

International Journal of Legal Information

the Official Journal of the International Association of Law Libraries

Volume 35
Issue 1 *Spring 2007*

Article 5

4-1-2007

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Recommended Citation

Maxeiner, James R. (2007) "Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method," *International Journal of Legal Information*: Vol. 35: Iss. 1, Article 5.
Available at: <http://scholarship.law.cornell.edu/ijli/vol35/iss1/5>

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Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method

JAMES R. MAXEINER*

In *Educating Lawyers: Preparation for the Profession of Law*¹ the Carnegie Foundation for the Advancement of Teaching has again turned its attention to legal education. Much as it did in the early years of the last century, in the first years of this century in its Preparation for the Professions Program (“PPP”), the Carnegie Foundation is examining professional education generally. In the early twentieth century, the Carnegie Foundation published its first report in law, *The Common Law and the Case Method in American University Law Schools*, prepared in 1914 by Josef Redlich, an Austrian law professor.² The two reports are referred to here as the PPP Legal Education Report and as the Redlich Report respectively.

The PPP Legal Education Report is remarkably reminiscent of the Redlich Report. Both reports focus on the case method. Both praise the case method for its powerful preparation of students for the profession of law. Both see its virtue in training law students to “think like lawyers.” But both see that over-reliance on the case method leads legal education to give insufficient attention to the broader purpose and mission of law in society. While three generations lie between the two reports, relatively little, it seems, has changed in the fundamental challenges to American legal education. Reading the PPP Legal Education Report with the Redlich Report in mind evokes a sense of déjà vu.

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¹ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND AND LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (The Carnegie Foundation for the Advancement of Teaching, Preparation for the Professions Program, 2007).

² JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING*, BULLETIN NO. 8 (1914).

This Article takes three of the four principal themes of the PPP Legal Education Report—the case method, education for practice, and education for the public dimension of law—and contrasts their treatment in the PPP Legal Education Report with that in the Redlich Report.³ While the two reports are eerily similar, their differences inform us about the course that American legal education took in the last century.

The principal differences between the reports are two: (1) the PPP Legal Education Report sees the case method as predominately an academic tool divorced from legal practice, while the Redlich Report sees it as an ingenious way of bringing what lawyers really do in practice into the classroom; and (2) the PPP Legal Education Report calls on law schools to increase practical training while the Redlich Report calls on them to better support legal science.

I admit my audacity in authoring this essay. The five co-authors of the PPP Legal Education Report have among them more than a century of experience in professional education. Professor Redlich was one of the foremost jurists of his day. When commissioned to write the report he was professor of law in the University of Vienna, author of books in English as well as in German on the common law world, and member of the Austrian parliament. He later became Finance Minister of Austria, Charles Stebbins Fairchild Professor of Comparative Public Law at Harvard Law School, first head of the Harvard Institute of Comparative Law, and deputy judge of the Permanent Court of International Justice.⁴ I, on the other hand, am a neophyte in legal education.⁵ My professional background is in the practice of law. Before I came to full time law teaching five years ago, for more than twenty years I practiced successively as government lawyer, law firm associate, and in house counsel. I hope that readers will be patient with my lack of familiarity with the disciplines of professional education.

Parts I and II of this Article summarize the PPP Legal Education and Redlich Reports respectively and place them in context. Parts III, IV and V examine the three principal chapters of the PPP Legal Education Report (chapters 2 to 4) and contrast them with the Redlich Report. Part VI updates

³ The fourth principal theme of the PPP Legal Education Report, dealing with assessment, has no counterpart in the Redlich Report and is not addressed here.

⁴ James R. Maxeiner, *Josef Redlich*, in 3 *GERMANY AND THE AMERICAS* 917 (Thomas Adam, ed. 2005).

⁵ Since the case method is identified with the first year of law school, it is relevant to mention that my teaching experience does including teaching four times, a six hour, first year contracts class.

the Redlich Report in areas specifically addressed there. The Conclusion summarizes this Article.

I. THE PPP LEGAL EDUCATION REPORT

The PPP Legal Education Report is the second of five projected studies on professional education in the fields of law, medicine, engineering, clergy and nursing. They are accompanied by a general introductory book by William M. Sullivan, who is co-director of the PPP and co-author of the PPP Legal Education Report.⁶ In the general volume, Sullivan identifies the challenge for professional education: it is to teach “the complex ensemble of analytic thinking, skillful practice and wise judgment.”⁷ Professional education should “shap[e] . . . students’ modes of thinking so as to enable [them to become] contributing members of the professional context.”⁸ Through what he calls “three apprenticeships,” professional education should provide the essential intellectual training, the skills shared by competent practitioners, and the ethical and social values of the profession.⁹ The PPP Legal Education Report terms these three components: cognitive, practice and ethical-social.

In a nutshell, the PPP Legal Education Report gives legal education high marks for its cognitive component, but low marks for its practice and ethical-social components. It sees the principal deficiencies of legal education

⁶ WILLIAM M. SULLIVAN, *WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA* (2nd ed. 2005). This is a revision under the Foundation’s imprimatur of the first edition of Sullivan’s book by the same name published in 1995. The study of clergy education has already appeared: CHARLES R. FOSTER ET AL., *EDUCATING CLERGY: TEACHING PRACTICES AND PASTORAL IMAGINATION* (2005). Information about the PPP is available at <http://www.carnegiefoundation.org/programs/index.asp?key=28>.

⁷ SULLIVAN, *supra* note 6, at 195.

⁸ SULLIVAN, *supra* note 6, at 207.

⁹ SULLIVAN, *supra* note 6, at 208. “Apprenticeship” in modern learning theory has a meaning different from that usual in law. In its dictionary meaning and in law it entails a contractual relationship between master and apprentice which obligates the master to instruct the apprentice in the master’s trade and which requires the apprentice to provide services for the master. In learning theory, on the other hand, apprenticeship refers to formal instruction of “student-novices” by “teacher-experts.” Cf. PPP Legal Education Report 61. To avoid confusion with law office study, an historic form of American legal education which was an apprenticeship, this Article avoids use of the term, but uses the dictionary definition except when quoting the PPP Legal Education Report. See *Apprentice*, BLACK’S LAW DICTIONARY (8th ed. 2004); *Apprentice*, OXFORD ENGLISH DICTIONARY ONLINE EDITION.

to be a “lack of attention to practice and the weakness of concern with professional responsibility.” According to the PPP Legal Education Report these are the “unintended consequences” of almost exclusive reliance on what it calls the “case-dialogue method” of instruction.¹⁰ “Case-dialogue method” is a new term coined by the PPP Legal Education Report for what is generally known as the “case method.” The Redlich Report calls it the case method and this Article does too.¹¹ While the PPP Legal Education Report provides a proposal for improvement, it does not see the situation of legal education as dire.

The PPP Legal Education Report proposal for improvement is “a framework for a bolder, more integrated approach to legal education.”¹² That framework is to be an “*integrative*” approach where “each aspect of the legal apprenticeship—the cognitive, the practical, and the ethical-social—takes on part of its character from the kind of relationship it has with the others.”¹³ These should be “linked so seamlessly that each contributes to the strength of the others, crossing boundaries to infuse each other.”¹⁴ Medical education is to provide the example. In the end, the goal of legal education should be a “more integrated drawing together of the three apprenticeships.”¹⁵

In addition to the introduction and conclusion, the PPP Legal Education Report consists of five chapters:

1. Law School in the Preparation of Professionals
2. A Common Portal: The Case Dialogue as Signature Pedagogy
3. Bridges to Practice: “Thinking Like a Lawyer” to “Lawyering”
4. Professional Identity and Purpose
5. Assessment and How to Make It Work

¹⁰ PPP Legal Education Report 188.

¹¹ A search made February 22, 2007 of the Lexis U.S. and Canadian Law Reviews Combined database resulted in only one hit for the search “case dialogue method” or “case-dialogue method.” That is an article by one of the authors of the PPP Legal Education Report: Judith Wegener, *2003 AALS Annual Meeting Discussion: Better Writing, Better Thinking: Thinking Like A Lawyer*, 10 LEGAL WRITING 9, 16 (2004). The search term “case method” in the same database returned 1962 hits.

¹² PPP Legal Education Report 185.

¹³ PPP Legal Education Report 191.

¹⁴ PPP Legal Education Report 191.

¹⁵ PPP Legal Education Report 194.

The PPP Legal Education Report is based on visits made in 1999 and 2000 to sixteen¹⁶ of the more than two hundred law schools in the United States and Canada. It does not identify which ones, although by implication, they include the law schools of the University of British Columbia, the City University of New York, New York University and Yale University.

II. THE REDLICH REPORT AND ITS CARNEGIE CONTEMPORARIES

The Redlich Report of 1914 is the Carnegie Foundation's third study of professional education. It followed the 1910 and 1912 reports on medical education by Abraham Flexner. The Flexner reports were a huge success.¹⁷ They contributed to the transformation of American medical education and are revered in American medical education to this day.¹⁸ They are the standard against which the Carnegie Foundation's later work in professional education is invariably measured; they are mentioned in both the Redlich Report¹⁹ and in the PPP Legal Education Report.²⁰ Their import is necessary background for this Article.

In an article in the *New England Journal of Medicine* marking the advent of the centennial of Flexner's reports, three Carnegie Foundation PPP scholars, Sullivan, Molly Cooke and David M. Irby (the latter are in charge of the PPP study of medical education), and a distinguished historian of medicine, Kenneth M. Ludmerer, write:

[Flexner's 1910 report] helped change the face of American medical education. The power of Flexner's report derived from his emphasis on the scientific basis of medical practice, the comprehensive nature of his survey, and the appeal of his message to the American public. Although reform in medical education was already under way,

¹⁶ PPP Legal Education Report 15.

¹⁷ ABRAHAM FLEXNER, MEDICAL EDUCATION IN THE UNITED STATES AND CANADA, BULLETIN NO. 4 (1910), available at <http://books.google.com> (collected with Bulletins Nos. 1 to 3). It was followed by a companion volume: MEDICAL EDUCATION IN EUROPE: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, BULLETIN NO. 6 (1912). See also ABRAHAM FLEXNER, MEDICAL EDUCATION: A COMPARATIVE STUDY (1925)

¹⁸ See, e.g., ASSOCIATION OF AMERICAN MEDICAL COLLEGES, THE HANDBOOK OF ACADEMIC MEDICINE: HOW MEDICAL SCHOOLS AND TEACHING HOSPITALS WORK 1 (2004) [hereafter cited as HANDBOOK OF ACADEMIC MEDICINE].

¹⁹ Henry S. Pritchett, *Preface*, in Redlich Report v,

²⁰ PPP Legal Education Report 18 (referring to the Flexner report as a "landmark"), 94.

Flexner's report fueled change by criticizing the mediocre quality and profit motive of many schools and teachers, the inadequate curricula and facilities at a number of schools, and the nonscientific approach to preparation for the profession, which contrasted with the university-based system of medical education in Germany.

At the core of Flexner's view was the notion that formal analytic reasoning, the kind of thinking integral to the natural sciences, should hold pride of place in the intellectual training of physicians. . . . In addition to a scientific foundation for medical education, Flexner envisioned a clinical phase of education in academically oriented hospitals, where thoughtful clinicians would pursue research stimulated by the questions that arose in the course of patient care and teach their students to do the same. To Flexner, research was not an end in its own right; it was important because it led to better care and teaching.²¹

Following the success of the Flexner reports, the president of the Carnegie Foundation, Henry S. Pritchett, sought an invitation from the American Bar Association to conduct a similar evaluation of American law schools.²² When Pritchett got the invitation, he commissioned Josef Redlich and Alfred Zantzinger Reed to conduct the studies.²³ Pritchett presented Redlich's report as one preliminary to the more general reports that he commissioned Reed to write.²⁴

²¹ Molly Cooke, David M. Irby, William Sullivan & Kenneth M. Ludmerer, *American Medical Education 100 Years after the Flexner Report*, 2006 N. ENGL. J. MED. 355: 1339.

²² ELLEN CONDLIFFE LAGEMANN, PRIVATE POWER FOR THE PUBLIC GOOD. A HISTORY OF THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING 75 (1983).

