The Case Method of Legal Education
The First One-Hundred Years

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American legal education is known for having developed its own peculiar system of instruction, the case method. The constantly growing number of European visitors to the United States has observed it in action. But yet it seems that in European circles of legal education it is not fully known what the case method really is. It even appears frequently to be misunderstood and misjudged. That is no wonder indeed. As practiced in American law schools, the case method is no uniform phenomenon. The term covers a great variety of ways of legal instruction. With some exaggeration one might even say that there are as many case methods as there are instructors in American law schools, and their number approximates two thousand.

At the time of its first application in 1870, the case method was a clearly circumscribed matter. Today, one-hundred and three years later, it no longer is. What has happened to the case method during this century; what was it in the beginning, what is it today?

*This paper was presented by Max Rheinstein, Max Pam Professor Emeritus of Comparative Law, on October 12, 1973 at the International Seminar on Legal Education (Seminario sull’ Educazione Giuridica), convened at the University of Perugia by the Italian National Council on Research (Consiglio Nazionale delle Ricerche).
aiming at turning them into Christian gentlemen ready to prepare themselves for life in business or a profession and likely to interest themselves in public affairs. As in England some contact with the law was regarded as a desirable part of such a general education, and so chairs of law were established at several of the American colleges, the number of which was rapidly increasing. Attendance at the courses of law professors was natural for students who intended upon graduation to be apprentice lawyers. But colleges were not the only places where preparation to, or supplementation of, the practical training was available. Some attorneys found it stimulating and also profitable to collect apprentices around them and to guide them in their “reading” in class-like organized groups for discussion and lecturing.

In both kinds of law courses, those of the college and those of the non-academic law schools, the methods of instruction were similar. From one class hour to the next the students were assigned chapters from Blackstone, Kent or those books which came to be written by the college professors of law. A professor’s lectures would supplement, or serve as a substitute of, a book. Then the students had to “recite,” sometimes literally, what they had read or heard. Their understanding was tested by their being “quizzed” and then clarified and deepened by discussion. A touch of practice was introduced through exercises in written pleadings, in the elaboration of problems and through moot courts.

In the principal, i.e. the theoretical part of this kind of instruction, the law was presented “dogmatically.” Procedure, characteristically called “practice,” was regarded as not being teachable. It was to be learned by and in practice. Knowledge of the constitution was expected of every citizen. Administrative law had not yet been invented. Criminal law was too simple to require treatment. Law courses were more or less limited to private law and within it statutes were regarded as mere patches on the body of the Common Law; and the Common Law was a body of rules and principles that were not too numerous, that could be articulated in clear terms and arranged in a systematic order. Lectures and treatises based upon such a conception were hardly different from those of the contemporary law faculties of the European continent. Legal learning was book learning and the books were systematic treatises.

Doubts about that notion arose in the mind of the young man who was called in 1869 to rejuvenate the Harvard Law School, which, like the other parts of Harvard College, had fallen into a rut. New ideas were astir. Science, i.e. natural science, had become prominent. Science means observation of nature, experiment. Study from books was no longer sufficient. If they were to be sciences, the other fields of learning had also to go back to the original sources. If law were to be a science, it had to go back to its sources. And what are the sources of the Common Law as it had grown up in England and been transplanted to America? What else than the cases judicially determined? For the lawyer who wished to be a scientist, it was thus necessary to go to the cases, read them, study them and from them directly derive the rules and principles of the Common Law. From such study they would emerge in their pure form rather than in the distorted shape in which they would so often appear in the subjective and all too frequently contradictory treatises of secondary writers. The principles seen pure and true would be clear and not numerous and would by themselves constitute a perspicacious system in which rules of detail would reveal themselves as simple applications of general principles of a higher order. Besides, if one studied the law from the cases, he would necessarily become aware of the Common Law as a phenomenon unfolding itself in the course of history.

