body of decisions in law school teaching.

Much the greater part of the public law of states and nation not found in constitutions, is embodied in the form of statutes. The organization and duties of public officers are statutory, though of course remedies against these officers are still to a large extent found in the common law. Law school courses on constitutional law deal almost entirely with problems presented by the constitution of the United States. Courses on administrative law, municipal corporations, and similar subjects are based primarily upon judicial decisions, though necessarily dealing to some extent with statutory enactments. Criminal law is chiefly statutory, though its common law basis is so important that courses on criminal law do not emphasize the statutory character of the subject.

Turning now to fields other than the distinctly public law, we find the relative importance of statutes less as compared with the public law. Yet the corporation law of the states is largely statutory. Statutes play an increasing share

in the development of private law. During the past fifteen years there has been a complete reconstruction by statute of the relationship between employer and employee in case of accident; and this field of the law has been transferred to a large extent into one of public administration. There was a similar and earlier reconstruction by statute as to married women's property rights. Within a short period we have to a large extent transferred from a common law to a statutory basis the subjects of negotiable instruments, sales and partnership. Upon the conduct of business, we have at the same time built up in the public interest a whole body of statutory restrictions.

What is the relationship between the common law and this growing body of statute law? The relationship is summed up in the often-repeated maxim that statutes in derogation of the common law shall be strictly construed—that the expression of legislative will shall so far as possible be subordinated to pre-existing rules.[1] A master of the law has shown the fallacy of this rule and pointed out the danger of its continued application:

"We recognize that legislation is the most truly democratic form of law-making. We see in legislation the more direct and accurate expression of the general will . . . . The public cannot be relied upon permanently to tolerate judicial obstruction or nullification of the social policies to which more and more it is compelled to be committed." [2]

But to what extent can we adopt a broad view as to the place of statutes in the development of the law, when each succeeding generation of students is taught to get its law from cases and to ignore the statutes. The students of today are the judges and legal counsel of tomorrow. Judges rely and must continue to rely primarily upon counsel who present briefs and argue cases; and judicial decisions will reflect the attitude of counsel toward statute law. Witness the complaints for a number of years in the American Bar Association Reports, that courts continued to decide cases upon common law grounds without reference to the statute, long after a state had enacted the uniform negotiable instruments act.

Questions as to the validity and construction of statutes present themselves in increasing number to the courts; and for their consideration the law school graduate has little preparation from his courses based upon case books. The chief problems of criminal law and judicial administration are today occasioned by the great mass of new statutory offenses,[3] but to what extent is the law school graduate aware of this fact?

The things which a lawyer may be expected to need with respect to statute law are the following: (a) a knowledge of the part statutes play in the development of the law, and of their relation to the common law; (b) the more common limitations found in constitutions upon procedure in enacting legislation

[1] For a wise rejection of this rule see *Commercial National Bank* v. *Canal-Louisiana Bank and Trust Co.*, 239 U. S. 520 (1915).

[2] Roscoe Pound, *Common Law and Legislation*, 21 Harv. Law Rev. 383.

[3] See Edwin R. Keedy, *Administration of the Criminal Law*, 31 Yale L. J. 240.

and upon the substance of legislation itself; (c) a general view of the problems involved in the drafting and interpretation of statutes; (d) the legislative organization for the enactment of statutes; and (e) the statutory basis of the law in the jurisdiction in which he practices. To what extent does the student obtain this knowledge from the law school course as now organized?

It may be urged that the student does or should obtain a sufficient knowledge of statutes from the courses now commonly given in the law school. When a statute has been in force long enough, its consideration becomes an incident to case discussion. This is true of the statute of frauds. It may become true of such phrases as "accidents arising out of and in the course of the employment," commonly found in workmen's compensation laws. As more and more common law principles come into statutes, each law school course may perhaps be expected to devote more attention to legislative enactments, and problems involved in their construction. In the application of the case method to each subject, the student may be given a notion of the importance of statutes; and this plan employed throughout the law school curriculum would emphasize the importance of statutes, equally with judicial decisions, as a factor in the growth even of the private law. Such a plan is highly desirable, but it yet leaves an important residue of legal knowledge nowhere covered in the law school course.