²³ Reed's two principal studies were TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNT OF CONDITIONS IN ENGLAND AND CANADA, BULLETIN NO. 15 (1921) and PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA, BULLETIN NO. 21 (1928). Reed was responsible for an annual review of legal education that appeared in the 1920s and early 1930s. It printed a number of other studies including one with a cover title that mirrors the PPP Legal Education Report conclusions: Alfred Zantzinger Reed, *The Missing Element in Legal Education* [cover page adds: *Practical Training and Ethical Standards*], in REVIEW OF LEGAL EDUCATION IN THE UNITED STATES AND CANADA FOR THE YEAR 1929, at 1 (1930).

²⁴ Pritchett in Redlich Report vii.

Why did Pritchett engage Redlich, an Austrian, for the Carnegie Foundation's first study of legal education? The reason that Pritchett gave was that American law school teachers were sharply divided over the case method: some thought it "a finished and perfect thing," while others "saw nothing good in it."²⁵ The Carnegie Foundation's officers believed, he wrote, that neutrality in this question could not be found at home. They therefore looked abroad to find someone who might prepare a "thoroughly sound, fair-minded and scholarly report."²⁶ They settled on Redlich, who was then law professor in the University of Vienna, member of the Austrian parliament, and above all an established civilian scholar of the common law.²⁷

There may have been more to Pritchett's choice than a desire to maintain neutrality in an American turf battle. Pritchett had himself studied in Europe and was much impressed by the German universities of his day.²⁸ Just as in his introduction to Flexner's first report he saw the problems of American medical and legal education similarly,²⁹ so too he may have seen their solutions. He may have hoped that Redlich would do for legal education what Flexner did for medical education: move it in the European direction of the research university model and away from the proprietary trade school model.³⁰ Supporting such speculation is the Redlich Report's finding that the case method controversy, which supposedly required a neutral observer, was already long over.³¹

Whatever was the motive, Pritchett's selection of a civilian, knowledgeable in and sympathetic to the common law, produced a report on American legal education with perception and perspective not seen before or since. Although commissioned to write only about legal education in American university law schools, Redlich filled his short study with comparative, historical, social and jurisprudential insights that only a

²⁵ Pritchett in Redlich Report v.

²⁶ Pritchett in Redlich Report vi.

²⁷ Pritchett in Redlich Report vi.

²⁸ LAGEMANN, *supra* note 22, at 26, 62-63.

²⁹ Henry S. Pritchett, *Introduction*, in ABRAHAM FLEXNER, *MEDICAL EDUCATION IN THE UNITED STATES AND CANADA*, *supra* note 17, at xiv.

³⁰ *Cf.* LAGEMANN, *supra* note 22, at 66-71; WILLIAM P. LAPIANA, *LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION* 163 (1994).

³¹ Redlich Report 29, 35. *Accord*, ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 112 (1983)

cosmopolitan jurist could give. The Redlich Report is worth reading in its own right even today.³²

Redlich came to the United States in fall 1913 to study American legal education. He spent two months visiting ten American law schools. The law schools that he visited included six of the nation's eight largest as well as four other smaller schools. Most, but not all of the schools that he studied, used the case method. These included Harvard, Columbia, Chicago, Northwestern, Michigan, and New York University.³³ Some of the schools that Redlich visited held evening classes.³⁴

The Redlich Report did not change the face of American legal education as Flexner's reports changed American medical education. The Redlich Report drew "polite notice," but created "little stir."³⁵ Even the general reports by Reed, which did create some controversy, had nowhere near an impact comparable to that of Flexner's reports. Eleanor Condliffe Lagemann, an historian of the Carnegie Foundation and former Dean of the Harvard Graduate School of Education, explains why the Carnegie Foundation had so much more effect on medical education than on legal education.³⁶ Here we focus on the Redlich Report, which was the smaller component of the whole project.

³² It does for legal education what the PPP Legal Education Report says law schools should do for law: it utilizes an "integrative strategy ... [to] link the learning of legal reasoning more directly with consideration of the historical, social, and philosophical dimensions of law and the legal profession, including some cross-national comparison." PPP Legal Education Report 194.

³³ Redlich Report 26.

³⁴ Redlich Report vi.

³⁵ LAGEMANN, *supra* note 22, at 76.

³⁶ LAGEMANN, *supra* note 22, at 76-84, offers other explanations in addition to those mentioned in the main text here. Supporters of the reforms were fewer, less united and less influential than their medical counterparts. The American Bar Association itself was much smaller than the American Medical Association: only 3% of lawyers were members of the ABA, while 50% of physicians were members of the AMA. Moreover, case method was a "weaker educational paradigm" than the much stronger "laboratory cum clinic" that medical education reformers had. She states: "the case method had to be justified primarily as a superior way to teach legal reasoning. But was it superior to the skills of reasoning one might acquire through the kind of apprenticeship in a law office that the case method and the 'scientific' law school had been designed primarily to replace? One could certainly debate the point." *Id.* at 78-79.

Flexner sought to have a major influence; Redlich, as an outsider, did not. Flexner had a single-minded vision of medical education. That vision, as endorsed by Pritchett in his introduction to Flexner's first report, was to bring about "a very much smaller number of medical schools, better equipped and better conducted"³⁷ In the words of Flexner's report, 120 schools were to be "wiped off the map."³⁸ Flexner sought and succeeded in suppressing medical schools that did not meet his academic and non-profit standards.

Neither Redlich nor Reed had similar goals. Redlich was chosen because he was an outsider and was not part of American legal education. His report is more diagnostic than prescriptive; it is the "thoroughly sound, fair-minded and scholarly report" that the Carnegie Foundation stated that it sought.³⁹ While Reed was not the outsider that Redlich was, neither was he the revolutionary reformer that Flexner was. Pritchett was chagrined that Reed did not seek to suppress teaching methods or institutions that did not meet his ideals.⁴⁰

Timing and receptivity also help explain why the Redlich Report and its modest proposals for change engendered little discussion: Flexner's reports appeared in the years before the First World War when Americans were still looking abroad to learn from foreign experiences. Many American physicians had themselves studied in Germany;⁴¹ it was no leap of faith for them to learn from German models of medical education. The Redlich Report, on the other hand, appeared when the German army was locked in combat with English and French forces and only one month before the sinking of the *Lusitania*.⁴² Few American lawyers had studied in Germany, while most had been trained to hold the English common law in awesome respect. A complacent legal community, respectful of the profession's Anglo-Saxon heritage, suspicious of things foreign, and inclined toward inertia, did not have to stir itself to

³⁷ Pritchett, *supra* note 29, at xi.

³⁸ FLEXNER, *supra* note 17, at 151.

³⁹ Pritchett in Redlich Report vi.

⁴⁰ LAGEMANN, *supra* note 22, at 79.

⁴¹ THOMAS NEVILLE BONNER, *AMERICAN DOCTORS AND GERMAN UNIVERSITIES: A CHAPTER IN INTERNATIONAL INTELLECTUAL RELATIONS 1870-1914* (1963).

⁴² Although dated 1914, the report was actually released April 4, 1915. "Holds Law Courses in the U.S. are the Best: Dr. Redlich says American System of Teaching is the Most Thorough Anywhere; Tribute to Case Method," N.Y. TIMES, April 5, 1915, p. 8. The *Lusitania* sank May 7, 1915.

inaction to ignore mild criticism from a professor from one of the Central Powers.⁴³

III. THE CASE METHOD

The Sullivan and Redlich Reports mirror each other. Both place the case method at the hearts of their respective studies. Both speak of the case method in glowing terms. The Redlich Report sees in it “great value” and a “great success.”⁴⁴ The PPP Legal Education Report calls it “a potent form of learning by doing,”⁴⁵ that is able in a “dramatic way ... to develop legal understanding and form professional identity.”⁴⁶ The Redlich Report notes how case method students stand out strongly in “excellent logical training, capacity for independent study, ... quick comprehension of the actual point[s] of law involved, [and] indisputable knowledge of positive law.”⁴⁷ Both reports agree that “it is designed to prepare students to ‘think like a lawyer.’”⁴⁸

Both reports consider the case method a uniquely American achievement. The Redlich Report counts it “an entirely original creation of the American mind in the realm of law.”⁴⁹ The PPP Legal Education Report sees it as “distinctive to American legal education and quite sharply different from the method used in the United Kingdom, continental Europe, and,

⁴³ According to Robert Stevens, “the establishment was not willing to listen to criticisms of the case method.” STEVENS, *supra* note 31, at 128 n. 42. Ezra Ripley Thayer, Dean of Harvard Law School, in private criticized “the very general principle of calling in Germans to pass on American instruction” and confided that “none of us are enthusiastic about the idea of an investigation by a foreigner.” *Quoted in* WILLIAM C. CHASE, *THE AMERICAN LAW SCHOOL AND THE RISE OF ADMINISTRATIVE GOVERNMENT* 100 (1982). Not long after the release of the Redlich Report, leading law reviews that might have discussed its proposals joined in hysteria against all things German. *See, e.g., Note, The Philosophy of German Autocracy*, 4 AM. L. SCHOOL REV. 315 (1917); M. Duguit, *Law and the State*, 31 HARV. L. REV. 1 (1917); [John M. Zane], *German Legal Philosophy*, 16 MICH. L. REV. 287, 288 (1918). *See also* LAGEMANN, *supra* note 22, at 82 (“Mounting xenophobia and anti-Semitism throughout the country also played a strong role in resistance to Reed’s recommendations.”).

⁴⁴ Redlich Report 29.

⁴⁵ PPP Legal Education Report 74; *cf.* Redlich Report 29.

⁴⁶ PPP Legal Education Report 3.

⁴⁷ Redlich Report 29.

⁴⁸ PPP Legal Education Report 49. *Accord*, Redlich Report 23 (“training the legal mind”).

⁴⁹ Redlich Report 9.

indeed, most of the world.”⁵⁰ Both credit Harvard Dean Christopher Columbus Langdell with originating it in 1871.

Both reports value the case method not only for its place in American legal education, but also for what it might contribute to other branches of professional education. Redlich saw the case method as “a phenomenon which transcends the boundaries of Anglo-American legal life, and demands the attention of all modern lawyers.”⁵¹ He counseled his colleagues back home that “[t]he case-teaching system . . . must serve very largely as a model in the coming reform of our German law study.”⁵² The authors of the PPP Legal Education Report hope that their report “can make the virtues of legal education better understood in law schools, other professional schools, and even other areas of higher education.”⁵³

Both reports contrast the case method to more traditional academic classroom lectures, where professors pontificate and students assimilate.⁵⁴ The Redlich Report also distinguishes the case method from other forms of interactive lectures that had been in use in American law schools at the turn of the twentieth century.

Yet the two reports describe and understand the case method differently. The PPP Legal Education Report sees the case method as a “form of teaching”⁵⁵ that leads to formal knowledge—as a “process of teaching and learning.”⁵⁶ It is a “heavily academic pedagogy.”⁵⁷ The focus of the PPP Legal Education Report is on the pedagogic and the professor. From the perspective of the PPP Legal Education Report, the case method does not teach practice skills. The Redlich Report, on the other hand, sees the case method as itself the very method of the common law. The focus of the Redlich Report is on the legal and on law students. From the perspective of the Redlich Report, the case method teaches the most important of practice skills: legal method.

⁵⁰ PPP Legal Education Report 51.

⁵¹ Redlich Report 25.

⁵² Redlich Report 73. The Redlich Report often speaks of German law and legal education in a broad sense that includes Austrian law and legal education.

⁵³ PPP Legal Education Report 185.

⁵⁴ PPP Legal Education Report 51, *cf.* Redlich Report 29.

⁵⁵ PPP Legal Education Report 186.

⁵⁶ PPP Legal Education Report 47.

⁵⁷ PPP Legal Education Report 188.

Explanations for these differences are not hard to find. Most obvious, of course, is that almost one hundred years lie between the two reports. Perhaps the case method today, as observed by the authors of the PPP Legal Education Report, is different from that observed by Redlich. Another explanation is that the different views are products of different perspectives. The authors come from different worlds. Redlich was a jurist from the civil law and consequently conscious of common law methods. The five co-authors of the PPP Legal Education Report are, with one exception, educators and not jurists and presumably have little consciousness of American legal methods and less knowledge of civil law ways. The authors order the case method within their respective worlds: the PPP Legal Education Report authors place it within the pedagogy of professional education; Redlich placed it within jurisprudence. Finally, as Reed remarked, the case method does not lend itself easily to classification as either practical or scientific: it can be theoretical without being either practical or scientific.⁵⁸

The PPP Legal Education Report: Case Method as Pedagogy

The PPP Legal Education Report's preference for the pedagogic is apparent already in its designation of the case method as legal education's "signature pedagogy." It continues to reveal itself in the coining of the new term: "case dialogue method." Introducing the term "dialogue" to describe the case method shifts the focus from professor and students working together to use the case method to find law, to the educational pedagogy and the classroom exchange between a single student and professor.

