

NOTES ON THE TEACHING OF LEGAL METHOD

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I

During his first few law school weeks, the beginning law student goes through an experience for which nothing in his past education has prepared him. He has been reading books throughout his two, three, or four college years, but he discovers immediately that the reading of cases is an entirely different kind of operation. At first he interprets the traditional law school question, "Mr. X, have you read this case?" as meaning little more than, "Mr. X, can you tell us in a general way what this dispute was about?" But trial and reprimand soon show him that "Have you read this case?" is the law teacher's way of saying, "Are you ready to discuss intelligently any question I can think of with respect to this case's out-of-court facts, procedural course, and precedent value?"

Above all, the beginning law student finds it hard to grasp just what it is that is expected of him, what insights he is supposed to bring to the class discussion. He gropes for criteria which will enable him to make a fair guess as to which of the many facts in a case are material facts, which the professor will insist be included in an acceptable case statement. He sees no unity or pattern in his instructors' demands, because he has no understanding as to what his instructors are trying to do. Why did the Professor of Torts, who after all is teaching substantive and not procedural law, object so bitingly when a member of the class made the slight error of saying that the defendant had "denied" the complaint rather than "demurred" to it? What was so grievously wrong about stating the issue in an auction case as whether "the acceptance by the plaintiff highest bidder of the defendant's offer to sell was enough to make out a binding contract"? Questions like these underline the continuing insecurity of the first law school semester, a confusion which reflects principally a lack of comprehension of the postulates and objectives of case-method legal instruction.

In recent years, increasing consideration has been given to the question whether the law school program for the first semester should not include a course intended solely to show beginning law students how to study legal materials effectively. Strenuous objection to this charitable design comes from those who believe in Spartan methods of professional initiation. Advocates of a "sink or swim" approach inevitably

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testify that their own mental fibers were toughened in the unaided struggle for comprehension and survival to which they were subjected during the first semester of their law study. It may be noted that the affection with which the ordeal is remembered tends to increase with the length of time since the speaker himself left law school, just as the veterans of World War I recall the good old days of their military service with vastly more warmth than do the veterans of World War II.

Faculty opinion at most law schools has swung away from the view that the confusion of the first law school semester is in itself a desirable educational experience. The more serious doubts as to the worth of an introductory course in the use of legal materials are expressed by those who regret the confusion of the first law school semester but believe that nothing systematic can be done about it. Is it possible to communicate in a separate method course even a general awareness of the discipline and skills which a law student must bring to bear on case law and legislative sources? All first-semester courses are really courses in legal reasoning and method, rather than in the substantive doctrines of Torts, Contracts, and Procedure. Why is it not better to leave the beginning student's introduction to professional techniques as the common enterprise of all the first-semester instructors?

The first justification of a separate course in Legal Method is that its inclusion in the first-semester, first-year program should accomplish an appreciable saving of desperately needed law school time. Three law school years afford insufficient time to bring students to grips with issues and developments of great significance in contemporary law practice. Law teachers and law students agree that the existing law school course fails to give anything like adequate training in such essential professional skills as counselling, negotiation, and drafting and, even more important, takes insufficient account of the responsibility of lawyers as participants in the making of public and private policy decisions. How can a suitable consideration of these crucial issues, skills, and values be added to the already over-packed law school curriculum? One possibility is to forego the luxury of having all four or five first-semester courses taught as if they were all principally courses in the fundamentals of case reading and analysis.

But time is not the only, nor even the chief, consideration. An even more important gain is that a reasonably well-taught course in the fundamentals of professional method can liberate the other first-year teachers from routine chores and enable them to conduct their class discussions in specific subjects like Torts and Contracts on a higher plane of criticism and artistry. The effective presentation of a first-semester course in a fundamental legal subject requires rare qualities of resource-

fulness and imagination. There are never more than a few real artists at classroom teaching on any law school faculty. It is as wasteful of talent to have a great case-method teacher spend his limited time in Contracts on a painstaking presentation of the mechanics of reading cases and statutes as it would be if an art school were to require Orozco or Sloan to instruct beginners in canvas stretching or if a department of English were to assign Housman or Thornton Wilder to the teaching of Composition I-A.