Such was the thought of Christopher Columbus Langdell, the Harvard graduate and young New York lawyer who in 1869 was called to Harvard and in the year following was made dean of the law department. The man by whom Langdell was brought to Harvard and who as President transformed the old college into one of the world’s leading universities, was Charles W. Eliot, by training a scientist, a scholar in chemistry.

For use in his own course on the law of contracts Langdell prepared a collection of cases of fairly large size, carefully chosen to present the rules and principles of the field in their historical development. Just as the chemist would formulate the principles of his science on the basis of the experiments, so Langdell’s students were expected by their own study of the cases to discover the underlying rules and principles. In this endeavor they were to be guided by the instructor who, through asking questions, would stimulate discussion with him and
among the students. The true rules of the Common Law would then become apprehensible. As an additional guide Langdell included in his first case book an appendix containing a systematical arrangement of the concisely formulated principles as they appeared to him. But this appendix was not to be "the book," not to be the subject of the students' study. It was to do no more than supplement the collection of the true sources, i.e., the cases. Appendices of that kind were soon dropped in the case-books of Langdell and of his followers.

The number of immediate followers was small. Langdell's innovation not only met with scorn and resistance among his fellow law teachers, it was also disliked so much by his students that of the members of his first class only seven endured the ordeal to the end.

Among these seven holdouts was the man to whom the case method owes its breakthrough, James Barr Ames. Langdell was a scholar, but teaching was not his strong side. Ames was both, a scholar and an inspiring teacher. When he accepted Langdell's method of instruction, the students accepted it with an enthusiasm that infected more and more members of the faculty.

Among the students who were exposed to the new method was the one who perhaps more than any other helped to carry the case method beyond the circle of the law faculty of Harvard. From 1875 to 1878 William Albert Keener had been a student at the Harvard Law School. In 1890 he was appointed to a new chair at Columbia University, an institution which was ripe for rejuvenating reforms as Harvard had been twenty years earlier. Made dean by Columbia's new reform President, Seth Low, Keener brought to the place a number of young law teachers who were eager to apply the Harvard method of teaching law through cases. The most enthusiastic among these was Keener himself, who applied it not only in his own courses but incessantly worked as its eloquent advocate in extensive writing. In his own teaching Keener turned out to be master of the Socratic method. In his writing he directed attention to the pedagogical merits of the case method. Rules and principles inductively discovered by the students through their own efforts meant more to them than ready made formulas memorized from texts. But, beyond and above all, the method was more than a device to familiarize students with the law's rules and principles. It was a superb device to teach them the peculiar ways of legal thinking. It induced them first of all to pay careful attention to the facts of each case, to separate the legally relevant from the irrelevant. It compelled them to follow and scrutinize the lines of argument of the parties litigant as well as that of the court. These lines of argument have to be analyzed and criticized. In the court's opinion the holding has to be separated from the dicta. In connection with earlier and later cases one is then carried to the very heart of the art of the Common Law, that of evaluating the significance of a case as a precedent and to estimate its scope. The case method, Keener never tired to pronounce, plunges the law student into that very mental activity which is the distinguishing mark of the lawyer. Under the guidance of a master the young lawyer is given continuous exercise; it makes him think like a lawyer and, if the teacher is a master, it is apt to turn the student not only into a good but a superior lawyer.

It was this aspect of the case method, as the superb method in the art of legal thinking, to which it owes its practically universal adoption in American legal education.