The PPP Legal Education Report seeks to "unlock the secrets of the learning process in the case-dialogue method."⁵⁹ Not to leave readers unexposed to this drama, it provides six pages of scripts, including two from a popular novel and movie (*The Paper Chase*), that show the case method in use in first year law school.⁶⁰ It sets the scene by describing the room in which the dialogue takes place—one that "was not designed like most university lecture halls."⁶¹ The professor is "clearly the focal point."⁶² The drama continues:

⁵⁸ REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, *supra* note ***, at 281.

⁵⁹ PPP Legal Education Report 47.

⁶⁰ PPP Legal Education Report 48-49. The remaining scenes, totaling over four pages, are drawn from the classes the authors visited and are transcribed at pages 67-68, 70-71, and 72-73.

⁶¹ PPP Legal Education Report 49.

⁶² PPP Legal Education Report 49.

Again and again, the instructor asks a student to read aloud the precise wording of a contract or a legal ruling given in a large book of legal cases that forms the text for the course. When, inevitably, the student becomes confused, the instructor repeatedly asks the student to look carefully at the language... For most of the hour, the professor of law is facing the students, interacting with them one by one through exchange of questions and answer, using the board or other visual displays to support the verbal exchanges.⁶³

The PPP Legal Education Report asks rhetorically: what is the subject of the case-dialogue classroom? “Is it the excitement of the tournament, evident in so many of the exchanges?”⁶⁴

The PPP Legal Education Report, when it describes the “best-taught” classes, demonstrates its infatuation with the drama possible with the case method. Here in its entirety is a relevant paragraph:

From our observations, it also seems clear that the motivational power of the pedagogy is considerable, though here again it is perhaps most effective with classes that are primed for challenging analytical work. It is not only fear, however, as in law students’ notorious dread of receiving a “cold call” from the instructor, that concentrates students’ minds in class. In the best-taught classes we observed, it was the narrative nature of legal argument itself, especially its dramatic character, that motivated students. It frequently took the instructor’s skill, however, to reconstitute the drama beneath the formal language of the opinions. As we saw in the previous chapter, legal argument is often triggered by conflicts—events that confuse or contradict a community’s expectations. Legal proceedings, especially litigation, therefore, have an inescapable narrative dimension, with story and counter-story being constructed by the contending parties to the dispute. We submit that this “conflictual” structure accounts for students’ willing suspension of disbelief that the “actors” involved could really be, as the case books keep insisting, those odd, strategizing “personae” —

⁶³ PPP Legal Education Report 50.

⁶⁴ PPP Legal Education Report 51. According to the PPP Legal Education Report, the classroom has an “inherently competitive character.” Cf. PPP Legal Education Report 188 (“competitive scholars”). The Redlich Report notes just the opposite: a specific atmosphere of cooperation. Redlich Report 31.

the “plaintiffs” and “defendants” and “parties” who strive relentlessly to stake the better claim on the basis of precedent and principle. As we saw, when performed in back-and-forth argument by a professor and an advanced student, the fine points of legal arguments, especially when they serve as turning points of these abstract dramas, can rivet students’ attention. At such moments they generate the sort of collective effervescence that burns particular classroom events into the memory, gradually reshaping students into legal professionals.”⁶⁵

The professor, who “reconstitutes” the drama, has the leading role in this version of the case method. The advanced student has the first supporting role. The students are the audience who “rivet” their attention on the performance.

The Redlich Report: Case Method as Legal Method

The Redlich Report has a different conception of the case method. In it all students in the classroom have active roles. According to the Redlich Report, the great value of the case method is that the student “who works out the abstract thoughts for himself also keeps firm hold upon them, and thus the case system is precisely the method which really does impart legal knowledge.”⁶⁶ The students are not confused. They all work to find and apply the principles of law that govern the facts of the case. Here is the Redlich Report counterpart to the passage from the PPP Legal Education Report quoted above:

The students study thoroughly a number of cases at home and strive to master the actual facts involved as well as the rule of law; usually they prepare a very brief abstract of each separate case, which they bring with them to class. In the actual class exercise the professor calls on one of the students, and has him state briefly the content of the case. Then follows the interchange of question and answer between teacher and students; in the course of the discussion other students are brought in by the teacher, and still others interject themselves in order to offer objections or doubts or to give a different answer to the original question. The whole exercise generally moves quickly and yet with absolute quiet and with undivided attention on the part of the class. It must indeed make a strong impression upon every visitor to observe ... classes of 100 to 150 students engaged in

⁶⁵ PPP Legal Education Report 75.

⁶⁶ Redlich Report 29 (*quoting* Keener, 17 A.B.A. REP. 482 (1894)).

this intensive intellectual work; all the students intent upon the subject, and the whole class continually, but to a certain extent imperceptibly, guided by the teacher and held to a common train of thought. The thing that specially impressed me was the general intense interest displayed by the whole class in the discussion, even by those who did not take part in it themselves; I do not remember that a student, when called upon, was confused or unable to reply, although of course not all gave an adequate answer. ... The great majority of students make notes during the course of the discussion. I looked at many of these note-books and found in them the principles of the case jotted down, almost always briefly but intelligibly ...

... [Some] professors, among whom are many of the strongest representatives of the case method, abstain from any summary résumé of the discussion, and even scrupulously avoid in any way formulating the result for the hearers, or presenting to the students their own view of the principles of the case. This is deliberate. The students, through their own study and through the analysis which goes on in the class exercises, must themselves find the law contained in the cases. Nay, more, they must themselves systematically put together the knowledge gained from hour to hour; or, as it has been repeated expressed to me by distinguished law teachers, instruction by the case method should make the students competent to compose their own text-books.

In the classrooms of the Redlich Report, the excitement is intellectual, not dramatic. Independent thinking is what matters. This was the major advance in education: legal thinking.

The Redlich Report sees the case method as far more than a novel pedagogic technique. It is the legal method itself. From teaching to think like a lawyer it is only

a step ... to a completely changed conception of the purpose of legal education as a whole; to the conception, namely, that the real purpose of scientific instruction in law is not to impart the content of the law, not to teach the law, but rather to arouse, to strengthen, to carry to the highest possible pitch of perfection a specifically legal manner of thinking.⁶⁷

⁶⁷ Redlich Report 24.

According to the Redlich Report, in thinking like a lawyer “the student is practically doing as a student what he will be doing as a lawyer.”⁶⁸ Therein lays “the great practical significance of this new method.”⁶⁹ It is no mere aid to teaching, it is the end itself: “the specific training in that manner of legal thinking which is peculiar to and necessary for the practicing lawyer.”⁷⁰ “In his practice [the law graduate] has only to continue to exercise and to develop the manner of thinking that he has already brought to a very high degree of perfection in the school.”⁷¹

Learning to think and to act like a lawyer is to learn the skill of using legal methods. The very title of the Redlich Report—*The Common Law and the Case Method in American University Law Schools*—portends the Report’s observation that the case method is rooted in the very method of the common law. The Redlich Report attributes the success of the case method directly to “the unshaken authority of the common law.”⁷² The case method responded well to the needs of the common law of the early twentieth century. The Redlich Report compares the nature of the common law then to that of the civil law:

To the German and Frenchman of our time, therefore, the law appears always in popular thought as the abstract rule, as the general principle, to which all individual relations of the citizens are a priori and for its own sake subordinated. To the Englishman and the American, on the other hand, the law appears rather as the single case of law, as the single subjective suit, conducted by the regular judge, and depending only upon his ‘finding of the law.’⁷³

⁶⁸ Redlich Report 23 (quoting with approval and emphasis early case method promoter Keener). *Accord*, Reed, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, *supra* note 23, at 285 (students who “discover the law for themselves, are engaged in an activity much more closely resembling what in their later practice they will be called upon to do ...).

⁶⁹ Redlich Report 24.

⁷⁰ Redlich Report 25.

⁷¹ Redlich Report 40.

⁷² Redlich Report 35.

⁷³ Redlich Report 36. *Cf.* Reed, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, *supra* note 23, at 61-62 (“We have carried on the English tradition that law is nothing more nor less than a body of rules enforced by the courts, as contrasted with the Continental conception of an external body of law that exists under this name, independently of the form that the courts give it when applying it to concrete cases.”)

The case method then studied trains students in the skill of common law law-finding:

A law like the Anglo-American common law, for which the maxim still holds that it lives in the breast of the judge, and the rules and principles of which are made known not through statutes as abstract norms but only in the application to the separate case and through the voice of the judge,—a law so formed must be studied in its native environment, in the court of justice, and must be obtained from the decisions of the judge.⁷⁴

The Redlich Report concludes “that “the case method is, then, in a certain sense, nothing but the return to the principles of legal education demanded by the very nature of the common law.”⁷⁵ It was, he wrote, a method “perfectly adapted to the nature of the common law.”⁷⁶

The Redlich Report did not find necessary distinguishing among different legal methods, that is, either between methods more suited for the unwritten common law or for the written statute law, or among methods of lawmaking, law-finding and law-applying,⁷⁷ because it found that the case method “really teaches the pupil to think in the way that any practical lawyer—whether dealing with written or with unwritten law—ought to and has to think.”⁷⁸

The PPP Legal Education Report and Legal Methods

While the PPP Legal Education Report sees the case method as a way to teach thinking like a lawyer, it does not see thinking like a lawyer as a legal method, *i.e.*, as a way of bringing law and facts together. It rejects the Redlich Report position of the identity of case method and legal method, *i.e.*, professional practice.⁷⁹ It is skeptical of legal method and it is suspicious of

⁷⁴ Redlich Report 37.

⁷⁵ Redlich Report 37.

⁷⁶ Redlich Report 40.

⁷⁷ For a discussion of such differences, see James R. Maxeiner, *Legal Indeterminacy Made in America: U.S. Legal Methods and the Rule of Law*, 41 VALPARAISO U.L. REV. 517, 526-27 (2006). In brief: *lawmaking* is drafting and promulgating law; *law-finding* is determining the applicable rule and interpreting its content; *law-applying* is applying the found rules to decide particular cases.

⁷⁸ Redlich Report 39.

⁷⁹ Sullivan 81 (“The essential dynamic of academic procedures is the separation [of case method] from the activities of professional practice.”).

law as a system of rules. The PPP Legal Education Report observes that in the case method the “relentless stress is on learning the boundaries that keep extraneous detail out of the legal landscape.”⁸⁰ Students are learning that “facts are only those details that contribute to someone’s staking a legal claim”⁸¹ Students are being taught not only how to think as lawyers, “but also, from a legal point of view, what is worth thinking about.”⁸² The case method, the PPP Legal Education Report concludes, provides a deliberate simplification of life: “[it] consists in the abstraction of the legally relevant aspects of situations and persons from their everyday contexts.”⁸³ The Report laments that “the rich complexity of actual situations that involves full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusion, remains outside the method.”⁸⁴ It questions whether the law itself reflects popular understanding of justice.⁸⁵

Seen as a way to simulate the legal method of finding the common law applicable to an individual case, the case method is a great success. So concludes the Redlich Report. That is a limited goal. As a legal method of finding common law, the case method is not intended to deliver a complete statement of the law, both as the law is and as the law should be. It does not claim exclusivity or priority over other legal methods of lawmaking and law-applying. Seen, however, as an academic pedagogy, intended to teach the whole law, the case method is inadequate. So concludes the PPP Legal Education Report. Part V below discusses this weakness.

⁸⁰ PPP Legal Education Report 55.

⁸¹ PPP Legal Education Report 53.

⁸² PPP Legal Education Report 53, 187.

⁸³ PPP Legal Education Report 187.

⁸⁴ PPP Legal Education Report 187.