Dowling, Patterson, and Powell's *Materials for Legal Method* is the latest effort to design a casebook for the specific purpose of introducing beginning law students to the approaches and skills necessary to the rewarding study of case and statute law. It would be pointless for me to undertake an extended review of a casebook as well known to law teachers as is the Dowling, Patterson, and Powell collection. In their preface, and in the explanatory notes with which they introduce each chapter, the three editors are quite explicit as to their general objective and as to their reasons for thinking the materials in each chapter will contribute to the beginning law student's understanding and perspective. Widespread agreement that the casebook is a suitable teaching tool for the purpose at hand appears from the fact that the casebook is already in use at more than fifty law schools, although its first publication was in the spring of 1946.

This, then, is one law teacher's account of the major problems which he has encountered so far in the teaching of Legal Method. Most of the observations offered should apply to any introductory course in the materials and methods of the profession, whether taught from the Dowling, Patterson, and Powell casebook or from some other set of materials of the instructor's own development or choice. Whatever the teaching materials, the students in any Legal Method class will all be beginners in the law. And the basic legal sources to which these beginners are to be introduced will be the same: the opinions of judges and the enactments of legislatures.

II

Every entering law class is made up of students of superior college achievement. The instructor will do a great deal to help the members of the class get their bearings in the new surroundings if he can suggest lines of correlation between their past college work and their law school studies. The construction of this bridge from the familiar to the new might not be too difficult if all members of the class had completed anything like a uniform pre-legal program. As matters stand, there is not a single ingredient of essential background knowledge which the instruc-

tor in Legal Method can take for granted. One student in five will have studied English constitutional history, and he will know little, if anything, concerning the development of English legal institutions.¹ Everyone in the class will have a general familiarity with economic theory, but few will be aware of the elementary facts of life about ordinary business practices and procedures. And most beginning students enter law school with no grasp of the course of American economic and political history, without which the corresponding developments in legal doctrine are largely unintelligible.

These notes on the teaching of Legal Method are not the place for a presentation of the case for a standard pre-legal program. But the plain fact is that the greatest single difficulty in the management of the first few Legal Method class discussions is that the typical first-semester, first-year law class possesses nothing even remotely approaching a common body of knowledge and experience. It is not necessary here to contend that certain specified college courses are necessarily preferable to other courses as pre-legal training. I have certain strong convictions about the matter, as, for example, that a college graduate with a background of stiff training in logic and in physics or chemistry is better equipped to begin the study of law than a student never subjected to those disciplines. But my present point is the narrower one that there is no common denominator at all.

Every teacher knows that the most effective device in the introduction of a beginner to a new discipline is the use of the analogy to some familiar area of the beginner's experience. If the students in a typical Legal Method course shared any field of common knowledge—whether it be classics, biology, or the history of art—analogy to that field might be used to illumine introductory discussions of lawyers' problems and shorten the long jump from college to law school. If, for example, all members of the class had an elementary knowledge of physics, a cross-reference to the concept of "vectors"² would do much to sharpen student comprehension of what is involved in the process which law professors call the synthesis of decisions. As it is, references to baseball and football are about the only useful analogies I have been able to arrive at in three terms of teaching Legal Method.

¹ A three-point course in Development of Legal Institutions is required of first-session law students at Columbia. Since that course gives a thorough grounding in the history of the common law and its institutions, the instructor in Legal Method can put his full emphasis on introducing students to legal skills. At schools which have no course corresponding to Development of Legal Institutions, the teacher of Legal Method has a harder job and wider responsibilities than this article may suggest.

² See ALBERT EINSTEIN AND LEOPOLD INFELD, *THE EVOLUTION OF PHYSICS* 12-19 (1938).

The circumstance that all his students are beginners creates a second, quite different, problem for the teacher of Legal Method. A beginning law student finds it difficult to follow a legal explanation, but he asks harder and more searching questions than will any of the old hands. The thinking of first-semester, first-year law students follows no established grooves and takes none of the conventions of the profession for granted. The freshness of outlook which beginning law students have, simply because they are beginners, makes it impossible to predict the questions which will be raised by the members of the class during an hour's discussion in Legal Method. By the time a law teacher is half-way through a course in Legal Method he will have been forced to re-examine and prepare a reasoned reply to fundamental questions concerning our legal order about which he may not have thought since his own early law school days.

