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THE PURPOSE OF THE LAW SCHOOL

J. HENRY LANDMAN

IT IS the author's shameless conviction that the primary function of the law school is the training of young people for the practice of law. There is nothing ignoble in learning a trade or a profession. It is distressing to think that there is a need to remind legal educators of this fact. There is no reason why the law graduate should be less equipped to practice his profession upon graduation than the engineer, accountant, physician or dentist. The study of law as a profession only enhances its value as a social and philosophical science. These objectives are not mutually exclusive.

Many of our young law graduates are a menace to their clients. The law schools, and particularly the national ones, apologize for this deficiency, by frankly admitting that their principal objective is the training of legal researchers for law practice. The responsibility for this danger to society by graduating incompetents is that of the law schools because they should and do know that many of these youngsters will practice before they have had proper apprenticeship to serve society efficiently.

The primary defects in our legal system of education are twofold: one is our English legal pedagogical heritage which serves England badly and us worse, and the other is the Case Method of studying law for which we can blame only ourselves and not the mother of our legal system.

I. ENGLISH PRE-LEGAL TRAINING

ENGLISH pre-legal training at private schools such as Eton and Harrow, or at the free state schools, provides youth with a much more rigorous and thorough education by the age of eighteen or nineteen than the comparable American system offers the college graduate at the age of twenty-one in the arts and humanities, when they are ready to embark on their respective legal trainings. The English youth is not pampered and is better disciplined mentally. Our high schools and colleges are finishing schools and club houses by comparison.

In England, there are no law schools in the American sense.[1]

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[1] For more information on English legal education consult:

a. Edlund, *Contemporary English Legal Education,* 10 J. LEGAL EDUCATION 11 (1957).

b. Outlines of two addresses delivered at the London Session of the American

Most English barristers and solicitors have neither a law school degree nor have they attended such an institution. Both types of lawyers learn their callings primarily by apprenticeship. Those who have taken degrees at a university took courses in jurisprudence in contrast to our concept of formal courses in law. Many university students take majors in jurisprudence as part of their general education without ever intending to become practicing barristers or solicitors. English students at the universities, including those who intend to become practicing lawyers, enjoy sinecures as compared with the mental application they exercised in their pre-legal education. Their earlier mental habits stand them in good stead at the university where they are, by comparison, free lances.

By contrast, the American law schools are intellectual hot-houses where, because of bad management, weeds as well as prize flowers sprout despite the careful selection of the seeds as compared with the American college flop-houses. While the American rather than the English law school is obviously a better professional institution, no inference is to be drawn from this fact that the American student's fear, uncertainty, confusion, high mortality and ignorance of the practice of law are justifiable.

The University of London offers a much wider variety of law courses than any American law school particularly if one includes allied courses in all the social and philosophical sciences. The provincial law schools in the nature of the situation offer fewer law courses and have smaller student populations. Since prospective solicitors must now attend a one year cram school, these law schools cater also to their needs. Instruction is by the lecture method predicated on the study of legal principles in law treatises, and by classroom discussion. Students take final annual examinations requiring answers to hypothetical problems. During the year they are also expected to write several essays on selected subjects. The examinations cover Roman law, constitutional law, contracts and the English legal system at the end of the first year; criminal law, torts, trusts (or real property) and evidence or administrative law at the end of the second year; and jurisprudence and options in international law, conflicts and mercantile law among other subjects at the end of the third year.

Bar Association Convention in July 1957 by E. R. Dew on "The Training of a Solicitor in England," and by R. E. Megarry on "Education for the English Bar."

The legal training at Oxford and Cambridge Universities is distinctive as well as aristocratic. They offer a B.A. rather than an LL.B. degree. Not all students majoring in jurisprudence intend to practice law. Professional preparation is not the intent of this curriculum. Those who seek such a career concentrate on history, international law, Roman law, constitutional law and the English legal system in the first year, and more of these advanced law courses and such optional courses as criminal law, contracts, torts and legal theory in the second and third years. Instruction is by the lecture method, but the lectures are poorly attended by the students who, if they do attend, take copious non-critical notes. The crux of the legal instruction is the tutorial system. Each student confers with his law don about once a week at which time the student discusses his pre-assigned essay. It is a kind of self-educating system, which is relatively effective because of the student's previously acquired mental habits in school though not for the practice of law.

On the overall, English legal education is more philosophical and theoretical than ours. Their libraries are most inadequate. Law professors command less respect than American ones, and are even more ignorant of the practice of law. Rarely are they elevated to the bench. English legal education emphasizes a mastery of the principles of law as propounded in the legal texts, accompanied by exercises in the application of sets of facts to them.