⁸⁵ *E.g.*, PPP Legal Education Report 186 (“In particular, the academic setting of most law school training emphasizes the priority of analytical thinking in which student learn to categorize and discuss persons in highly generalized terms. . . . It conveys at a deep, largely uncritical level an understanding of the law as a formal and rational system, *however much its doctrines and rules may diverge from the commonsense understandings of the layperson.*” (emphasis added)); PPP Legal Education Report 24 (“students are often disappointed or disillusioned to discover that legal understanding can diverge significantly from what they understand as moral norms or standards of fairness.”) *Contra*, WILLIAM C. ROBINSON, A STUDY ON LEGAL EDUCATION: ITS PURPOSES AND METHODS 7 (1895) (“The rules which command and prohibit action are generally intelligible even to the ordinary citizen.”)

Law students must learn to deal, as lawyers do, both with the law as it exists, as well as with the law as it should be. Minimally competent lawyers must be able to counsel their clients about what the law is. They should be able to advocate for their clients interpretations of the law, and even changes in the law, changes in the law that comport with their clients' interests without contravening other law. Accomplished lawyers can participate fully in legal life; they do recognize deficiencies in the law, and both for their clients and otherwise, work to improve the legal system.

IV. PRACTICAL TRAINING AND CASE METHOD

Both the PPP Legal Education Report and the Redlich Report see practical legal training as an important part of legal education. Both see law as a "practical profession."⁸⁶ Both see that an aim of legal education is practical activity in the law, *i.e.*, the development and training of young attorneys.⁸⁷ They disagree on the extent to which practical training is best achieved within the law school itself. According to the Redlich Report, in the case method, the law schools have miraculously brought the most important practical skills into the law school from the outside world of practice. More than that, they cannot do. According to the PPP Legal Education Report, on the other hand, thinking like a lawyer is still not performing like one.⁸⁸ The Report classes legal analysis together with knowledge of legal doctrine as formal knowledge.⁸⁹ Law school education can do more. Legal education is not complete if it does not include experience with clients.⁹⁰ And experience with clients should encompass acting as lawyer for clients. Medical education, where students participate in treating real patients, should be the model.

The Redlich Report: The Case Method as Practical Training

The Redlich Report asserts that teaching the case method itself constitutes "methodical preparation for the practical calling of law."⁹¹ As proof it offers the success of the case method, not only with legal educators, but with practitioners: the best law offices preferred to hire case method trained applicants over all others.⁹²

⁸⁶ Redlich Report 18.

⁸⁷ Redlich Report 34.

⁸⁸ PPP Legal Education Report 22.

⁸⁹ *Cf.* PPP Legal Education Report 193.

⁹⁰ PPP Legal Education Report 56.

⁹¹ Redlich Report 35.

⁹² Redlich Report 35.

The Redlich Report does not argue that the case method is complete; the case method requires supplementation.⁹³ The Report points to other forms of instruction within law schools that contribute to the success of the case method. These include methods identified with traditional academic education, such as textbooks in addition to casebooks, lectures in addition to case method classes, and meetings with professors outside of class in addition to classes.⁹⁴ They also include less traditional methods of education more akin to practical training, such as moot and practice courts and law reviews.⁹⁵

The Redlich Report is clear that law schools cannot teach all practical knowledge:

it must of course again be emphasized that this knowledge can never be gained in any school, anywhere, any more than any law school of Europe or America can teach the future lawyer the ethics of the legal profession or the peculiar instinct (*Takt*) of the successful lawyer or judge. In this calling, as in every other, only the direct atmosphere of daily professional life can furnish to the beginning certain experiences and qualities which are of great practical importance.⁹⁶

The Redlich Report concludes that in the case method, the law schools have gone about as far as they can go: “the American student gains in the modern law school of his country all the practical knowledge of the law that any school can give to a future attorney or judge, in unparalleled manner.”⁹⁷ That this was not all the professional skills that students need is not of overriding concern: “In his practice he has only to continue to exercise and to develop the manner of thinking that he has already brought to a very high degree of perfection in the school. By the side of this, what he has still to learn in his law office (especially in the fields of procedure and of written forms in general) is of very subordinate importance.”⁹⁸

The PPP Legal Education Report: the Medical Model

The PPP Legal Education Report has a different view. It states that law schools can and should do more. And doing more in practical training

⁹³ See also Part V.

⁹⁴ Redlich Report 30.

⁹⁵ Redlich Report 31-33.

⁹⁶ Redlich Report 40.

⁹⁷ Redlich Report 40.

⁹⁸ Redlich Report 40.

would enhance other aspects of legal education. Practice complements theory.⁹⁹ Clinical training complements case method.¹⁰⁰ The problem that the PPP Legal Education Report sees is that legal education has marginalized clinical training.¹⁰¹

The PPP Legal Education Report offers medical education as an example that legal education should follow.¹⁰² For three decades medical education has been enhancing the role of clinical education in the teaching of medical students. Where once clinical training began in the third year of medical school, now it begins in the first year. It is dominant by the third year. According to the PPP Legal Education Report both medical science and medical professionalism are best taught in the context of medical practice.¹⁰³ Practical apprenticeships in medicine have “opened the way to more authentic and powerful means of fostering professionalism.”¹⁰⁴ When students take on responsibility these concerns “come alive most effectively.”¹⁰⁵ The same could happen in legal education.

The PPP Legal Education Report calls on legal education to follow the example of medical education. Beginning with the first year of law school, lawyering courses should complement doctrinal courses. “[T]he teaching of legal doctrine needs to become fully integrated into the curriculum. It should extend beyond case-dialogue courses to become part of learning to think like a lawyer *in practice settings*.”¹⁰⁶ Integration should continue into the second and third years as a gradual development of knowledge and skill first through simulation then through actual responsibility for clients.¹⁰⁷ It finds a more dynamic and integrated law school curriculum in two law schools that have combined doctrinal and lawyering instruction in substantive law and lawyering skills courses, that have made greater use of simulations throughout the curriculum, and that have increased offerings of clinical courses.¹⁰⁸

⁹⁹ PPP Legal Education Report 13.

¹⁰⁰ PPP Legal Education Report 24.

¹⁰¹ PPP Legal Education Report 24.

¹⁰² PPP Legal Education Report 192.

¹⁰³ PPP Legal Education Report 192.

¹⁰⁴ PPP Legal Education Report 192.

¹⁰⁵ PPP Legal Education Report 197.

¹⁰⁶ PPP Legal Education Report 195 (emphasis added).

¹⁰⁷ PPP Legal Education Report 195.

¹⁰⁸ It points to programs at New York University and at the City University of New York. PPP Legal Education Report 34-43, 197. Such programs are found at law schools located outside of New York City as well, including in Baltimore.

Comparability Issues

That legal education might learn from medical education is a good idea. Legal educators are accustomed to learning from others in law through the tool of comparative law. Learning from others can include following the example of others through the “better law” approach. Legal educators ought to be willing to follow the “better pedagogy” approach as well. Following the example of others, however, assumes some measure of comparability of problem and of solution. The PPP Legal Education Report does not address issues of comparability between medical and legal education.

In the days of Redlich, Reed and Flexner comparability among professional schools could be assumed. In those days legal education and medical education had similar missions (education of professionals) and similar resources (modest). But times have changed. While legal education is much the same as in 1914, medical education has “changed its face.”¹⁰⁹ Medical schools now have three missions: education, patient care and scientific research. Their resources have increased exponentially to accommodate their two new missions. Today, to say that medical and law schools are comparable because both are professional schools, is rather like saying that elephants and mice are comparable because both species are mammals. Yes, mice may learn much from elephants, but no one would expect a mouse to act like an elephant. A few statistics from the Association of American Medical Colleges (“AAMC”) show the elephants that American medical schools have become.

The average medical school has an annual budget of over \$450 million. “The budget of the medical school often dwarfs that of the other divisions of the parent university combined.”¹¹⁰ The average medical school has over 850 full time faculty members;¹¹¹ the average American law school does not have even that many students. Yet the average law school, with a fraction of the faculty, has almost twice as many students in each matriculating class (248 students) as the average medical school (135 students).¹¹² One-on-one clinical training is facilitated when teachers outnumber students.

¹⁰⁹ Sullivan *et al.*, *supra* note ***.

¹¹⁰ HANDBOOK OF ACADEMIC MEDICINE, *supra* note 18, at 3.

¹¹¹ HANDBOOK OF ACADEMIC MEDICINE, *supra* note 18, at 3, 5.

¹¹² PPP Legal Education Report 2-3.

But wait. There is more, much more. It may be that the medical school is no longer the proper institutional point of reference for preparation for the profession of medicine. All American medical schools are integral parts of conglomerates called “academic health centers” (“AHCs”).¹¹³ AHCs consist of a medical school and one or more teaching hospitals contractually bound together.¹¹⁴ They are the teachers of both undergraduate and graduate medical students. Their three missions are patient care, scientific research, and medical education. Some critics believe that education comes last.¹¹⁵ The development of AHCs is traced to Flexner’s recommendation that medical school education include two years of clinical education.¹¹⁶

Today undergraduate medical education consists of four years of medical school. These are followed by three to seven years of mandatory “residency,” *i.e.*, clinical graduate medical education. “Although the quality of the education received by medical students is clearly important,” according to a deans’ committee of the American Association of Medical Colleges, “it is during residency training that physicians acquire the detailed knowledge, the special skills, and the professional attitudes needed to provide high quality

¹¹³ *See, e.g.*, INSTITUTE OF MEDICINE, *ACADEMIC HEALTH CENTERS: LEADING CHANGE IN THE 21ST CENTURY* (2003) available at <http://www.iom.edu> (AHCs “are the places that train health professionals, conduct research that advances health, and provide care . . .”); TRAINING TOMORROW’S DOCTORS. THE MEDICAL EDUCATION MISSION OF THE ACADEMIC HEALTH CENTERS, A REPORT OF THE COMMONWEALTH FUND TASK FORCE ON ACADEMIC HEALTH CENTERS 1 (2002) available at <http://www.cmwf.org> (the report seems generally to equate AHCs and medical schools, *e.g.*: “The education of our nation’s physicians occurs primarily in academic health centers (AHCs)—the 125 medical schools and their affiliated or owned clinical facilities.”).

¹¹⁴ There is no generally accepted definition of an AHC, but at a minimum an AHC includes a medical school and clinical facilities, most usually, one or more teaching hospitals. *See* INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, *ACADEMIC HEALTH CENTERS: LEADING CHANGE IN THE 21ST CENTURY* 20-21 (2004).

¹¹⁵ *See, e.g.*, THE BLUE RIDGE ACADEMIC HEALTH GROUP, REPORT 7, REFORMING MEDICAL EDUCATION: URGENT PRIORITY FOR THE ACADEMIC HEALTH CENTER IN THE NEW CENTURY 13-14 (2003) (“It has been well documented that both enhanced research funding and the Medicare and Medicaid funding for direct clinical care shifted the balance within medical school missions first toward research and then toward clinical care. Without the substantial, dedicated, and coherent funding streams available for research and clinical care, the education mission became the weakest leg of the three-legged stool.”); TRAINING TOMORROW’S DOCTORS, *supra* note 113, at x (“The medical education activities of faculty are valued less than research and patient care at AHCs.”)

¹¹⁶ INSTITUTE OF MEDICINE, *supra* note 113, at 21.

care in medical practice.”¹¹⁷ There are dozens of different residencies—ranging from anesthesiology to urology—each specific to a particular medical specialization.¹¹⁸ Residents are paid employees.

According to the PPP Legal Education Report one reason that law schools should enhance clinical legal education is that American medical schools have increased the clinical component of their students’ education. Where they used to require students to take two years of clinical work and two years of basic science in the classroom, now they require that students begin clinical work in the first or second year of undergraduate medical education. This change, however, looks less dramatic if the residency part of medical training is taken into account. Before the change, medical students during their seven to eleven years of medical education were already spending 70% or more of their studies in clinical training; after, it they are spending 80% or more.¹¹⁹ The increased clinical training is more of the same. It is a mid-course correction. It is not a dramatic change in what medical schools do or in what they require their students to do. That would not be true if law schools followed the medical model. Presently they rarely require any clinical work, seldom offer students clinical opportunities comparable to that which medical schools require of their students, and only exceptionally offer and never require graduate education. Paying graduate law students is practically unknown.