The wide-ranging nature of beginning student inquiry was brought home to me the first time I taught Legal Method. We had worked through a line of cases, and I moved on to make the point that a lawyer's construction of the bearing of the precedents just considered on a future, slightly different, case would depend very largely on whether he is acting in the later case as counsellor, advocate, or judge.³ As law professors do, I stated a hypothetical case and asked successive members of the class to formulate the strongest possible argument which could be made by counsel for the hypothetical plaintiff on the basis of the casebook precedents. The discussion had not gone very far when one of the best men in the class raised the direct question whether it is right for a lawyer to urge a court to accept a proposition of law which the lawyer himself is not convinced represents a fair construction of the available precedents. Needless to say, I tried to dodge the question by quoting from the casebook that "the permissible limits of advocacy are not dealt with here."⁴ But the class would not let me evade it, and I think now that they were right. Certainly it is irresponsible to introduce beginning students to the technique of legal argument without at the same time discussing candidly and at length the role of the advocate in the administration of justice.

This experience, and many others like it, have convinced me that one indispensable addition to a course in Legal Method is at least an elementary consideration of the legal profession as an institution and of the obligations and responsibilities of members of the bar. In the preface

³ This point is excellently made in the brief text section entitled "The Uses of Legal Argument" on pages 471-472 of the Dowling, Patterson, and Powell casebook.

⁴ At page 471. My quotation, of course, was out of context, as the chapter from which it was taken is expressly described as concerned only with the formal logical analysis of cases.

to his *Cases and Other Materials on the Legal Profession*, Professor Cheatham states it as one of his principal objectives "to foster the development of a sense of professional responsibility, which may result in effective and decent representation of clients and, at the same time, in aid in the readjustment of the profession to the changing needs of society."⁵ Progress towards this objective cannot be postponed until the second or third law school year. Legal techniques become more meaningful when viewed in the institutional and ethical environment of their use. A law student will never again be as receptive towards a candid discussion of the responsibilities and problems of the profession as he is during the first semester of his first law school year.

III

Much of the confusion of the first law school semester can be traced to student uncertainty concerning the assumptions and the objectives of case-method legal instruction. Why should first-year law study proceed by way of the laborious fashioning of legal rules from the raw materials of past judicial decisions rather than by the systematic exposition of general legal principles with cases mentioned only for illustrative purposes? Unless the beginning law student can be made to see why we are using the case method, what attributes and skills we want him to develop in the course of this slow and sometimes tedious process, he will remain in doubt as to what is expected of him when he is called on to take part in class discussions and will miss the point and purpose of the best classroom presentation.

The beginning student's introduction to the study of case law should be so planned as to make clear to him at the outset that the case method is not an arbitrary arrangement of legal materials to suit academic preconceptions, but an approach to the study of law which is dictated by the essential nature of the materials which lawyers must make use of in the performance of practical professional tasks. The basic assumption of the case method is, I take it, that the case method requires the law student to use legal sources in a manner which resembles as closely as possible the use which lawyers make of the same sources in courts and law offices. A clear statement of the assumptions and aims of case-method law teaching will do more to put a beginning student on the right track in his study and discussion of case law than can any other form of introductory explanation.

Chapter II of the Dowling, Patterson, and Powell casebook, entitled "The Reading of a Case," constitutes the editors' answer to the ques-

⁵ At page vi.

tion: "What does the law student most need at the very beginning of the study of law to help him read [cases] effectively?" The first thirty-six pages of this chapter contain information intended to acquaint beginning law students with past and present forms of judicial organization and with the mechanics of law reporting. The chapter's final forty pages are designed to communicate what the editors call "the beginning of an understanding" of the determinative control of procedure on the effect and scope of a judicial decision.

Comprehension of the extent to which the procedure in a case controls the breadth of the proposition of substantive law for which the case can be taken as authority is the unfailing mark which distinguishes professional from amateur case analysis. The difference which results from procedural awareness stands out particularly in courses like Constitutional Law and Trade Regulation, in which the class roster may include both law students and graduate students in political science or economics. A mediocre law student will excel the best graduate-school man when they meet on the law student's home ground of case analysis. However intelligent the graduate student may be, and however well versed in his own field of specialization, it is impossible for him to read an appellate court opinion for what it is—the court's justification for its decision of an issue of law framed by the pleadings and procedural moves in the court below.

For use in helping beginning students to acquire a reasonable measure of procedure-mindedness, the editors of the Legal Method casebook have included a seven-page text note from Scott and Simpson's *Cases on Judicial Remedies*, outlining the course of proceedings in a legal action, and eight cases presenting a cross-section of procedural devices: demurrer, answer, judgment *n.o.v.*, motion for directed verdict, and motion for a new trial. The difficult teaching problem at this stage of Legal Method is that most beginning students are so fascinated by the new terminology, and by procedure for procedure's sake, that they forget the whole purpose of the discussion.