Like their predecessors, Langdell and Ames had tried to teach the law, i.e., the contents of the legal order as expressed in a comprehensible system of articulated rules and principles. That aim may have been achievable in those days. But more and more did it appear that in the United States this aim was no longer attainable. Through legislation and through the often diverging practice of the courts of the several states of which the nation, the United States, is composed, American law tended increasingly to develop differently from state to state. Which state's law should be the subject of instruction? None of the leading law schools wished to be provincial. Students as well as teachers were attracted from all parts of the vast country. Harvard had no intention to teach just the law of Massachusetts, or Yale that of Connecticut, or Chicago that of Illinois. The "national" law schools were to teach American law. But what is American law? It is a set of common principles and traditions and, above all, a common way of thinking, of arguing, trying and handling cases in court and out of it. The essential feature common to the law of all states of the United States is the Common Law and the Common Law is basically a common method of thinking.
If the law schools in the United States wished to avoid provincialism, they had to concentrate on the modes of Common Law thinking, and the most effective way of training in this method is the case method. Pedagogic concentration on legal method became necessary for an additional reason. Around 1850 American law was, perhaps, still comparatively simple. With the growth of the United States into an industrial colossus, the legal matter became complicated and by the federal structure of the nation complexity increased. Social problems hitherto given little attention required regulation through such rapidly expanding new fields of law as administrative law, labor law, tax law, trade regulation and what not. The body of American law became a vast and complicated object. No single human mind could possibly "know" it, teach it or learn it.

But was the method of training lawyers through cases, and exclusively through cases, the ideal one for the country as it developed in the 20th Century? The same circumstances which produced the rapidly increasing complexity of the American law also pushed in the direction of change, of reform. Not that the Common Law had ever been immutable. The decades following the American Revolution had been a time of pronounced dynamics. The legal system that had originated in England had to be adapted to the different geographic, economic, social, political and ideological circumstances of America. The later 19th century was a period of comparative stability. But with the profound changes that set in around the turn of the century and of which the public became increasingly aware, demands for reforms, profound social reforms indeed, become irresistible.

Law reform, one might think, is the task of the legislature. In the United States, this proposition does not entirely hold. Under the federal system, legislative power is divided between the Congress and the legislatures of now 50 states. The Congress is overly burdened and in the early part of the century its complexion was predominantly conservative. Later on it was at times so overburdened that it was incapable of moving on basic issues. Of the State legislatures many were conservative too, especially in the Southern part of the country, where reform of discriminatory race legislation was demanded with increasing fervor.

In the great majority of the states the legislature was not so organized as to enable them competently to deal with matters of private law, procedure, or commerce. Advocates of law reform had thus to think not only of the legislative process but also of the courts, which in the tradition of the Common Law had often engaged in what has for a long time been called judicial legislation. Judicial attitudes had to be considered for an additional reason. Through the exercise of their power of judicial control of the constitutionality of legislation American courts can stop legislative reforms in their tracks. In the early decades of the 20th century, the Supreme Court of the United States had in fact consistently stopped efforts of social legislation. American advocates of law reform thus had to pay close attention to the activities of the courts, they had to think not only of the judges but of the attorneys too as well as of the steadily growing number of lawyers in the public administration and, of course, of the hosts of legal advisers of business. If law was to be a device of social engineering, the legal profession in its totality had to be imbued with the reformist spirit. But it also meant that the lawyers' competency was to reach beyond the law. If lawyers were to be the reformers of society, they had to know not only the law but also society. Lawyers had to be social scientists. The social sciences had to be integrated into the law. These were the postulates of Roscoe Pound, of his companions of the school of "sociological jurisprudence" and of their more radical brethren, the "realists."

Law teachers of the younger generation eagerly embraced the new ideas. They engaged in passionate disputes about legal methodology and in their scholarly activities turned from the hitherto dominant dogmatic inquiries and systematic presentation to incisive monographic investigation of specific problems of social life, in which the exploration of the social facts was the indispensable preliminary to the fashioning of the proper legal solution. Law was no longer visualized as a set of fairly well articulated rules and principles. It now appeared as the technique of adjusting conflicts of individual or group interests in the way best conforming with the public interest of the community at large, a process in which change should be achieved without violent breaks with tradition.