The present high clinical component of modern American medical education would not be possible if medical schools had not taken on new missions in addition to medical education. If medical schools were not engaged in patient care and sponsored medical research they could not offer their students the practical training they do. Patient care and research provide the funds and the work opportunities that make clinical education possible.

The Association of American Medical Colleges identifies four principal sources of funds for medical schools (as distinct from AHCs): patient care reimbursement for physician services (36%); federal government research grants and contracts for teaching (24%); affiliated teaching hospital

¹¹⁷ EDUCATING DOCTORS TO PROVIDE HIGH QUALITY MEDICAL CARE: A VISION FOR MEDICAL EDUCATION IN THE UNITED STATES. REPORT OF THE AD HOC COMMITTEE OF DEANS, ASSOCIATION OF AMERICAN MEDICAL COLLEGES 4 (2004), available at <http://www.aamc.org>.

¹¹⁸ The “matching system” that matches medical school graduates to residency programs has 34 different types of residencies. <https://services.aamc.org/eras/erasstats/par/>

¹¹⁹ INSTITUTE OF MEDICINE, *supra* note 113, at 47.

support (12.1%); and state and local appropriations (6.5%).¹²⁰ Oh, yes. The AAMC observes that tuition and fees are an “oft-cited source of funding for higher education institutions.” But, it comments, “in the medical school arena, [they] have always been a small but relatively stable component of revenues, about 3-4 percent, since the 1960s.”¹²¹

It is conceivable that American legal education could follow the medical education model. Were it to follow the medical model, just as medical education took on additional roles that justified additional funding and provided employment opportunities for trainees, so too would legal education have to take on new roles. What would that mean? Legal education could take on client care and legal scientific research just as medical education took on patient care and medical scientific research.¹²² Law schools could provide legal services, not just occasionally for free to the indigent, but systematically for compensation to the population at large and, above all, for the population of corporate entities (the biggest consumers of legal services). Law schools could be put in charge of other legal institutions, such as courts or prisons. Law schools could provide scientific services in the researching and drafting of legislation and regulation just as medical schools provide medical research to improve our understanding of medical science. Were these visions to come to pass, law schools could employ and educate their

¹²⁰ HANDBOOK OF ACADEMIC MEDICINE, *supra* note 18, at 3. Distributions do not, of course, tell us anything about how much money we are actually talking about. While the figures provided by AAMC in the report referenced are incomplete on this point, they do tell us that in fiscal 2003, if we average the funds received over the 125 medical schools, the average medical school received \$109.6 million in federal research funds (not including other federal funds) and \$55.2 million in state and local appropriations. HANDBOOK OF ACADEMIC MEDICINE, *supra* note 18, at 3.

¹²¹ *Id.* While funding figures prominently in reports on the future of medical education, student tuition is scarcely mentioned. The Institute of Medicine, for example, calls for creation of an “education innovation of fund.” It considered three options for funding: none relied in any way on student payments; all look to Congress. One option was a new funding source: “[t]he education of health professionals is of sufficient value to society to justify the allocation of new funds to such an endeavor.” INSTITUTE OF MEDICINE, *supra* note 113, at 119. It settled on reconfiguring present funding sources. *Id.* at 7. Incidentally it noted that Medicare is the “primary funder of graduate medical education.” *Id.* at 120.

¹²² A contemporary of Langdell did observe this possibility! See *Law Apprenticeships*, 5 ALB. L.J. 97 (1872). (“[the] want of systematic practical instruction is the great defect in our method of legal education, and it is beyond the power of the law schools to remedy unless they can incorporate actual legal business into their courses.”)

students in the work that they do for others just as AHCs now do for their students.

While these scenarios are conceivable, they are not foreseeable. The realistic choice is among alternatives that require fewer resources and lesser responsibilities than the medical model. That choice today is not so different from the choice that faced Langdell and his contemporaries in 1871: law schools could provide more practical training through classes, simulations and clinics, or students could be sent out to law offices to be trained in practice there. The former is the approach proposed by the PPP Legal Education Report; the latter was familiar to Redlich and is used in most other countries.¹²³ We consider the former now; we address the latter summarily in Part VI.¹²⁴

A serious effort in law schools at comprehensive clinical training along the lines of medical school training would be resource intensive. The range of clinical training required for medical accreditation is set out in the margin. It demonstrates that comprehensive training is far-reaching.¹²⁵ One is compelled to ask: could it be financially feasible? The principal source of funding for law schools is the “oft-cited” source for institutions of higher education: students’ tuition. The PPP Legal Education Report recognizes that law schools “face the demand that they recover their costs from tuition”¹²⁶ and that those tuitions are already “very high indeed.”¹²⁷ At least one law school dean is on record that law students “cannot possibly” themselves pay to fulfill the medical education vision.¹²⁸ New funds would be necessary.

¹²³ Cf. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, *supra* note 23, at 281.

¹²⁴ See text at note 168 to 216.

¹²⁵ “Clinical education must cover all organ systems, and include the important aspects of preventive, acute, chronic, continuing, rehabilitating and end-of-life care. Clinical experience in primary care must be included as part of the curriculum. The curriculum should include clinical experiences in family medicine, internal medicine, obstetrics and gynecology, pediatrics, psychiatry, and surgery. Students’ clinical experiences must utilize both outpatient and in patient settings.” FUNCTIONS AND STRUCTURES OF A MEDICAL SCHOOL. STANDARDS FOR ACCREDITATION OF MEDICAL EDUCATION PROGRAMS LEADING TO THE M.D. DEGREE. LIAISON COMMITTEE ON MEDICAL EDUCATION, at 2 (2007), *available at* <http://www.lcme.org/functions2007feb.pdf>.

¹²⁶ PPP Legal Education Report 33.

¹²⁷ *Id.*

¹²⁸ John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 196-97 (1993).

Non-financial Challenges for Enhanced Practical Training in Law Schools

We leave to one side financial limitations on emulating medical schools. Both the PPP Legal Education Report and the Redlich Report remind us that, even if money is no object, enhancing practical training in law schools faces significant challenges. The PPP Legal Education Report laments that particularly in “highly ranked institutions with very well-prepared students,” there is “deep skepticism about the intellectual value of practice-oriented courses.”¹²⁹ The Redlich Report worries whether the case method demands too much of professors for them to do perform adequate scientific work.

I submit that the source of that skepticism is only partly concern about intellectual value of such practice-oriented courses. Many professors are concerned about the utility of the practical training that law schools can reasonably conduct for the general population of law students.

The PPP Legal Education Report notes that “lawyers fill a bewildering variety of roles in American society.”¹³⁰ The pedagogical problems that this produces for practical training should not be underestimated.¹³¹ Are students being trained to be lawyers, prosecutors, government administrators or judges? If they are being trained to be lawyers, what kinds of clients will they serve? Will their clients be natural persons or legal persons? Rich or poor? Large or small? What kind of tasks will they do for their clients? The example of medical education is relevant: practical training in medicine divides into dozens of different residency tracks each of which provides training tailored to the practice its particular participants will later present patients.¹³²

¹²⁹ PPP Legal Education Report 100.

¹³⁰ Cf. PPP Legal Education Report 44. And now law schools must be concerned not with just one national society, but with legal systems around the world. *See, e.g.*, the newly founded International Association of Law Schools brochure, <http://www.ialsnet.org/files/IALS-Ebrochure.pdf> (“What is the IALS? ... Its members are committed to the proposition that the quality of legal education in any society is improved when students learn about other cultures and legal systems and the diverse approaches to solving legal problems employed in those legal systems.”)

¹³¹ *See, e.g.*, Reed, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, *supra* note 23, at 283 (“with the present tendency toward specialization in law practice, few offices could provide a student with experience that would be of much value to him save in one narrow and not always commendable rut.”).

¹³² *See* text at note 118 *supra*.

Yet physicians have it easier than lawyers do: their patients are all human. Consider, for example, Andrew Carnegie and Pablo Picasso. They were not much different one from another physically. Their legal concerns, however, were worlds apart. They spoke different languages and were governed by different legal systems. The natural person and the legal persons that Andrew Carnegie beget themselves had very different legal concerns. The legal concerns of his daughter, Margaret Carnegie, were quite different from those of his industrial “baby,” the Carnegie Steel Company. His philanthropic babies have outlived him and could be immortal. They too have different legal concerns. Carnegie Mellon University has legal concerns different from Carnegie Hall. The International Court of Justice, housed in the Peace Palace funded by Carnegie, has legal concerns different from those of the Carnegie Foundation for the Advancement of Teaching.

Some of the pedagogic problems that arise from the different legal needs that lawyers serve include.¹³³

- The more training becomes practical, the less general it is. While every legal position requires particular practice skills, those skills are not always the same
- The more complicated practical problems are, the less easily reproduced they are. Systematic instruction in practice skills is facilitated by repetition
- Many practice skills, such as interviewing, negotiating, case planning, trial advocacy, and legal drafting,¹³⁴ are highly dependent upon the clients for whom they are undertaken. The profession of law is more culturally dependant than other professions such as medicine or engineering.¹³⁵

¹³³ This list makes no claim to being either comprehensive or systematic. It is made without any reference to the literature of education.

¹³⁴ These skills are named in the PPP Legal Education Report at 159 as skills likely to be taught.

¹³⁵ In the 1930s and 1940s thousands of physicians, engineers and lawyers fled Nazi-controlled Europe. Most suffered severely. But physicians and engineers often could resume their professions in their new homes with relatively little retooling. Few lawyers could do so without returning to law school. Today, we see the same story repeated: thousands of foreign-trained physicians and engineers provide professional services in the United States, but few foreign-trained lawyers do and almost none without first obtaining a specifically American legal education. *Accord*, ROBINSON, *supra* note 85, at 17 (noting “the art of law is a local art” and “the skilled practitioner, removing from one jurisdiction to another, would find himself but little better suited for his labors than the untrained student”).

- Practice skills are not necessarily best taught in the classroom, but may be better taught in practice.¹³⁶ Simulations fall short of participation in real practice.¹³⁷

In legal practice, among the most important skills are those skills that are related to knowing one's clients and their interests.¹³⁸ Do you speak their language (literally)? Do you understand their business relationships? Do you understand the science or craft that underlies their business? How well can you do transactions of particular importance to those clients?

Study of the hiring of experienced lawyers (*i.e.*, lateral hiring) demonstrates the diversity of skills sought in the practice of law. Study of lateral hiring could help identify which skills are suitable to law school instruction and which are not. In my experience, lawyer recruiters look less for the best performers among all candidates, as they look for very good lawyers with unusual skill sets that fit specific employers well. These skill sets usually include experience with the industry or with specific technical tasks. They often have nothing to do with law.

¹³⁶ See, e.g., Robert S. Summers, *What is the Area of Greatest Deficiency in Legal Education?*, 6 CORNELL LAW FORUM No. 3, 17 (February 1980) at 18 (“Tutelage within the law school setting is more essential in those subjects [of general theory and perspective] than in interviewing, counseling, and other nonlitigational skills. Also, many practitioners can do a better job of imparting skills of this nature than we can in the law school. Law schools cannot emphasize everything, and the question is what can be better taught in law school than by other life experiences and, especially, the early years of professional employment. Finally, I should add that there is considerably more teachable substance to the subjects dealing with general theory and perspective than there is to interviewing, counseling, and most other nonlitigational lawyer skills.”)

¹³⁷ Skepticism of simulations in legal education is deep-rooted and can lead to preference for the medical model. See, e.g., *Law Apprenticeships*, 5 ALB. L.J. 97 (1872) (“Mock courts exist, indeed, but they are no more like real courts than a manikin is like a living man. We would laugh at a medical professor who should introduce at a clinic a patient that presented he was sick or wounded, and ask the students to doctor or carve such patient for practice.”)

¹³⁸ As “drive-through” treatment in hospitals becomes more common, the get-to-know your client problem of lawyers is visiting medical trainees too. See INSTITUTE OF MEDICINE, *supra* note 113, at 82 (“These trends give the learner less time to establish a relationship with the patient and to understand the multiple medical, social, psychological, and other factors that affect not only the course of disease, but also the individual’s health and well-being. A short hospital stay provides a poor learning opportunity”).