Patient explanation and frequent repetition are necessary to make clear to a beginning law student that the eight procedural cases are being brought to his attention during his first week in law school not for the purpose of giving him an advance synopsis of Civil Procedure but for the sole purpose of explaining to him why every decision of so-called substantive law must be examined through procedural spectacles. Nowhere else in the course is there as much danger that the beginning student will miss the forest for the trees.

The teacher of Legal Method will, I think, find it necessary to impose a rigid and seemingly arbitrary limit on class discussion of these

procedural cases. The only teaching device I have found effective is to introduce this part of the course with the dogmatic statement that we are going to examine each of the eight cases in the casebook with two, and only two, questions in mind: (1) Is this decision a final adjudication of the rights and duties of the parties before the court? and (2) What, if any, is the proposition of substantive law for which this case can be taken as authority? My experience is that even this restriction on discussion will not permit a pace faster than two cases a day if the beginning student is to grasp and retain "the beginning of an understanding" of the importance of procedure in the analysis of case precedents.

What are the other irreducible minimum insights which must be developed before a beginning student is equipped to start the effective study of case law? First, and perhaps foremost, he must learn to approach cases with two clear questions in mind: (1) What considerations caused the court to arrive at the decision which it handed down in this case? and (2) What influence is this case likely to have on the thinking of the judges before whom somewhat similar cases will come for decision in the future? Obvious as this point will seem in later courses, it is the sharpest departure from the approach which the beginning student probably found sufficient in his undergraduate studies, where it was not often necessary for him to go beyond the attainment of an understanding of past events.

In introducing students to case-law processes, I have found it helpful to proceed by way of three separate stages in classroom emphasis. In the first stage, the class spends an hour on each of two or three cases, and the discussion does not go beyond a painstaking analysis of why the court in each case decided the controversy as it did. The three cases set out in the Dowling, Patterson, and Powell materials under the heading, "Judicial Behavior When Faced With a New Problem," lend themselves very well to the kind of clinical dissection which characterizes this first stage in the discussion of case law.

After the members of the class have shown that they have at least a general idea of all that is involved in taking a case apart, the discussion moves on to the second stage. Cases are still discussed one by one, but the emphasis shifts to a consideration of each case's weight as a precedent in later cases involving somewhat different out-of-court facts. Here the beginner meets for the first time the ever-present professional problem of determining how much of the talk in a judicial opinion was "holding" and how much is to be stigmatized as dictum. The justification for simplifying the problem by narrowing the issue to one of the weight of a single case precedent on a single new set of facts is that we

are bringing a complete novice to grips with a problem of case analysis for which Anglo-American law has never arrived at a formula solution.

How much can the teacher of Legal Method do with the holding-dictum idea? His first responsibility is to make sure that the members of the class grasp the crucial significance in common-law thinking of the existence of a conceptual distinction between the holding, or *ratio decidendi*, of a case and the doctrinal statements in the opinion which later judges will, or may if they choose, disregard or discount as dictum. The first-year law student begins to understand the profound respect for facts which characterizes the common-law tradition only when he has learned that the weight of a judicial decision as precedent in a later case depends more on the similarity of the facts of the two cases than on the doctrinal generalization stated in the first court's opinion.

Legal Method class discussions of the holding-dictum problem should go far enough to advise the beginning law student that the common law knows no scientific formula whereby a legal analyst can determine precisely in every case what statements in the opinion are holding and what statements are dictum.⁶ The student of case law might as well find out immediately that the use of case law is an art and not a science and that the distinction between holding and dictum is like the distinction between night and day, easy to discern at the opposites but a matter of shading in morning and twilight areas. On this essential phase of legal analysis the course in Legal Method can do no more than communicate an introductory awareness of why cases must always be analyzed with the holding-dictum distinction in mind and a further recognition of the subtlety with which a good case lawyer handles the problem. The disciplined and continuing practice necessary to develop the beginning student's own skill and artistry in the application of the holding-dictum standard can be provided only in the other first-year courses.