Why have courses in statute law not become popular in American law schools? The reasons are three: (a) the fact that the case method is an effective method of teaching, and has not been regarded as applicable to courses on statute law; (b) the unsatisfactory character of some of the courses which have been given in the field of statute law; and the uncertainty of those advocating such courses as to what should be the purpose and content of the course; (c) the difficulty in expanding the law school curriculum.

It would be impracticable and unnecessary to attempt to teach the whole substance of the law through statutes. Statutes are in their form not as teachable as cases; and a student is likely to gain little from a course which merely analyzes statutes picked from the whole legal field. A law school drawing its students from a number of states has an added difficulty. Statutes vary from state to state; and even where their language may be the same, judicial constructions vary. Not only this, but the statutory language is in most states subject to change each two years, and in others more frequently. To the law school teacher, inexperienced as he usually is in the field of statutes, legislation appears to be merely a headless and systemless mass of unrelated rules, meriting little consideration and receiving less. To some extent this is true; just as it is true that case law has much the same characteristics, except as it is systematized and given an appearance of uniformity in the case books. What is usually taught in the law schools is not the law as anywhere in force, but a generalized body of more fundamental principles underlying the law in all jurisdictions. There is much to be said for this method of teaching, especially in schools not drawing students primarily from one jurisdiction, but the argument even here is not

entirely one-sided; and an effective plea has been made for case-books of local law.

What of value can be taught in a course on statute law, and how can such a course be taught? It must of course be assumed that such a course will not duplicate subjects adequately covered in other courses. The technical task of drafting statutes is one which may be taught in a few highly specialized courses; but a course aiming at such a result would be out of place as one for all students. Some exercise in drafting proposed legislation is desirable, but the technical basis for drafting bills cannot be taught in and of itself. In the first place such a basis requires as a preliminary a thorough knowledge of the constitutional law of the particular jurisdiction; of its governmental organization; its legislative practices; the statutory basis of its law; and the statutory and common law of the state upon the subject within whose field the drafting is to be done. In the second place a course upon statutes must give students something they are likely to need, and the drafting of proposed statutes will not appeal to them or to law school administrators as sufficiently meeting a general need. A satisfactory course in statute law should however give a lawyer the basis for drawing statutes, should this task come his way. For this purpose, a technical course in drafting is likely to prove unsatisfactory; though efforts may now be made to give such a course upon the basis of the outline presented in the final report of the American Bar Association's special committee on legislative drafting, presented in 1921. This report, while excellent for its intended purpose, does not present a satisfactory outline of a course. Much better results would probably be obtained from a course emphasizing the fundamental knowledge necessary for statutory drafting. Such a course is given to advanced college students by Professor Arnold B. Hall of the University of Wisconsin; and under such a plan many points can be taught by the use of cases.

Nor does it seem practicable to the present writer to teach statute law, upon the assumption that such a course shall deal primarily with the theoretical or historical relations between common law and statutes. It appears equally undesirable to devote such a course to the analysis of specific statutes, for the purpose of bringing out the chief problems of draftsmanship. The subjects here referred to should be covered in any course, and knowledge as to them should be the necessary result of a course, but not the basis. No subject taught theoretically or abstractly will or should commend itself to those who are students of the law, if it can be taught concretely. Theory and history are important, but can be tied up with problems of the present law.

The need for courses in statute law cannot be met by courses in contemporary legislation, valuable as they are. There will always be new social, economic and industrial problems to be met by legislation; and as a citizen each lawyer should have some training in these subjects. A valuable outline of a course in contemporary legislation has been prepared by Dean John H. Wigmore.[4] The

[4] *Recent Phases of Contemporary Legislative Proposals,* 15 Ill. Law Rev. 141.

study of broad policies of legislation is important, but is not the purpose of a course on statute law. Some elements of a course in statute law are provided separately at the Northwestern University Law School. At that school a course on legal sources is now being given, with practical exercises in finding the statute law and in determining the relation between statutes and judicial decisions in particular jurisdictions.[5]

What practical and theoretical needs can be united in a course on statute law? State constitutional law is primarily a body of law dealing with limitations on the powers and procedure of state legislatures. These limitations vary from state to state, and their judicial construction varies; but the rules and their construction are largely the same, and can be generalized for all but a few of the states. The constitutional law of the United States is taught in all law schools; but state constitutional law is taught in substantially none, though in the life of the practicing lawyer issues of state constitutional law are likely to be ten times as numerous.[6] State constitutional law is the fundamental basis for a knowledge of what may be accomplished through legislation; and is at the same time of value to the practitioner. Its usefulness is not weakened by the fact that a knowledge of it is necessary to the drafting of state statutes. State constitutional law can be most effectively taught through cases from a single jurisdiction; but a large body of its rules may be generalized, and taught to groups who come from different states. It forms a large part of the necessary subject-matter of an effective course dealing with statute law.

