

ON TEACHING LAW TEACHERS TO TEACH

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Once upon a time—well within the memories of some of us—it was not considered quite nice for a law teacher to say anything about the way he taught. Then a few bold brethren, with reputations impregnably secured or with the disposition to acquire them by unconventional means, thumbed their noses at tradition and began to talk, even write, about their teaching methods. Soon the fashion had changed. A new spirit showed itself in the pages of the law reviews, on the floors of the A.A.L.S. meetings, in the changed composition of casebooks, and in the appearance of confidential teachers' guides to the use of the books. The birth of the *Journal of Legal Education* in 1948 marked, I had supposed, a final and general acceptance of the new philosophy.

But it seems that the old order has not completely passed away. Here and there, in the *Journal* and elsewhere, protests are uttered. Teachers' manuals are characterized as insulting, and as furnishing a "false intellectual bosom" for the "mentally flat-chested instructor."¹ Finally, in the Autumn 1950 issue of the *Journal*, Professor Addison Mueller openly repents of his undertaking to describe his teaching materials in Contracts and gives us instead his reasons for nonfulfillment of his promise.² His contribution appears just in time to provide me with a convenient target for some shots which I have been wanting to discharge and which otherwise would have been aimed in the general direction of the protesting group. The comment which follows is in part a gentle chiding of Professor Mueller, and in form is directed specifically to his remarks, but more broadly it is a recording of my conviction that the latter-day policy of sharing ideas is good, and of my hope that the occasional manifestations of dissent which I have noted are not the initial rumblings of a mass movement back to the old days when every law teacher was expected as a matter of course to keep his techniques locked in a colleague-proof safe. To avoid any possible misapprehension of my motives it seems proper to explain that I am not the compiler of a casebook or a teachers' manual, and I have no pedagogical advice to broadcast, although I decline to commit myself to silence when and if I feel the urge to get something off my chest at any future time.

Why is Professor Mueller so diffident about describing his product? Not because he thinks it is an inferior article. On the contrary, he confesses to being "as proud a parent as the next," and I do not blame him. I have examined his materials with delight and admiration; they are novel, ingenious; and exciting; I may yet find myself sufficiently sold on my ability to use them effectively to feel justified in trying them out on my own class; but whether I do or not, I have got some excellent ideas from them and I

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¹The false-bosom quotation is from Professor Cleary's book review in 2 J.LEGAL EDUC. 109 (1949). The epithet "insulting" is one I have seen in recent months, but I have not yet re-located the source.

²Mueller, *There is Madness in Our Methods*, 3 J.LEGAL EDUC. 93 (1950).

think I shall be a better teacher—not only of Contracts but of anything else I may teach—for having studied them. I am sure that many others would profit from the same experience.

If Professor Mueller preferred to keep his materials to himself (and his own students) I think I could understand his reticence about them, although I would still deplore it. But this is not the case. On the contrary, he invites “any teacher interested in my organization and my ideas as possible stimulators of his own thought processes . . . to see these materials, to sample from them, even to teach them for a term.” I cannot help wondering how a teacher is to know that he would be interested without some hint as to what it is that he would be interested in. Beautiful romances may spring from blind dates, it is true; still I fear that Professor Mueller’s invitation will appeal more to the try-anything-once type of teacher than to the conscientious, discriminating scholar who wants to do a better, not just a different, job of teaching. But let us suppose that the interest of a select group is attracted, and that others are kept at a distance by the conditions attached to Professor Mueller’s offer. Why not let everybody in? I may be wrong, but the conclusion I draw from everything he says is that he is afraid some—maybe many—Contracts teachers would go all out in “adopting” his materials and in trying to teach as he teaches. Well, if it is a good way, why not? Because, he says, “There ought to be as many ways to teach law as there are law teachers.”

If this were intended as a statement of an ultimate desideratum, it could precipitate a dispute in which there is no occasion for me to take sides. There may be those who would assert that there is somewhere an undiscovered and undiscoverable One Best Way to teach a given subject (say Contracts) and an unattainable ideal of the perfect teacher to teach it. But it will probably be agreed that we all ought to teach differently (as we can’t help doing, whether we ought to or not) because we are not perfect, because our imperfections are of different sorts, and because your best way may not be my best way, so that all that any of us can do is to try to find his most effective method in the light of his own peculiar talents and limitations. Now I really have no idea that Professor Mueller means anything more than this; but by imagining that he does I have given myself an excuse for making the point that what we are considering is a means to an end, that end being the best teaching of which a particular individual is capable. Professor Mueller thinks that end will be better served by our all saying nothing about the way we teach. I don’t. I think his conclusions are wrong because his premises are faulty. These I shall essay to examine briefly.