The changed attitude toward law, the new view
of the role and function of the lawyer required a reorientation of legal education. The case method came under critique. What was criticized, however, were not the ideas that the end of legal education was the training in legal thinking or that such training should be achieved through guided self-study. The object of the critique was the limitation of the study material to cases judicially determined. If the lawyer was to be the expert in social engineering, if the law had to be "integrated with the social sciences" and if the science of law was then to become one of the social sciences, the materials to be studied in the course of legal education had to be widened far beyond the opinions reached by appellate courts. If carried out consistently, the new ideas would amount to no less than inclusion in the lawyers' training of at least economics and sociology, if not also of history, psychology, and philosophy, not to speak of the natural sciences. Obviously such a course of study threatened to submerge the law proper. Besides, the job staggered the imagination and was simply beyond the scope of the humanly possible. And so one asked what could be done, what ought to be done?

Amidst a welter of turbulent dispute, a scheme of sober investigation was initiated by the faculty of the Law School of Columbia University. For two years the Faculty, in full sessions or in committees, met, at times every week, to discuss the ways in which the new needs might be met. In the end the Faculty found itself split. A minority group thought that the task called for the radical transformation of the Columbia Faculty into an institution devoted entirely to research into the relations between society and law, and freed from all burdens of instruction. As the majority was reluctant to consent to such a radical break, in 1932 the minority left Columbia and was welcomed at the John Hopkins University in Baltimore, Maryland, a famous institution of learning which, however, had never so far comprised a department of law. Now it established an Institute of Legal Research that should devote itself entirely to the study of the facts of the legal life of society. The new Institute, staffed with eminent representatives of the realist and sociological wing of the legal scholars, was greeted with great expectations. But it was short-lived. After just one year its financial endowment was wiped out by the Great Depression. Its only publication was a two-volume investigation into the detailed functioning of the divorce courts of two states, Maryland and Ohio, a work that has remained a model for the flood of socio-legal investigation that was produced in later years. The members of the Institute staff were dispersed among a number of law school faculties, a fact which in the end strongly increased the influence of the school of the New Jurisprudence.

The majority of the faculty of the Columbia University Law School held on to the idea that it ought to remain an institution of training for the legal profession. From this it followed that the members had to engage in both instruction and research, that their research ought to involve the relations between society and law, and that the results of such research ought to find expression in teaching, especially in the elaboration of new books for study by the students. A whole series of courses and a whole set of books for them were indeed elaborated.

They did not constitute a radical break with tradition. Their aim still remained that of training students in the methods of legal thinking and, as a basis thereof, to convey to them that measure of information about the contents of the law that would appear to be indispensable. One also remained convinced that the students should educate themselves by their own study of original materials and that such self-study ought to be guided by socratically conducted classroom discussion. One also held on to the notion that the training in legal thinking could best be obtained through the study of opinions of appellate courts. But, and this was the innovation, cases should no longer be the only, the exclusive, material of study. The students should also be made acquainted with data about social life. They ought to be given materials from which one might observe the forces by which the law is shaped and the impact which the law has on the life of society. In particular the students' eyes ought to be opened to the social effects that have flown or that might flow from the decision one way or another of problems presented for judicial determination.

It is not easy in clear terms to state the goal. It was even more difficult, much more difficult to implement the idea. How difficult that task is and in how many different ways it can be approached, is illustrated by the books which emerged from the Columbia discussions and by those innumerable books of legal instruction which have been published since.
The number of such new books is vast. It goes into the hundreds. The aim of adapting legal education to the new approach to law and the lawyer’s role in society is being universally accepted. There may perhaps be one or another law school practicing the old case method of Langdellian style or even the pre-Langdell method of lecturing. If it exists at all, it lives in obscurity along with another method of legal education that once was more readily available, that of studying law through the letters of correspondence schools combined with apprenticeship in a law office. Today, the regular course of legal education is attendance at a law school, most of which are now parts of universities and at practically all of which the level of instruction and of creative scholarly work has been rising steadily in recent decades. American law schools still differ in quality. They can be arranged along a scale from the half dozen or so schools on the top all the way down to institutions of mediocre caliber. But at present the techniques of teaching law by “cases and other materials” is in almost universal use.