Students, in their education, cannot well anticipate which skills they will need later in practice. They do not know then what practice they will have later. Law schools graduates cannot choose the relatively certain career paths of residency open to medical school graduates.¹³⁹ Nor are their needs sufficiently general among *all* students that law schools can easily design courses around them, even if the students did know what they would be doing five years after graduation from law school. This may explain why the PPP Legal Education Report found faculty at highly ranked schools asserting that “Students will get better training when in a firm than from our skills courses.”¹⁴⁰ The faculty’s belief is justified, not because the training will be better, but because it will be more relevant.¹⁴¹

My own personal experience in two decades of practice confirm me in my opinion. My practice was diverse: (a) three years as government prosecutor doing antitrust law policy work; (b) five years as associate with a mid-sized corporate law firm doing litigation and corporation counseling for mid- to large-sized foreign corporate clients; (c) three years as senior associate doing complex litigation for gigantic corporate clients; and (d) nine years as associate general counsel doing counseling, deals and government relations for a large business corporation.¹⁴² Only twice did I have human clients. There were many practical skills that I needed in practice that I did not learn in law school. Many of these skills I learned before I went to law school; many I learned after law school while in practice. I spent more than 14 of those years working for just four legal persons. Had I only known in law school that I would do that, I could have made study plans accordingly. But I knew then neither that I would be working for these four persons nor what I would be doing for them. Had I prepared myself more for them, that preparation would have been largely wasted had I worked for almost any other employer. Upon reflection, I am hard-pressed to identify practice skills

¹³⁹ See James R. Maxeiner, *International Legal Careers: Paths and Directions*, 25 SYRACUSE J. INT’L L. & COMM. 21, 43 (1998).

¹⁴⁰ PPP Legal Education Report 100.

¹⁴¹ Law office study was unsystematic, because it depended upon what business came through the door. With respect to general matters, that is a disadvantage in competition with law school education. But with respect to transaction specific practice, it is an advantage. Law schools can not know in which law offices their students will practice.

¹⁴² (a) 1977-1980, Trial Attorney, United States Department of Justice. (b) 1982-1987, Associate, Walter Conston & Schurtman, P.C., New York City. (c) 1987-1991, Associate, Kaye Scholer LLP, New York City. (d) 1992-2001, Vice President & Associate General Counsel, Dun & Bradstreet, Inc.

that I could reasonably have learned in law school that I did not learn in the six hours of practice courses that I had.¹⁴³

V. THE LEGAL SYSTEM AND THE CASE METHOD

The Redlich Report and the PPP Legal Education Reports are united in their judgment that a principal weakness of the case method is the unfortunate effect that it has on the broader goal of legal education, *i.e.*, a better legal system.¹⁴⁴ They see the hazard in similar ways: the successful case method lays claim to exclusivity and can subordinate or even drive out all other considerations in legal education.¹⁴⁵ Both see this as resulting in inadequate attention to the socio-ethical side of law. The PPP Legal Education Report sees this as a pedagogic problem in graduating students who are not sufficiently educated in the responsibility of lawyers both for the wider legal system and in the ethics of their particular practice. The Redlich Report sees the problem not only as one of providing a well-rounded education for students, but also as one for law faculties contributing properly to developing the science of law.¹⁴⁶

The Pedagogic Problem of Missing Perspective

The two reports diagnose the pedagogic problem in similar ways. According to the Redlich Report: “The result of this is that the students never obtain a general picture of the law as a whole, not even a picture which includes only its main features.”¹⁴⁷ Students need to be reminded, according to the PPP Legal Education Report, of “the broader purpose and mission of the law.”¹⁴⁸

The reports’ prescriptions for cure are strikingly similar—at least in initial treatment. Each prescribes a specific course of curricular cures that, in view of the century that lies between them, run amazingly parallel. The first

¹⁴³ In law school, I had three course hours of “practice training” (legal research and basic brief writing) and three course hours of trial techniques.

¹⁴⁴ *See, e.g.*, Redlich Report 41, 73; PPP Legal Education Report 57, 132.

¹⁴⁵ Redlich Report 41; PPP Legal Education Report 132.

¹⁴⁶ While the PPP Legal Education Report attends to courses in professional responsibility as such (*i.e.*, law of lawyers’ ethics), the Redlich Report leaves these issues to practice.

¹⁴⁷ Redlich Report 41.

¹⁴⁸ PPP Legal Education Report 144. *See also* PPP Legal Education Report 196 (“The aim has to be stereoscopic: the ‘big picture’ of the profession, its history, aims, and context, as well as that of the law itself”).

year should begin with a course, dubbed by the Redlich Report an “institutes” course, or by the PPP Legal Education Report, “perspectives in the law.” As envisioned by the Redlich Report, it would introduce students to the fundamental concepts common to all parts of the legal system. It would examine American law historically and comparatively so that students “may be made to see the system of law as a living whole, the product of centuries of development.”¹⁴⁹ The perspectives in the law program, not only envisioned by the PPP Legal Education Report, but identified as a reality at the law school of the University of British Columbia, is “deliberately designed to counter-balance the first year focus on legal analysis, narrowly construed, by addressing the relationships among law, social forces, and values, analyzing those relationships from a variety of perspectives.”¹⁵⁰

Neither report stops this work with the first year. The PPP Legal Education Report calls for a “pervasive” approach: “A basis in the first year is essential, but this base soil needs cultivation throughout the three years, especially following up in the form of more advanced courses that enable students to continue relating their growing understanding of the law, their developing skills of practice, and their sense of identity and professional commitment.”¹⁵¹ The Redlich Report calls not only for a course at the end of the three years that would sum it all up, it also urges adding an obligatory *fourth year* that would allow “time for lectures upon legal reform, designed to give the students, even before they go out into practice, some critical guidance in the problems of the *lex ferenda*.”¹⁵²

Some of these recommendations were not new. The first major study of American legal education, the 1892 report of the American Bar Association Committee on Legal Education, called for “the abandonment of the present method of teaching the law mainly by distinct topics, at least during the first year of the course, and the substitution for it of a careful and systematic study

¹⁴⁹ Redlich Report 45. *See id.* at 41-46. A civilian who has long taught in America makes a similar recommendation. ALAN WATSON, *THE SHAME OF AMERICAN LEGAL EDUCATION* 198 (2006).

¹⁵⁰ PPP Legal Education Report 153. “The goal is to give students greater breadth and a sense that there are many ways to look at the law at the same time that their other courses ask them to narrow their perspectives in order to learn the technical thinking and language of legal analysis.” *Id.*

¹⁵¹ PPP Legal Education Report 154.

¹⁵² Redlich Report 46. *Lex ferenda*, what the law ought to be, is to this day a frequently used term on the Continent, that is contrasted to *lex lata*, what the law is.

of the system as a whole after the European method.”¹⁵³ While the Redlich proposals were less far-reaching (save for the possibility of a mandatory fourth year), the American law school community reacted to the Redlich Report recommendation of an institutions course as if it would require a major reallocation of resources. H.F. Stone, Dean of Columbia University School of Law, probably spoke for many when he commented: “I have searched Dr. Redlich’s report in vain for any convincing evidence that the introductory course in law, whatever its theoretical excellence, is actually worth what it will cost in the displacement of more important courses in our already overcrowded curriculum.”¹⁵⁴

Neither the Redlich Report nor the PPP Legal Education Report considers addition of courses to the curriculum alone as sufficient to enhance law schools’ roles in promoting a just legal system. In their prescriptions for long-term treatment, they do differ. The PPP Legal Education Report, consistent with its general position in favor of increased clinical education, sees clinical education as an ideal place to integrate the ethical-social relationship in to the curriculum generally. There the values and situation of the law and the legal profession “come alive.”¹⁵⁵

The Redlich Report and Legal Science

The Redlich Report sees the socio-economic weakness of the case method as going beyond “legal instruction proper.” Perhaps more critical still is “... its reaction upon the scientific elaboration of law in general, that important function of law faculties which we must consider apart from their purely pedagogic aims.”¹⁵⁶ It is incumbent upon law professors to contribute

¹⁵³ AMERICAN BAR ASSOCIATION, REPORT OF THE COMMITTEE ON LEGAL EDUCATION, SUBMITTED TO THE ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION, AUGUST 24th, 1892 (William G. Hammond, Chairman), *printed in part in ** ABA Rep **** (1892), *reprinted in part* 26 AM. L. REV. 705, 742 (1892), *printed in full in* 1 REPORT OF THE COMMISSIONER OF EDUCATION FOR THE YEAR 1890-91, 376, 406 (1894), and as REPORT ON LEGAL EDUCATION, ADVANCE SHEETS FROM THE REPORT OF THE COMMISSION OF EDUCATION FOR 1890-91 (1893), available at <http://books.google.com>.

¹⁵⁴ H.F. Stone in *Papers and Discussion Concerning the Redlich Report*, 4 AM. L. SCHOOL REV. 91, 92-93 (1916). Frederic C. Woodward, Dean of Stanford Law School, was more negative still; he found himself “substantially in disagreement” with that part of the report and cautioned that introduction of a preparatory lecture course would be a “serious mistake.” *Id.* at 98, 99.

¹⁵⁵ PPP Legal Education Report 197.

¹⁵⁶ Redlich Report 41.

to “a systematic, scientifically grounded reform of great parts of current American law—notably its thoroughly antiquated rules of civil and criminal procedure.”¹⁵⁷ They should strive for a reform “in favor of simplification, a greater efficiency and improvement.”¹⁵⁸ According to the Redlich Report, “the modern organization of a completely industrialized democracy” demands regeneration and renewal of law.¹⁵⁹

Clarity here as to how the Redlich Report conceives legal science is important, since in the American legal community there is confusion and some derision about the idea of law as science. The Redlich Report unequivocally rejects Langdell’s view of law as an empirical, inductive or physical science: “the analogy between legal science and physical science so frequently drawn by modern American lawyers is . . . inaccurate.”¹⁶⁰ The Redlich Report explains where Langdell went wrong: “legal science cannot deal with law in the sense of the physical investigator, but only with law in the sense of definite norms, willed by men, and intended to guide and limit the business of men.”¹⁶¹ At length it supports its conclusion that the case method qualifies as a science in the German sense of a science of norms (*Normwissenschaft*).¹⁶² The Redlich Report states how law should be viewed as a science:

Legal science, in the traditional sense of the word, is scientific knowledge of the positive law, and as such is one of the so-called intellectual sciences (*Geisteswissenschaften*); or, to use another expression current in German, it is conceived of as a normative science (*Normwissenschaft*) in contrast to all sciences which rest upon observation, experience, and investigation of natural phenomena, and have to make clear and to explain the general laws governing life and matter. For the positive law rests entirely upon ‘norms,’ that is to say, upon commands or prohibitions, denoting something which ‘ought to be’ rather than something that ‘is.’ Every single decision of a court of law contains nothing else than the regulation of a legal relationship, a regulation which, for the single case, gives actual expression to this something which ought to be. In essence, legal science can, therefore, only consist in comprehending all these commands and prohibitions,

¹⁵⁷ Redlich Report 49.

¹⁵⁸ Redlich Report 63.

¹⁵⁹ Redlich Report 66.

¹⁶⁰ Redlich Report 55.

¹⁶¹ Redlich Report 56.

¹⁶² Redlich Report 54-59. The PPP Legal Education Report repeats the Langdell model without comment. PPP Legal Education Report 5-6.

these norms, in the inner historical and logical relation which they bear one to one another.¹⁶³

The Redlich Report asserts that America needs a “dogmatic working over of the common law” and a “laborious linking and dogmatic probing of the substance of the law” that might lead to “the creation of a scientific system of the common law.”¹⁶⁴

The Redlich Report cautions that the case method tends to inhibit the creation of a scientific common law: “[it] claims ... an uncommon amount of time ... and so already reduces very seriously [the law professor’s] opportunities of composing extended works in legal science.”¹⁶⁵ The Report finds “the burden of purely pedagogical labor which rests upon American law teachers is extraordinarily great.”¹⁶⁶

The Redlich Report sees the science of law as having central importance in dealing with the social-ethical issues such as those of concern to the PPP Legal Education Report. As if to punctuate its importance, the Redlich Report closes the entire report with a stirring exhortation:

[T]he American law teachers of our time ... should not doubt that the great reform in teaching which Langdell introduced is the very thing which qualifies them, and earnestly summons them, to do the great work that lies before them now: namely, to apply the resources of European legal science, with its development of nearly two thousand years, to the establishment at last of a scientific system for the common law, thereby opening the way for a most fruitful development of national law and procedure and raising and invigorating the principle of social and economic justice in the life of the American people.¹⁶⁷

¹⁶³ Redlich Report 56.