In the first place, I think he underrates the importance of being a good *teacher*. He admits that it is better for a teacher to have both ideas and technique, but “as between ideas without technique and technique without ideas, the choice is clear to me.” I have seen this thought expressed before, and it produces the same reaction today that it did the first time I was exposed to it. To me it would seem just as reasonable to say that in choosing an automobile for a transcontinental trip, the one with the transmission missing is preferable to the one without a motor. It may be objected that the only sad circumstance about either car is that it won’t get you anywhere, whereas the facile breeze from the intellectually deficient occupant of a teacher’s platform may waft the students’ thoughts in undesirable directions.

The tongue-tied scholar will at least do no harm. But aside from the fact that no one is arguing for technique without ideas (although many truths have been best learned by discovering teachers' errors), I do not know that innocuousness has ever been advocated as an all-sufficient qualification for a teacher. If it were, a wax effigy of Mark Hopkins on a log would do the job just as well for a fraction of the money, and might furnish a little inspiration besides. The inescapable truth is that both ideas *and* technique are essential. The man with ideas alone has a place in the world and can find some way to make a living, but as a teacher he is not worth an instructor's salary in the poorest paying law school in the country.

Now of course, and in spite of some student opinion to the contrary, no man who tries to teach is a total flop. But some of us are worse than others, and the best of us has faults. Can nothing be done to improve us? Professor Mueller doubts it. "A good teacher will teach in his own way." Let us leave him alone. And the not-so-good teacher? Leave him alone too. If he has any chance of getting better, it is through his own unaided efforts. But how did the good teacher get to be good, and how much of his method is really his own? What would happen if a man who had never seen the inside of a classroom or been exposed to a description of a teacher in action, were directed to a door and ordered to "go in there and teach Contracts"? Of course he *might* come out with something that would revolutionize law teaching (if the news should get around in spite of Professor Mueller's protests), but the chances are a thousand to one that he would render a pretty sorry performance. Every teacher has been a student of other teachers, and his basic notions about teaching methods have been acquired by accepting some of their tricks, rejecting others, and inventing a number (few or many) of his own. This will be the limit of his sources of supply if Professor Mueller and those who agree with him have their way. Other men will acquire new tricks on which still others (their students) will improve, but he will not hear of them nor will they of his. His repertory will consist of his own variations on the stunts performed thirty years before at Siwash by dear old Dean Scrubahl and Professors Hemmenhaugh, Stutterling, Stentor, and Knapp.

Some of my readers are already protesting that Professor Mueller doesn't advocate suppressing all news about teaching techniques but objects only to (a) furnishing blueprints (b) to lazy or unimaginative teachers (c) who will build their courses according to specifications. Well, let us see. As to (a), he was not asked to furnish a blueprint, but only to write a brief description of his materials. As to (b), he is willing to submit the materials themselves for inspection on request. I cannot believe that on receipt of a request he would first initiate a character investigation and then, on getting an unfavorable report, excuse himself on the ground that the applicant was unfit. If information about teaching methods is given out at all, I know of no way it can be kept from reaching undesirable people without organizing an Elite Order of Proper Professors and swearing its members to secrecy. Even then the members' students, some of them highly improper, would learn the secrets by observation. Similar comments apply to (c), but since the kernel of Professor Mueller's argument lies imbedded here, elaboration is necessary.

What Professor Mueller views with alarm is the production and marketing of teaching materials in which the whole content, organization, and philosophy of a course are laid out by one man for other men to follow. Other men *will* follow them, he believes, thus allowing their inventive faculties to atrophy and halting their development into inspiring teachers with messages of their own. The harmful potentialities of this process so outweigh any possible good that might come from an indiscriminate dissemination of pedagogical ideas that he prefers not to present a "sales brochure" for his own materials. If this is not a fair statement of his thesis, I shall be most happy to be set right. Assuming that it is, let us examine it.

Where are these teachers who "year after year . . . blissfully teach other men's courses . . . in other men's ways"? I am sure there are none of them among Professor Mueller's colleagues at Yale, and I have encountered none in my twenty-odd years of teaching. I have never worked with a man yet who was completely satisfied with a single casebook he was using, and who did not delete, add, substitute, and rearrange in some degree at least. These teachers taught from other men's casebooks, of course; they drew on other men's ideas; they may even have furtively examined teachers' manuals when available, but they did not follow other men's specifications. They could not have done it if they had wanted to. They did what I did—each chose the casebook that could most easily be adjusted to his own methods, and proceeded to adjust.