II. English Formal Legal Training

Barristers and solicitors alike prepare for their respective practices outside the universities in special legal training schools. The Council for Legal Education since 1951 operates such a school in affiliation with Lincoln's Inn for prospective barristers of all the Inns of Court. The instruction is given by barristers and is intended as a supplement to or as a substitute for apprenticeship. The Law Society in London and similar organizations offer a prescribed one year course for prospective solicitors. These professional schools grew up as a protest against the failure of the apprenticeship method in the hands of impatient and inconsiderate master barristers and solicitors.

To become a barrister or a solicitor, university training is not a prerequisite though about fifty per cent of each are such graduates. Despite the aforementioned preparatory cram law courses, apprenticeship is the traditional method of training for both branches of the legal profession.

Prospective solicitors are expected to serve a three-year apprenticeship if they possess a university degree, or a five-year apprenticeship if they have no such degree to take the formal admission examinations. Such apprentices while "articled" received little or no remuneration. It had even been the practice for solicitors to charge their "articled clerks" $200 to $300 per year.

The prospective solicitor is expected to pass an Intermediate and later a Final Examination. The former consists of four papers in (1) English legal system, constitutional law, criminal law and evidence, (2) contracts and torts, (3) real property, and (4) bookkeeping and trust accounts. Students with an A.B. degree are exempt from the examinations except for the one in bookkeeping and trust accounts, and do not have to attend a cram school during apprenticeship.

The Final Examination is a difficult one. It consists of seven essay papers. About 50% of the students fail it. It consists of required examinations in real and personal property, contracts, torts, wills, income tax, death duties and stamp duties, corporate law and partnerships, and optional papers in: evidence and procedure, conflict of laws, domestic relations, local governments, patents, copyrights, and optional papers in: court procedure, sales, negotiable instruments, master and servant, negligence, insurance, bailment, and admiralty law.

Prospective barristers must satisfy one historical prerequisite to become a barrister and that is eat twenty-four dinners per year for three years with the Inn of Court of his choice: Gray's Inn, Lincoln's Inn, Inner Temple, or Middle Temple. These institutions enjoy relatively equal prestige and control jointly through the Council of Legal Education the standards of and admissions to becoming a barrister. "Keeping terms" is of questionable social value and of even less educational significance. A university student need attend only one-half the number of dinners of the Inn of his choice. The Bar examinations of three days duration are reputed to be less severe than that of the solicitor. While apprenticeship is not actually required, most candidates seek it, though such experience is of little value in preparation for the examinations. The cram course is infinitely more valuable. Most prospectives serve a barrister for about one year and pay the master about $300 per year.

The Bar examinations consist of Part I and the Final. Each

examination lasts three hours and is divided into two parts. Each part contains seven questions, of which five must be answered.

Part I consists of questions in Roman law, constitutional and legal history, contracts, torts, real property, and criminal law or Hindu and Mohammedan law (or Mohammedan law, or Roman-Dutch law). Credit is granted for the passing of any one of these subjects at a university.

The Final examination consists of papers in master and servant, or sales, criminal procedure, construction of documents, equity and trusts, corporations, and conveyancing or divorce, or international law, or Hindu, Mohammedan, or Roman-Dutch law, or evidence and civil procedure, and common law, equity and conflict of laws. About 65% of the applicants fail.

The solicitor rather than the barrister approximates the American lawyer. They operate as partnerships or as individuals, and have modest incomes of the average of $5,000 per year. The barristers monopolize the higher court practice, and render opinions on difficult questions of law. They operate solo with chambers at one of the Inns. Their average income is less than that of solicitors. While the solicitors earn more than the barristers, the latter enjoy greater prestige and acquire their calling more readily.

III. Contrast Between American and English Lawyers

The English Bar is very small. There are about 2,000 admitted barristers, of which 200 are Queen's Counsel and about one-half of the remainder are in part-time practice. Of the 500 or so who are called to the English Bar each year, about one-half go abroad, and only 100 of the balance remain permanently in practice in England. The solicitors number about 22,000. Hence, there is one lawyer for every 2,250 persons in England and Wales which together have a population of 54 millions of people. By contrast, there are about 220,000 lawyers in the United States of a population of 170 millions of people, or one for every 770 people. The difference in proportions is due to the facts that the American middle class is much more enterprising than the English, and that our legal system consists of fifty and not one jurisdiction.