¹⁶⁴ Redlich Report 63.

¹⁶⁵ Redlich Report 50.

¹⁶⁶ Redlich Report 50.

¹⁶⁷ Redlich Report 74. *Accord*, Robinson, *supra* note 85, at 5 (“The law is an ethical science. ... Its end is the production of social order in which the varied faculties of man may enjoy the widest liberty of action, and the program of the race toward its destiny may most easily and effectually be secured.”)

VI. UPDATING REDLICH TO TODAY

Redlich wrote the above exhortation with the optimism that characterized the world before August 1914. When the world turned to war, it and the United States turned away from the fruitful development of law and from the principle of social and economic justice. Too many wars later, times have changed: has legal education?

The PPP Legal Education Report is not intended to be an historical report and does not answer that question. Legal education has changed, more than the PPP Legal Education Report suggests, yet given that almost an entire century has passed, it is still surprisingly the same. While a history that would trace those developments is far beyond the scope of this Article, a summary note of those changes as they affect the themes here discussed is not.

How has the case method changed?

The case method has not been static since Langdell introduced it in 1870. Already in 1914 Redlich observed that Langdell's successors had shifted the emphasis of the case method from inductive science to training the legal mind.¹⁶⁸ Since Redlich's visit later generations of law professors have continued to adjust the method. Their adjustments are easily evidenced in their revisions to its signature pedagogic publication: the case book. Langdell's *Selection of Cases on the Law of Contracts*¹⁶⁹ of 1871 was an organized collection of cases with no guide to their interpretation. So too were the other first casebooks. But by the 1920s law professors began to refer to their casebooks as collections of "cases and materials." First they renamed casebooks for upper level courses: Karl Llewellyn named his *Cases and Materials on the Law of Sales*. By the late 1930s, authors of first year casebooks joined in: they might change a new edition of *Cases on Contracts* to *Cases and Materials on the Law of Contracts*.¹⁷⁰ The casebook titles evidence that by the 1930s professors were not doing what they had been doing fifty years before. Still they continued to adjust the case method. By the 1950s they were renaming their books "cases and problems." Again they started with casebooks for upper division classes, and only later got around to

¹⁶⁸ Redlich Report 23-25.

¹⁶⁹ C.C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS (1871).

¹⁷⁰ HAROLD SHEPARD & GEORGE P. COSTIGAN, CASES AND MATERIALS ON THE LAW OF CONTRACTS, [BEING] A COMPLETE REVISION OF CASES ON CONTRACTS, THIRD EDITION, BY GEORGE P. COSTIGAN, JR. (1939).

first year courses. By 1978, contracts professors could teach their first year courses from *Cases and Problems on Contracts* by John D. Calamari and Joseph M. Perillo. Today I teach first year contracts from *Contracts Cases, Discussion and Problems* by Brian A. Blum and Amy C. Bushaw. Just how these “problems” relate to the “cases” varies with the author and professor. Depending upon how they define terms, some professors see this “problem method” as “the major alternative to case method teaching . . . ,”¹⁷¹ while others, such as the author of this Article, see it as a natural development out of the case method as Redlich understood it.

The shift toward the problem method is a natural consequence of the diminished importance of the common law. It also recognizes the importance of practice considerations in classroom teaching. The case method as described in the Redlich Report rested on the “unshaken authority of the common law.” Identity of the case method and legal method gave the former its strength. But in the twentieth century statutes displaced common law as the principal source of American law.¹⁷² Today Americans live in “the Age of Statutes.”¹⁷³ The problem method better reflects what it means to think like a lawyer today. The problem method is concerned more with applying law—increasingly statutory—and less with finding common law. I suspect that where the case method works best, professors long ago moved in this direction. Where it works worst, they are stuck in reading rules out of case reports.¹⁷⁴ This is nothing new; even before Redlich visited the United States American law professors were working on “Adapting the Case-Book to the Needs of Professional Training.”¹⁷⁵ What is new is that in 2006 the Harvard Law School, the home of the case method, gave its imprimatur to

¹⁷¹ Gregory L. Ogden, *The Problem Method in Legal Education*, 34 J. LEGAL ED. 654 (1984).

¹⁷² See GUIDO CALABRESI, *A COMMON LAW FOR THE AGE OF STATUTES* 1 (1982) (referring to the “statutorification” of American law); WILLIAM N. ESKRIDGE, JR. ET AL., *LEGISLATION AND STATUTORY INTERPRETATION* 2 (2000).

¹⁷³ CALABRESI, *supra* note 172, at 1.

¹⁷⁴ *Cf.*, David D. Garner, *The Continuing Vitality of the Case Method in the Twenty-First Century*, 2000 B.Y.U. ED. & L.J., 307, 330-38 (summarizing criticisms of the case method).

¹⁷⁵ Henry Winthrop Ballantine, *Adapting the Case-Book to the Needs of Professional Training*, 2 AM. L. SCHOOL REV. 135, 137 (1908) (“If the object of the three year course is to equip the graduate for the actual work of his profession, why not substitute for books of pre-selected opinions, books of concrete facts or skeleton cases raising the important and crucial issues of the different topics of the law.”)

incorporating these developments into its first-year curriculum.¹⁷⁶ The PPP Legal Education Report notes neither the overall trend nor Harvard's recent action.

Meanwhile, the availability to students of the incidental supporting tools that the Redlich Report notes contribute to the success of the case method, has increased enormously. When the Report was released, only moot courts were common.¹⁷⁷ Law school clinics were largely unknown,¹⁷⁸ only a handful of law schools had law reviews and only a few students at schools with law reviews could participate in them. Today moot courts and clinics are widely available and sometimes required. Law reviews are found in nearly every law school, and often in great number. Harvard has more than one dozen. Most students who wish to participate in a clinic, moot court or law review have the opportunity to do so.

What has become of external practical training (including clinics)?

Law office training was still alive when the Redlich Report appeared.¹⁷⁹ But only a few years later Reed saw that the days of law office training were numbered. It was not, however, the "hostile takeover" that the PPP Legal Education Report suggests it was.¹⁸⁰ Legal education did not enjoy a victory on the battlefield. Law office training simply abandoned the field. It was a decision of simple economics. Reed observed it: "private law offices do not want law students and law students do not want them."¹⁸¹ In 1871 law offices had use for copy clerks; in 1921 they had typewriters and stenographers instead. Likewise for the students: in 1871, law schools were

¹⁷⁶ HLS faculty unanimously approves first-year curricular reform, News Release of Harvard Law School (Oct. 6, 2006), available at http://www.law.harvard.edu/news/2006/10/06_curriculum.php. With modesty typical of Harvard, Dean Elena Kagan states: "Over 100 years ago, Harvard Law School invented the basic law school curriculum, and we are now making the most significant revisions to it since that time. . . . [W]e will add new first-year courses in international and comparative law, legislation and regulation, and complex problem solving -- areas of great and ever-growing importance in today's world."

¹⁷⁷ Cf., Philip T. Van Zile, *Practice Work in Law Colleges*, 2 AM. L. SCHOOL REV. 71, 73-75 (1907) (discussing practice courts).

¹⁷⁸ See, e.g., E.M. Morgan, *The Legal Clinic*, 4 AM. L. SCHOOL REV. 255 (1917); William V. Rowe, *Legal Clinics and Better Trained Lawyers—A Necessity*, 11 ILL. L. REV. 591 (1917).

¹⁷⁹ Redlich Report 18.

¹⁸⁰ PPP Legal Education Report 5.

¹⁸¹ REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, *supra* note 23, at 283.

few and ineffective; in 1921 law schools were plentiful and effective. Although Reed regretted the lost opportunities for practical training,¹⁸² “pleasant memories” were not sufficient to maintain law office training in the face of “frank facts.”¹⁸³

That law office study gave way to law school study is not remarkable; that formal law office study disappeared altogether is.¹⁸⁴ In most other countries, while law school study predominates, law office study remains. There is a place for both. When Redlich visited the United States, students were required to study law for a prescribed period of time, but how they spent that time was up to them.¹⁸⁵ A balance between the two was thought desirable: one should learn practice in the law office and theory in the law school.¹⁸⁶ The choice, however, became binary: either law office study or law school study. The reasons for that lies beyond the scope of this Article. Proposals to require both—a mandatory training year with a practitioner after getting a law degree from a law school—were made repeatedly in New York, but failed.¹⁸⁷ Had these proposals been successful, the United States might have had something similar to the system of “articling” that prevails in other common law countries. Articling today is a form of post-graduate training where law students learn specific practical skills clerking for practicing lawyers and judges.

¹⁸² REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, *supra* note 23, at 281.

¹⁸³ REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, *supra* note 23, at 283.

¹⁸⁴ A kind of informal law office study, however, continues. As in Redlich’s day, many law students work in law offices while pursuing law degrees at night or part time. Many other law graduates, probably most, who complete law school studies without legal work experience (other than summer clerkships), do not begin legal practice on their own, but start work as associates in law firms or as junior attorneys, as judicial law clerks, or as junior jurists in other law jobs. They begin their jobs by assisting more senior attorneys and then gradually take on matters of increasing importance in their own responsibility.

¹⁸⁵ Redlich Report 67.

¹⁸⁶ *See, e.g., Law Apprenticeships*, 5 ALB. L.J. 97 (1872) (“Only those fortunate youths whose training has been properly conducted in both school and office have no reason to regret wasted time and effort. We say properly conducted, for mere attendance at both places will not qualify one for the legal profession . . .”).

¹⁸⁷ *See* REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, *supra* note 23, at 261 (discussing the “New York Controversy” of 1875-1882); *Proceedings of the Section of Legal Education*, in REPORT OF THE THIRTY-FOURTH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 632, 649 (1911) (a contemporaneous discussion of another such recommendation of the State Board of Bar examiners).

Since Redlich's day, a new form of practical training outside of law schools has arisen: continuing legal education ("CLE"). Most states now require that lawyers attend CLE classes; some states require that newly admitted lawyers attend transitions-to-practice programs. CLE programs typically consist of classroom instruction only and do not include clinical instruction. But CLE courses are practice-directed programs presented by practitioners. Restructuring of American legal education should take into account both the present role of CLE programs and possibilities for enhancing them. CLE may offer a way to overcome the pedagogic and resource challenges that confront enhancing practical training in legal education. The PPP Legal Education Report does not address CLE.

A still greater omission of the PPP Legal Education Report is the lack of an international perspective. The PPP Legal Education Report says efforts were made to broaden the perspective, but those efforts mentioned in the Report did not go beyond Canada and the United Kingdom.¹⁸⁸ And even those efforts are wanting, as we now shall see.

Among the 16 law schools that PPP Legal Education Report surveyed was at least one Canadian school: apparently it was that of the University of British Columbia ("UBC").¹⁸⁹ In British Columbia, as elsewhere in Canada, articling is a feature of legal education.¹⁹⁰ The UBC Law School has posted to its website a history of the school authored by one of its faculty members, noted legal historian Professor W. Wesley Pue. Pue's history discusses the principal themes of the PPP Legal Education Report and gives articling a prominent place.¹⁹¹

The Law Society of British Columbia has formalized articling. To be admitted to practice law in British Columbia, law students must graduate from

¹⁸⁸ PPP Legal Education Report 16-17.

¹⁸⁹ PPP Legal Education Report 15-16, 153.

¹⁹⁰ John Law, *Articling in Canada*, 43 S. TEX. L. REV. 449 (2002) (giving particular attention to articling in Alberta, Ontario and British Columbia). For a view of Canadian legal education, see Annie Rochette & W. Wesley Pue, "Back to Basics"? *University Legal Education and 21st Century Professionalism*, 20 WINDSOR Y.B. ACCESS JUST. 167 (2001).

¹⁹¹ W. WESLEY PUE, *LAW SCHOOL: THE STORY OF LEGAL EDUCATION IN BRITISH COLUMBIA* (1995) available at <http://faculty.law.ubc.ca/Pue/historybook/school01a.html>. UBC Law School has an Articling Committee that is attached to its career services office that makes available to students an Articling Handbook. <http://faculty.law.ubc.ca/orientation/16-1.html>.

law school and then complete a one-year Law Society Admission Program. This includes three components: a nine-month clerkship, ten-weeks full-time attendance at the Professional Legal Training Course, and two qualification examinations.¹⁹² In the articling clerkship the principal agrees to provide for the instruction of the law student in the practice of law and professional conduct; the student agrees to provide services to the principal's law firm. Together they are required to "ensure that the Student obtains practical training and experience in a minimum of three Practice Areas."¹⁹³ Inexplicably the PPP Legal Education Report does not mention articling in British Columbia. It parallels the practical training that American medical students receive.