And where are the blueprints and specifications that teachers might follow if they could and would? Professor Mueller sees them in the modern "streamlined" annotated casebooks accompanied by teachers' manuals. "All that the foster parent [*i. e.*, the 'adopter'] of such a book has to do—in fact, often all that he can do—is to turn the class on at the beginning of the hour and keep a hand on the throttle to regulate its speed." This is an overstatement of some magnitude, and I can only assume that its author intended it as such. Recently I taught from a casebook for which the editor had prepared the most elaborate teachers' manual I have ever seen, and I can assure Professor Mueller that not a single class session would have been able to move for five minutes under the power generated by the manual. But let us suppose the worst. Suppose Professor Moddle produces a series of sound movies of his classes in Promissory and Consensual Transactions, and Professor Koppie tries to utilize it to the full. The first question he asks in his class will provoke a different response, and thenceforth he will be on his own. He will know then what we are assuming he did not know before: that in teaching law you cannot follow another man's blueprints. More than that, he will learn next year that he cannot even follow his own blueprints if he has tried to make them. The human beings in his classes will not behave like inanimate building materials.

I find that I have now argued myself into a position even farther away from Professor Mueller's than was the one I began with. Now I am ready to assert that the qualities of originality and inventiveness which we agree are essentials of a good teacher are nourished rather than stunted by the use of highly embellished coursebooks, even with manuals. The more there is for the teacher to conform to, the sooner he learns that he cannot conform, and the more irresistible is the pressure to innovate.

There is one additional stone to be turned in the wrecking process before I undertake a somewhat more constructive task. Let us suppose that there is somewhere a teacher with brain so sluggish and soul so dead that he is content to pass his years following other men's teaching patterns, and that he succeeds in doing it. What would such a man do if he had no pattern to follow? Professor Mueller's answer is that we should not protect him in his incompetence. But do not his students deserve some protection?³ His own job-protection is governed by so many factors—a winsome personality, a nice family, pull, the A.A.U.P.—that a few sets of teaching specifications will have no appreciable effect. However poor a teacher he may be at best, he will be a better one with someone else's pattern than with none at all.

When I began teaching, casebooks contained little more than cases and a few footnotes of purely informational content. A little bit of the editor's personality and perhaps just a hint of his plan peeped out from the preface, which consisted mainly of humble acknowledgments of his indebtedness to others. Beyond this, the teacher who used the book had no guide save his own sense of direction unless he had been taught from the same book; in which case he had the past guidance of his own teacher, who got *his* guidance from heaven knows where. If through necessity or choice he adopted an unfamiliar book, while preparing for the second or third assignment he would begin to worry himself sick over why the case of *Razor v. Beard* was inserted at this particular place. If he thought of asking the Great Man himself, he would soon think better of it, partly because he understood that that sort of thing just wasn't done—teachers didn't talk about the way they taught—and partly because he was afraid the answer was so simple that the very asking of the question would permanently deprive him of all opportunity for professional advancement. So he would omit the case, or mumble or bluster about it according to his temperament, and remain in the dark until the next meeting of the Association of American Law Schools when, if luck was with him, he might collar a contemporary who was using the same book and ask *him*, and get either information or misinformation, or the dubious satisfaction of learning that the two shared the same bewilderment. Professor Mueller might say that this was all to the good. Our hero's experience ought to have convinced him that *Razor v. Beard* was not for him, at least in that place. I can't see it. Was he to profit nothing from the ingenuity or the accidental discoveries of others? If so, something is expected of a law teacher that is expected of no one in any other calling that I know of. I think he was entitled to know why *Razor v. Beard* was there, and to know it from the man who put it there. In other words, he was entitled to a teachers' manual.

Of course a teachers' manual is one thing, while the problems, explanatory notes, orientation passages, and other trimmings with which the ultramodern casebook is adorned are something else. One can easily be friendly to

³ Somewhere, and this is as good a place as any, I must comment on Professor Mueller's intimation that only "good students" are worth considering. "Legal education should not be designed to appeal to the poor student." He says nothing about the average student, a species that is found in considerable numbers in most if not all law schools. Whether we like it or not, the bulk of the legal profession is made up of average lawyers who once were average students; they deserve good teaching, and need it worse than the good students do.

either and hostile to the other. The manual is For Teachers Only,⁴ and the teacher can ignore it or use any or all of it as he pleases. But everything that is in the casebook itself is there for all the students to see. It cannot be ignored. On the other hand, it need not and ought not be accepted as truth unquestioned. The teacher who is gullible enough to do that would accord the same finality to a passage in a textbook or a student note in a law review if the casebook were barren of editorial comment.