Another fundamental element in a course on statute law is that of investigating the statutory material of the jurisdiction in which the student is to practice. This investigation may well precede the study of state constitutional law, and should take into account the extent to which common law principles have been replaced by statute, and the attitude of the state courts in the construction of statutes. Though this study may be most effective if localized to a particular state, yet much of this material may be generalized. For example, the case of *Thompson* v. *Thompson*[7] forms the basis for a discussion of judicial construction and application of statutes. Perhaps no better place than such a course presents itself in the law school for a discussion of the respective functions of judicial and statutory law-making. For this discussion, such a case as *Meeker* v. *East Orange*[8] will be of value; and aid may be obtained from Dicey's Law and Public Opinion in England in the Nineteenth Century.

A third element which may go to make up a course on statute law is a series of topical assignments upon specific subjects each in a single jurisdiction, in much the form outlined by Dean Wigmore in 1922. In such topical exercises detailed principles of statutory construction may be emphasized. Such practical

[5] John H. Wigmore, *The Job Analysis Method of Teaching the Use of Law Sources*, 16 Ill. Law Rev. 499.

[6] For a discussion of the value of state constitutional law, see Horace A. Davis, *Instruction in Statute Law*, 6 Ill. Law Rev. 126.

[7] 218 U. S. 611 (1910). *Fitzwater* v. *Warren*, 206 N. Y. 355, 99 N. E. 1012 (1912), well illustrates another aspect of judicial application.

[8] 77 N. J. Law 623, 74 Atl. 379 (1909).

exercises may be supplemented by carefully planned exercises in bill-drafting. Such exercises belong at the end of a course.

The content of a course may be worked out in more concrete fashion for a single jurisdiction; but much the same plan may be employed in a generalized course. The suggestions made above may be grouped into the form of an outline:

(1) Statutory basis of the law.

(a) Extent to which the law is found in statutes.

(b) Cases illustrating in a general way the judicial construction of statutes.

(c) Cases illustrating manner in which the courts establish new legal principles.

(2) State constitutional law, studied from cases, but with discussion of legislative organization and practical problems of legislation.

(a) Definite and indefinite constitutional provisions.[9]

(b) Procedural and formal limitations upon legislative bodies.

(c) Substantive limitations on legislative power.

(3) Topical analysis of relation between common law and statutes; and, if it is desired, exercises in bill-drafting.[10]

The law school course is largely fixed, both as to its length and its subject-matter. It must give precedence to the subjects of more immediate need; and must decline ready admittance to a new subject (at least as a required course), until that subject has overcome the presumption against it. But to deny admittance to new subjects, at least as electives, and to refuse any readjustment of required courses, is to stagnate. The importance of teaching statute law has been ably presented to the Association of American Law Schools;[11] but rapid progress in the introduction of such a course has not been made.

To what extent is this the fault of the law school, and to what extent the fault of the course? Of the courses given upon this subject in American law schools, each appears to have been given upon a different plan; and each appears to have had a different purpose, so far as it has had any specific purpose. Experimentation is desirable in a new subject, but some agreement as to the purpose of the course is also desirable. This article is merely an attempt to analyze the problem, as a basis for possible agreement.

From the standpoint of the needs of its students, the American law school must give more attention to statutes. Much may be accomplished by an independent course on the subject; but all courses in the law school should at the same time devote some attention to the statutory basis of the law. Statute law

[9] Upon this see an article by the writer in 20 Col. Law Rev. 635.

[10] The class in Statutes in the University of North Carolina School of Law uses an outline in some respects similar to that above indicated.

[11] By Professor Ernst Freund of the University of Chicago Law School and Dean John H. Wigmore of the Northwestern University Law School.