The United States inherited not only England's common law but inherited also its apprenticeship method of training lawyers. The latter proved inadequate to meet the needs of our rapidly growing industrial and commercial society. Our first revolution in legal educa-

tion occurred when the law school replaced legal apprenticeship. It was merely rendering respectable the cram courses that embryo solicitors and barristers in England attended to prepare for their respective professional examinations for which frequently selfish, inconsiderate and incompetent masters did not prepare them. It is only in recent years that the barristers and solicitors in England overcame historical inertia by establishing their own respective professional schools, but they have never replaced the apprenticeship method to the extent that we have in the United States. In England the orthodox method of training barristers and solicitors is still apprenticeship accompanied by apologetic instruction in their respective cram schools. We, on the other hand, consider our law schools the standard method of training lawyers, and view post-graduate apprenticeship as an adequate means of training young people in the practice of law. We recognized the failures of the English legal apprenticeship method; but in establishing professional law schools we neglected to include in the curricula enough of the techniques of the practice of law to prepare young practitioners who will become more valuable to society and themselves with years of experience, as in all professions, without being a menace to clients in the interim. At best, the Case Method of studying law is poor training for the preparation of memoranda of law even though much of the actual practice of law is rapidly being reduced to the latter.

IV. THE CASE METHOD

THE Case Method of studying law is an American legal pedagogic device, commonly attributed to Christopher Columbus Langdell as its innovator with his "Selection of Cases on the Law of Contracts" in the year 1870. It is an educational concept the nature of which no two law teachers will agree upon because obviously a study of one hundred or so heterogeneous, truncated court decisions can give no one a mastery of a legal subject. Even Langdell finally realized this. It is evidenced by the fact that he had a "Summary" published as an appendage to his case-book. Yet the Case-Book fetish as a pedagogic device has been widely adopted by our law schools. It has become so contagious that other social sciences, such as sociology and economics, have accepted it where upon examination there are no likenesses except in name. Even England has fallen a prey to it but there it never purported to serve any other function but as illustrations of selected legal principles. The text-book undoubtedly has made its

contribution to legal pedagogy by offering the young student in ready form some fundamental principles which stand him in good stead as a legal apprentice or as a law student. Without the aid of a resourceful and stimulating teacher, it might leave the student with a static concept of the law. Obviously, the Case Method no matter how inadequately employed shatters that illusion. Yet the need for a mastery of some essential principles of law is apparent. This accounts in part for the current compromise between the text-book and case-book as evidenced in the present crop of law books entitled "Cases and Materials."

There is no denying that apprenticeship, the text-book, and the case-book have their respective merits in preparing the young person for the practice of the law. The author's primary grievance with legal education is that the law school fails to recognize its principal function, which is to prepare young people for the practice of the law, and that is attributable in large measure to the exaggerated claims of the proponents of the Case Method. The author contends that the Problem Method will help greatly to achieve this result. As the term signifies, the student is directed to texts, decisions and other bibliography to aid him in arriving at a solution to his problem. More specifically, the Problem Method takes on the form of classroom discussion of non-prescribed, and prescribed problems with or without bibliography, and written term and fortnightly research projects.

V. The Problem Method

First, the special virtue of the Problem Method is that it approximates the thinking of the practicing lawyer when confronted with a new problem.

Second, it prevents the student from resting on the decision of an abbreviated case as an intellectual crutch and obliges him to research the problem to corroborate or amend his temporary opinion.

Third, the bibliography in connection with his problem should enable the student to learn the pertinent law of his jurisdiction whether it be sound or otherwise.

Fourth, it instructs the student in bibliographic method which is as important as legal knowledge itself.

Fifth, it obliges the student to press into use other branches of human knowledge such as economics, sociology and the like, in the solution of legal problems.

Sixth, it best trains young students to prepare convincing memoranda of law which have become the grist of the law office whether it be an opinion for a client or the basis of a brief in litigation.

Seventh, it helps destroy the departmentalization of the law which is so frustrating in the analysis and solution of legal problems.

Eighth, it encourages students to respect court precedents but at the same time invites independent reasoning for more equitable decisions.

Ninth, it should tend to modernize the law of all our jurisdictions which are now regretfully encumbered by obsolete and unsound decisions.

Tenth, it is a more workable and efficient teaching technique than the wasteful Case Method and permits of more law school time for courses in the actual practice of law.

Blackstones, Cokes, Storys and other lawyers of such eminence would have been developed under any method including the apprenticeship, lecture, text-book or Case Method. Poor teaching and inadequate techniques can only retard the progress of such geniuses. It is the author's immodest opinion that the Problem Method would serve such and particularly less capable law students better than the earlier legal teaching devices.

The Problem Method would provide the necessary time in the law curriculum to train students in the preparation of standard legal instruments, to examine complete trial methods, and to visit actual trials in the courtrooms. All of these recommendations are folly unless law professors are required to engage simultaneously in the practice of law, or are obliged to take periodic sabbatical leaves of absence to learn the practical applications of the law.[2]

[2] Other publications by the author on legal education are:

a. *Anent the Case Method of Studying Law,* 4 N. Y. U. L. REV. 139 (1927); *republished* N. Y. L. J., May 13 and 14, 1927.

b. THE CASE METHOD OF STUDYING LAW—A CRITIQUE (New York 1930).

c. *Problem Method of Studying Law,* 5 J. LEGAL EDUCATION 500 (1953).