I remember well my own reactions, which cannot have been so different from those of many other teachers, to the successive changes that have taken place in law teaching materials during the past twenty years. I began teaching Contracts with the first edition of *Corbin's Cases*. It was a book of the older type mentioned a few paragraphs back (not one of the originals described by Professor Mueller)—with reports of cases, a few informative footnotes, and nothing else. Such things as the history of consideration and of assignment, which in most modern collections are sketched in by text introductions, were presented by series of unadorned old English cases in which something was argued by Godfrey and something else by Gawdy, and the student was hard put to tell what the judge decided or even who the judge was. After a couple of trials I learned for myself that these materials could be read over "for background" and supplemented by a few erudite remarks from the rostrum instead of being dissected one by one in class. This and a lot of other things which I learned the hard way at the expense of my guinea-pig students could and should have been explained to me in a manual. When, years later, I first set eyes on a teachers' manual in Contracts, I found that of the comments on the old familiar cases about 80 per cent confirmed the views I had accumulated over the years, ten per cent was good stuff which somehow I had failed to pick up on my own, and ten per cent was to my mind an inferior substitute for my discoveries. I have no reason to believe that possession of a manual at the start of my career would have led me into perpetual error with respect to this last ten per cent. On the contrary, it would have given me more time to learn more quickly the thousands of things that no manual could ever tell me and that I *had* to get on my own.

The second edition of Corbin in 1933 employed a new device: a large proportion of the cases were followed by "Questions." My initial reaction to this was one of resentment. Some of the questions had not occurred to me before, and I was sore at myself for not having thought of them first. Some, I fear, *had* occurred to me but I had purposely avoided them in class because I had not worked out a satisfactory technique for handling them. Now I would have to grapple with them whether I wanted to or not; some student would be bound to press the point. But the ones that irritated me the most were the ones I had been springing on the students without warn-

⁴The confidential nature of the manual does pose a problem which I do not quite know how to solve. There are always some things in it that I would like to quote as gems of wisdom and put the credit where it belongs. There are others which I would like to set up before the class to be knocked down. If the students are allowed to see the manual they will be palatably but injuriously spoon-fed. If they are told of its existence but are not permitted to see it they may conclude that it is the sole source of their professor's thinking in the materials of the course. For myself, I have chosen to take this risk.

ing. The fun was spoiled, but more than that I had a vague feeling that my thunder had been stolen. A little self-examination revealed that my displeasure was really due to the realization that now when I used those same questions I would appear to be sounding somebody else's thunder instead of my own. Eventually I concluded that if Professor Corbin and I had both been producing the same thunder it must be pretty good, and the more widespread the reverberation the better.

When "streamlining" or channeling materials of a different sort began to appear in casebooks, I experienced no resentment that I can recall. They were time-saving and/or thought-provoking devices, and I accepted them as such. And they certainly did not tempt me to quit thinking and devising for myself. By amplifying the factual statements in the text I could impress my students still more with the extent of my learning. When the casebook trimmings began to assume a jurisprudential hue—when the editors projected their notions of policy, of rationale, of legal method—it pleased me because it gave me something more to shoot at, something more worthy of my ammunition. Punching holes in judicial opinions was old stuff; now I could really show my mettle by bombarding the very citadels of learning and laying bare the pitiable errors of the Great Minds themselves. Of course I always took pains to tell the students that they were free to accept the master's word instead of mine and that the one thing I was trying to do was to get them to think for themselves—except perhaps on an objective-type final examination. It has all been great fun, and the effect of having "Cases and Materials" instead of just "Cases" has been to subject the students to the impact of at least two non-judicial personalities—mine and the editor's—instead of only one.

To sum up this informal and loosely-organized discourse. There is, I submit, no harm and much good in talking about teaching methods. Let us have more such talk, not less. The more fashionable it becomes, the more will every teacher feel the urge to do his own course-designing so he may tell others about it. Let us have more, not fewer, accessible collections of teaching materials from which to choose. Let the editors cram as much of their personalities into their output as suits their fancies; it will stimulate, not anaesthetize, those of us who use them or who keep our free copies of them within easy reach for reference. And let us have more and better teachers' manuals. It will help us, not hurt us, to have the confidential advice of the experienced teachers who produced them. If to utilize and transmit wisdom that we have acquired from others is to put up a false intellectual front, I fear that the world's greatest teachers have been among its biggest frauds. Wastebaskets are provided by most institutions for the convenience of those who disagree.