In the third and most advanced stage of the Legal Method student's introduction to the study of case law he has his first try at the challenging intellectual operation which the editors of the casebook call the synthesis of decisions. The specific materials selected for study and discussion are the cases which have developed and are developing the law concerning the liability of sellers and manufacturers of goods. Here again the function of the course in Legal Method is limited to setting the stage for the continuing practice in the synthesis of decisions which the student will receive in his other courses. Eight or nine hours of class

⁶ The best effort to state an analytical formula is probably Goodhart, *Determining the Ratio Decidendi of a Case*, 40 *YALE L. J.* 161 (1930). But judicial practice is much more realistically described in Oliphant, *A Return to Stare Decisis*, 14 *A.B.A.J.* 71 (1928), and Llewellyn, *The Rule of Law in our Case-Law of Contract*, 47 *YALE L.J.* 1243 (1938).

discussion of the problems of synthesis set by the manufacturers' liability cases can hardly do more than warn the beginning law student of the great variety of the factual differences and doctrinal trends of which he must take account in the formulation of a reasonable and useful synthesis of a line of decisions. Legal Method has done its job if the first-year law student can recognize a masterly job of synthesis when he meets one in later class discussions in Torts, Contracts, and Procedure.

Since Legal Method is instrumental to better student performance in other courses, the teacher of Legal Method is worried all the way by a time schedule which has to be fixed in relation to the student's rate of progress in other subjects. Undoubtedly it will occur to him that he can save time by making it clear to the class at the start that the course in Legal Method is concerned with the formal rather than the material validity of legal reasoning and that no attempt will be made in Legal Method to consider the extent to which judicial decisions are explainable or predictable in terms of non-doctrinal considerations.

My limiting formula, the first time I taught Legal Method, was that my approach would be the same as that of a professor of surgery, who restricts himself to operating techniques and does not attempt to teach the class how to determine whether the man on the operating table is a useful citizen or a scoundrel whom the world would be better rid of. The falsity of this analogy is apparent. If the surgeon's technique is skillful, the patient's moral shortcomings will not affect the success of the operation. But the best legal technique will not save a case if the deciding court is convinced that the case lacks substantial merit. The method of the common law demands the effective use both of doctrinal arguments and of those non-doctrinal arguments which we call appeals to justice or policy. The realities of professional technique require that it be made clear even to beginning students that precedents rarely impose so tight a rein on the discretion of judges that they are forced to decide cases unjustly.

IV

Chapter VI of the Dowling, Patterson, and Powell casebook is given to cases and notes on the interpretation of statutes. Chapter VII introduces beginning students to selected problems in the coordination of judge-made and statute law. At many law schools as much as one-half of the classroom time assigned to Legal Method is given to coverage of these two statute-law chapters. The probable explanation for this emphasis is that other first-semester courses are usually taught almost entirely as case-law subjects, and Legal Method is looked upon as the only course in which first-semester, first-year law students are given systematic instruction in the use of statutes. The strong legislative

weighting of Legal Method as actually offered throughout the country would appear to justify the following rather lengthy statement of certain of the principal teaching problems involved in introducing students to professional method in the use of statute law.

By far the hardest point to get across to beginning law students is a decent respect for the language of statutes. After even a few weeks of case-law analysis and synthesis, a first-year law student has discovered that the principle of law derived from a case or from a line of cases can be stated in several different forms of language, each of which constitutes an accurate statement. But a statutory rule of law is cast in an exclusive textual form.⁷ The beginning law student finds it extremely difficult, as for that matter do many members of the profession, to work comfortably with a legal principle of which there is only one authorized version. Inevitably the beginner wants to handle statutes with the same freedom of paraphrase which he has found permissible in the statement of case-law principles.

My experience with three different Legal Method classes is that it takes three or four full class hours to convince first-session students that the issue in a case of statutory interpretation must be so stated as to include an exact quotation of the precise term of the statute with respect to which the question of statutory applicability arises. The beginning law student shies away from this discipline as a colt from the saddle, and he resists professorial insistence that issues of statutory interpretation be stated with textual precision more stubbornly than he fights against anything else in the course.