Looking beyond Canada, the issues addressed in the PPP Legal Education Report are currently much discussed in other countries. In Europe, the so-called Bologna process, which is designed to harmonize higher education throughout the European Union, has led to much rethinking of professional education in the 27 Member States.

In Germany the system that the Redlich Report describes is still in place.¹⁹⁴ It provides after law school for a "*directed, rounded, apprenticeship*".¹⁹⁵ It consists of a minimum of three-and-one-half years of university education, the first state exam, two years (in Redlich's day, three years) of practical training under the direction of the state ministries of justice, the second state exam and, finally admission to practice. The two year period of practical training period includes one year as an apprentice judge and a second year as an apprentice rotating among law firm, corporate and government offices. The German system prepares a unitary form of jurist: the jurist qualified to be a judge. Thanks to Bologna and to other pressures of a modern economy and of European integration, the German system known to Redlich may soon change. The German Bar Association is pushing hard to

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http://www.lawsociety.bc.ca/licensing_membership/becoming_bc_lawyer/admission_program.html.

¹⁹³ http://www.lawsociety.bc.ca/publications_forms/forms/MS-admissions/articling-agmt.pdf.

¹⁹⁴ Redlich Report 68-69.

¹⁹⁵ Karl Llewellyn, *On What is Wrong with So-called Legal Education*, 35 COLUM. L. REV. 651, 657 (1935) (emphasis in original). This is still the German system seventy years later, although it has been shortened to two years.

split the unitary training program into three separate practical training tracks: one for judges, one for lawyers, and one for government administrators.¹⁹⁶

Japan modeled its system of legal education on the German, although with significantly different results. It artificially limited the number of trainees to a tiny percentage of test-takers. In 2004 Japan overhauled that system following an American law school example. It *reduced*, but did not eliminate, the practical training period. It introduced American-style law schools between undergraduate legal education and practical training. This has permitted it to increase the number of lawyers without increasing costs of practical training.¹⁹⁷

Elsewhere in Asia, China has in the last three decades established hundreds of legal education programs; clinical legal education is likely to find a place in the developing of legal education there.¹⁹⁸

International perspectives, we saw, loomed large in the early work of the Carnegie Foundation. Pritchett wanted American professional education to learn from foreign examples. Flexner devoted one of the two volumes of his report to European medicine and part of the American volume to Canada. The insularity of the PPP Legal Education Report in a day of globalization is disappointing.

What has become of the science of law in American law schools?

¹⁹⁶ See Hartmut Kilger, *Wie der angehende Anwalt ausgebildet sein muss*, 2007 ANWALTSBLATT 1 (article by the president of the German Bar Association, *i.e.*, DeutscherAnwaltVerein); *Entwurf eines Gesetzes zur Einführung einer Spartenausbildung in der Juristenausbildung: Gesetzentwurf des Deutschen Anwaltvereins (DAV)*, 2007 ANWALTSBLATT 45 (draft law).

¹⁹⁷ See James R. Maxeiner & Keiichi Yamanaka, 13 PAC. RIM LAW & POLICY J. 303 (2004). See also, James R. Maxeiner, *American Law Schools as a Model for Japanese Legal Education?*, 24 KANSAI UNIV. REV. L. & POLITICS 37 (2003); James R. Maxeiner, *The Professional in Legal Education: Foreign Perspectives*, 38 HIMEJI HOGAKU—姫路法学—HIMEJI L. REV. 246, 241-237 (2003) [this a Japanese language publication, so this exceptional contribution in English the pages run in descending order]; James R. Maxeiner, *The Rule of Law in the Reform of Legal Education: Teaching the Legal Mind in Japanese Law Schools*, 25 KANSAI UNIV. REV. L. & POLITICS 63 (2004).

¹⁹⁸ See generally Pamela N. Phan, *Note From the Field: Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE H.R. & DEV. L.J. 117 (2005); Kara Abramson, *Paradigms in the Cultivation of China's Future Legal Elite: a Case Study of Legal Education in Western China*, 7 ASIAN-PACIFIC L. & POL'Y J. 302, 320 (2006).

Redlich lived to see the Carnegie Corporation support initiatives for “the creation of a scientific system of the common law.”¹⁹⁹ In 1923 it provided the seed money for the American Law Institute, which quickly became and remains to this day the leading national proponent of law reform.²⁰⁰ Redlich himself came to the United States at the end of the decade to become the first head of Harvard Law School’s new Institute of Comparative Law.²⁰¹ But while the American Law Institute enjoyed successes with its Restatement and in joint work on the Uniform Commercial Code, the type of science of law that Redlich had hoped for has not developed.

According to the Redlich Report, the scientific value of most American legal literature of through to the early twentieth century was “not ... very great.” Much of it “remained consistently upon the level of manuals of instruction (and instruction, note, of high school grade), or of aids to practice.”²⁰² The Report anticipated that there might be a gradual increase in scientific literature after 1870,²⁰³ and that the “merely industrious

¹⁹⁹ Redlich Report 63.

²⁰⁰ Herbert F. Goodrich, *The Story of the American Law Institute*, 1951 WASH. U.L.Q. 283, 288. The purpose of the Institute as stated in its 1923 charter could practically have been drawn straight from the Redlich Report of 1914. It is “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice and to encourage and carry on scholarly and scientific legal work.” *Id.* at 285-86. According to Lagemann, the Carnegie Corporation cut off funding to the American Law Institute at the insistence of trustee Russell Leffingwell, a practicing lawyer who considered legal science out of touch with the needs of practice. LAGEMANN, *supra* note 22, at 78,

²⁰¹ Maxeiner, *supra* note 4.

²⁰² Redlich Report 48.

²⁰³ The Redlich Report has much praise for the *Harvard Law Review* of 1914; it likens the Review’s members to a “kind of general staff” selected for “exertion and ability.” Redlich Report 33. It marvels that “[t]he amount of scientific legal labor ... is a wonderful accomplishment on the part of teachers and pupils ...” Redlich Report 49. It is hard to conceive of a finding that there is much scientific in the *Review*’s best-selling product today, THE BLUEBOOK. A UNIFORM SYSTEM OF CITATION (18th ed. 2005), or in the competition for membership (one week long: 60% writing a twenty-page case comment using pre-selected materials only; 40% doing a “subcite” test, i.e., correcting a student comment for citation and language errors that have been deliberately introduced). <http://www.harvardlawreview.org/membership.shtml> and *hear* the linked audio/video. The Bluebook fits the common law stock preconception of civil law codes better than does any civil law code.

commentator” might eventually disappear.²⁰⁴ Yet that did not happen. The consensus judgment of legal scholars today is that until 1970 the academic value of American legal literature, with notable exceptions, remained at the level of student and practice aids.²⁰⁵ The consensus dismisses that scholarship as doctrinal in contrast to today’s empirical and interdisciplinary studies.²⁰⁶ The “new” scholarship dating to about 1970 looks at law from a variety of perspectives—“from the outside”—from the points of view of sociology, history, economics, psychology, philosophy, and so on.²⁰⁷

The Redlich Report notes and applauds such social science scholarship about law. Such scholarship was not, as we might think, an invention of our era. But the Redlich Report notes that: “[t]he ends aimed at, however, in these modern sociological, legal-historical, and cultural investigations—useful and important as these certainly are—is not at all legal science in the sense in which this expression has been used for centuries,—in the only sense in which legal science or legal education is understood [as a science of norms].”²⁰⁸ A true science of law is a system of law. It relates legal rules one-to-another and to life. It facilitates application of legal rules.

The reservations of the Redlich Report about the specifically legal-scientific value of social-science scholarship about law have proven true. The PPP Legal Education Report notes that scholarship in law schools has moved “further away from the concerns of judges and practitioners and closer to those of other academic fields.”²⁰⁹ Where traditional American legal literature had been directed to judges and lawyers, this new scholarship is directed to university professors.²¹⁰ Today there is indeed a disjunction between legal education and the legal professions.²¹¹

According to the Redlich Report, a science of law is needed in order to achieve the socio-ethical ideals of law such as those identified in the PPP

²⁰⁴ Redlich Report 63.

²⁰⁵ Cf., Todd D. Rakoff, *Introduction [to Symposium: Law, Knowledge, and the Academy]*, 115 HARV. L. REV. 1278, 1281 (2002).

²⁰⁶ Richard A. Posner, *Legal Scholarship Today*, 115 HARV. L. REV. 1314, 1316 (2002). See also Gregory Mitchell, *Empirical legal Scholarship as Scientific Dialogue*, 83 N.C.L. REV. 167 (2004).

²⁰⁷ Posner, *supra* note 206, at 1316.

²⁰⁸ Redlich Report 55.

²⁰⁹ PPP Legal Education Report 7.

²¹⁰ Posner, *supra* note 206, at 1320.

²¹¹ Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

Legal Education Report. The cost of failure to develop a science of law is great and practical and not slight and theoretical. A legal system without a science of law is costly, complicated and inefficient.²¹² It is a legal system that has not and can not solve “the mighty problems confronting American legal life.”²¹³ Decision of a single case is not enough. A contemporary foreign observer perceptively and poignantly sees the problem: Americans, in the single-minded focus on one case, falsely assume that achieving justice in one case, makes the whole system just.²¹⁴ American comparative law scholars easily come to this revelation,²¹⁵ but frank American practitioners without comparative knowledge see it too. In 1984 then Chief Justice of the United States Warren Burger told the American Bar Association annual meeting: “Our system is too costly, too painful, too destructive, too inefficient for a truly civilized people.”²¹⁶

Flummoxed by Flexner?

In reviewing the century after the Redlich Report, one irony is unmistakable. It demands to be mentioned in view of the PPP Legal Education Report’s call for following the medical model. While not much has changed in American legal education since 1914, everything has changed in American medical education. While the two forms of professional education started from the same plain in the early twentieth century, they now are now on totally different plains. Medical education has achieved the clinical and the scientific goals of which the Redlich Report and the PPP Legal Education Report can only dream. Jurists should be jealous of their physician friends.

²¹² Redlich Report 63.

²¹³ Redlich Report 65.

²¹⁴ THOMAS SCHULER, AMERIKA IMMER IM RECHT. WIE AMERIKA SICH UND SEINE IDEALE VERRÄT 91 (2003) („Sie betrachten stets nur den einzelnen Fall. Wenn ein einzelner Fall als gerecht gelten darf, dann ist das ganze System gerecht. All jene Fälle, die nicht zur Verhandlung kommen, mögen ungerecht verlaufen—es scheint die Mehrheit nicht zu kümmern.“).

²¹⁵ See, e.g., Rudolf B. Schlesinger, *Comparative Criminal Procedure: A Plea For Utilizing Foreign Experience*, 26 BUFF. L. REV. 361 (1977) (“I shall explore a few aspects of our law of criminal procedure that, in the light of comparable foreign solutions, appear to me to be intolerably archaic, inefficient, unjust, and indeed perverse.”)

²¹⁶ Address, February 13, 1984, quoted in 52 *U.S. Law Week* 2471 (February 28, 1984).

VII. CONCLUSION

We may summarize the conclusions of this comparison:

(1) Legal method, and not the case method as such, is central to law school education. Law school graduates should be familiar with lawmaking, law-finding and law-applying. The first-year focus on “thinking like a lawyer” is proper and productive. Teaching methods in first year classes should adjust to accommodate changes in legal methods away from common law toward statute law.

(2) Practical training is a proper part of legal education. Lawyers should be professionally competent. That competence should be developed where it can be developed best. Comparative work—both transnational and trans-professional—can help identify where and how that can best be accomplished.

(3) The socio-ethical role of law deserves greater attention in law school education. Attention to decision of individual cases should not be allowed to lead us to lose sight that law is a body of rules, willed by us, and intended to guide and limit us and our institutions. Law schools should better educate their students to understand this role and themselves should take more responsibility for the quality of those rules.