The teaching problem here outlined is a familiar one to every law teacher who has undertaken to introduce law students to the use of statutory materials. Assume, for example, that the instructor has called for a statement of the issue in the familiar case of *McBoyle v. United States*.⁸ Inevitably the student to whom the question is addressed will give an answer approximating: "The issue in this case is whether the interstate transportation of a stolen airplane is to be considered a federal offense under the National Motor Vehicle Theft Act of 1919." I have discussed the *McBoyle* case with five different sets of first-year law students, and I have yet to encounter a student able to reply, without a refresher glance at his casebook, that the precise statutory term before the

⁷ "Case law is made up of the propositions of law which acquire authoritative status because they are inferred from judicial or administrative precedents . . . ; the propositions of law thus derived are not reduced to an official exclusive textual form. Legislation, on the other hand, is reduced to an official exclusive textual form." DOWLING, PATTERSON, AND POWELL, MATERIALS FOR LEGAL METHOD 15 (1946).

⁸ 283 U.S. 25, 51 Sup.Ct. 340, 75 L.Ed. 816 (1931); DOWLING, PATTERSON, AND POWELL, MATERIALS FOR LEGAL METHOD 284 (1946).

Supreme Court for interpretation was the term "motor vehicle," which the Act itself further defined as including "an automobile, automobile truck . . . or any other self-propelled vehicle not designed for running on rails." Without this focusing of the issue on the crucial term of the statute itself, the student, of course, misses the entire point of the controversy.

First-year law students see legal issues and concepts in extremes of black and white. If a beginning student has read a case or two, or a law review article, indicating that courts in appropriate cases can usually find ways to go behind or beyond the supposed "plain meaning" of a statute, he is impelled at once to the conclusion that the words of a statute are of no consequence whatever. The only device that will provide reasonable insurance against general student adoption of this uncritical attitude is to spend the first two or three hours of class discussion of this part of Legal Method on hypothetical cases to be analyzed and discussed solely on the basis of the words of a given statute. Next fall I am going to go so far as to tell the members of the class that they are not even to look at any judicial decisions interpreting statutes until they have learned that the first indispensable step in the analysis of a statutory problem is the reading and rereading of the text of the statute itself.⁹ Unless this simple but fundamental lesson is hammered home, the student is left unequipped to perform workmanlike statutory analysis and wholly unable to appreciate the niceties of legislative drafting.

Once the beginner has learned to state an issue of statutory interpretation in a form which takes sufficient account of the precise term of the statute with respect to which the issue of interpretation arises, he is qualified to proceed to analysis of judicial theory and judicial practice in the resolution of statutory doubts. There will be no disagreement, I think, as to the fundamental point we want the beginning law student to grasp and retain. This basic point is that the traditional formula that courts are bound to apply the "intention of the legislature" means simply in most cases that the court should decide doubtful questions of statutory applicability in such a way as will best contribute to the attainment of the objectives which the legislature sought to accomplish by the enactment of the statute.

Here again we meet the problem of uncritical student extremism. How can a collective body have an intelligible "intention"? Even if a

⁹ I suppose I had better say that I still adhere to the views on statutory interpretation I expressed in *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes*, 25 WASH. U.L.Q. 2 (1939), and *Statutory Doubts and Legislative Intention*, 40 COL.L.REV. 957 (1940). But I wish my students would not read the *Plain Meaning* article during the first week of Legal Method class discussion of statutory construction.

collective "intention" is possible, how can there be anything like a legislative will with respect to issues of interpretation which no member of the legislature ever thought of when the statute was passed? When such questions arise for discussion, beginning students are inclined to move to the easy conclusion that all judicial doctrines of statutory construction are hocus-pocus and that the wise judge should simply resolve statutory ambiguities in the manner which best suits his, the judge's, personal views as to justice and expediency.

The best teaching materials for use in communicating to law students an awareness that the purposive interpretation of statutes means interpretation in the light of the judgments and values which were compelling to the enacting legislators, and not in the light of the judge's own personal preferences, are the cases in which courts have given great weight to committee reports and other legislative sources in the construction of acts of Congress. At first glance the statutory-interpretation chapter of the Legal Method casebook seems overloaded with these so-called "extrinsic aid" cases,¹⁰ since the technique involved is not applicable in the interpretation of state statutes, where extrinsic aids are practically never available. But no other cases can be used as effectively to help beginning law students acquire a realistic understanding of the appropriate responsibilities of legislatures and courts in the development and application of the statute law. Other Legal Method teachers with whom I have discussed the matter agree that the emphasis on extrinsic-aids cases is a sound one in a first course on statutes and that the statutory-interpretation chapter of the casebook is stimulating and teachable.

One serious handicap in Legal Method class discussions of statutory interpretation is that many beginning law students have no knowledge whatever of federal and state legislative organization and only the haziest notions concerning the essential characteristics of the modern legislative process. Issues involving the weight to be given to a Senate committee report in the interpretation of a federal statute can hardly be grasped realistically by a student who has no idea of the extent to which Congressional government operates through the committee system. A poll of beginning law students at any law school would reveal a general student idea of Congress as a disorderly debating society in which little attention is given to such details as the technical articulation of statutory provisions. The term "legislative committee," to the average first-year law student, calls up principally headlines about the Thomas Committee, and few students have any idea of the expertness which an experienced standing committee of Congress brings to its consideration of the tech-

¹⁰ "Extrinsic aids" figure, or are mentioned, in nine of the seventeen cases in Chapter VI, "Interpretation of Statutes."

nical phases of bills referred to it for judgment and development. In my own Legal Method classes, I have found it necessary to preface class discussions of statutory-interpretation problems with painfully elementary comments on legislative organization and functioning, particularly with respect to the committee system and the role of the executive in the formulation and sponsoring of legislative proposals.¹¹

V

How should the course in Legal Method be fitted into the first-semester, first-year time schedule? At Columbia the work in Legal Method is concentrated in the first part of the semester by having the class meet five times a week for five weeks, three times weekly for the next four weeks, and once a week for the last five weeks. Theoretically, this arrangement is subject to the criticism that an introductory course in the essential skills of law study should be offered and completed before the entering student begins any other class work at all. But there are not many law teachers whose energies and imaginations are sufficient to enable them to carry so concentrated a load. I know that I could not meet any class, beginners or graduates, fifteen hours a week for three weeks without completely deadening student interest. The device of adding variety to a steady diet of Legal Method by dividing the course among three or four members of the faculty seems undesirable in an introductory subject in which careful organization and systematic references back to materials already covered are necessary to the student's progress.

The more important practical justification for some such compromise schedule arrangement as exists at Columbia is that the value of a course in Legal Method is not as clear to the first-semester law student as it will be to him later. Even the best of our recruits come to law school fired with eagerness to learn "the law" and skeptical towards a course which does not pretend to communicate knowledge of any body of legal doctrine. The beginning law student's frame of mind is about that of an apprentice carpenter, eager to get going on the building of things and impatient with attempts to give him systematic grounding in the use of his tools. His attitude changes very quickly after he has skinned his knuckles and blackened his thumbnail a time or two. There is much keener student awareness of the need and function of Legal Method after disastrous experience in other courses has shown the beginners how

¹¹ The best reference for outside reading by law students beginning the study of statutory interpretation is JOSEPH P. CHAMBERLAIN, *LEGISLATIVE PROCESSES: NATIONAL AND STATE* (1936), particularly the description of the work of committees in Chapter VI. And Legal Method students can usefully be referred to the sprightly, words-and-pictures account of how a bill becomes a law in GEORGE H. E. SMITH AND FLOYD M. RIDDICK, *CONGRESS IN ACTION* (1948).

much they have to learn about the tools of legal analysis before they can do anything constructive with a nice problem in Contracts, Torts, or Civil Procedure. It should be added that the materials on the formal logical analysis of judicial precedents in Chapter IX of the Dowling, Patterson, and Powell casebook can be presented far more effectively as providing a critical apparatus to be brought to bear on the work of an entire law school semester than if they were covered at the end of the student's third law school week.

Questions as to when Legal Method is to be taught are trivial when compared with questions as to how it is to be taught. My own views as to the preferable classroom approach are controlled by my conceptions of the functions which the course fulfills in the first-semester law school program: the creation of some understanding of the assumptions and objectives of the case method, and the communication to beginning students of a respectful awareness of the discipline and skills which a lawyer must bring to his use of case and statute law. The development of the student's own artistry in the use of the techniques of the profession can be accomplished only through the repeated and disciplined experience in case analysis and synthesis, and in the use of statutes, which he will secure in his other courses.

The accomplishment of this limited but difficult objective requires the taking of pains more than it requires the flash of genius. The hidden-ball trick and the fake reverse are not for the teacher of Legal Method; he is there to clarify and explain. Legal Method sets the stage for the more sophisticated performances of the other law school courses. If this is objected to as the acceptance of too lowly an office, we have always George Herbert's assurance:

Who sweeps a room, as for Thy laws
Makes that and th' action fine.