The books used in this kind of teaching are no longer entitled “Cases on the Law of so-and-so.” The new title is “Cases and Other Materials,” or, in most recent times, “Text, Cases and Other Materials.”

What are the “other materials?” A great many of them are meant to supply the law student with extra-legal information, with data on economic and social life, or practices of business and finance, on history, psychology, criminology, on the cost of litigation, on the actual working of the administration of justice in all its branches from the Supreme Court of the United States to the policeman on the beat, on the activities of administrative agencies. They are selected so as to throw light on the law in its character as a result of social forces and used as their regulator and shaper. They are of the most varied kind: statutes, excerpts from learned writing, news items, forms of commercial transactions, etc.

But the “other materials” are not all “non-legal.” The new books no longer neglect statute law. This is true not only in those fields of the law which are based on statutes such as taxation, social welfare or trade regulation, but also in those fields of law which are based on those statutes by which the traditional fields of the Common Law are being supplemented, modified and, often enough, profoundly transformed. Prototypes must of course be selected from among the variety of state statutes. The origins, background and impact of legislation is illustrated by passages from legislative debates, hearings, committee reports and other pertinent material. Where pertinent, as for instance, in administrative law or taxation, the endeavor is made to introduce the student into the mass of administrative regulations. By the growing number of American law teachers who have recognized the didactic value of comparative law, references to foreign solutions are occasionally used to stimulate thought about the American students’ own law.

Since training in legal thinking is still regarded as one of the principal aims of legal education, cases continue to fill many pages of the voluminous new books. As in the Langdellian phase, they are printed without the syllabus which in the regular sets of reports tries succinctly to formulate the legal rule or rules on which the decision is based — based, that is, on the view that was held by the reporter at the time of reporting and which may or may not be shared in later case law development. So it has remained to each student for and by himself to interpret the case and see his interpretation tested in the class room discussion. In this important respect the case method is still a mainstay in American legal education. It has proven to be by far the most effective device to turn a student into a lawyer, i.e., a person who knows how to use concepts, rules and institutions, to give close attention to facts, to use precedent or to distinguish the new case from the old, to recognize the interests at stake, to see the individual issue within the context of the public interest, in other words, to think as a lawyer.

How much of a course book should be “law,” how much “other materials”? The decision is left to the individual writer. But the space at his disposal is limited. The book ought to constitute the study material for a course of normally 40 class hours, more or less, in which the contents are to be “covered.” That means the book should comprise no more than 1,000 pages, preferably less; but an occasional book has close to 1,200 or even 1,400 pages. The law material is still indispensable; the “other materials” are theoretically without limit. But what goes into the book must be limited, strictly limited indeed, and limited to what is essential for the task of training in law and to what is understandable to
law students. A practical limit is of course given by the author's own range of knowledge. The task of selection is delicate. Early enthusiasm for the inclusion of large masses of "social" material has yielded to more sober deliberation. In successive editions of a coursebook the "social" material is likely to shrink. After all when entering law school, the students have already spent three or, more frequently, four years in college, where they can be assumed to have received a good dose of instruction in the social sciences.

In the compilation of "legal" material, selection has, of course, been necessary even while it was still limited to cases. Langdell and his early followers were inclined to include in their case books a good many decisions of ancient vintage, especially classic decisions of English courts. But as the mass of modern cases has swollen gigantically, authors find themselves compelled more and more to concentrate on modern cases by which contemporary problems, developments and methods are demonstrated. And should the case material be spread over the country at large, or should it be concentrated upon a few states that would serve as national prototypes? Should emphasis be placed on cases apt to illuminate as broad as possible an area of the substantive law, or should they primarily teach legal method? And which method: that of the practicing attorney, the trial judge, the appellate court judge, the legislator, the draftsman, the legal counselor, the administrative officer?

If the cases are to each more than legal method, if the book is to give some idea of a legal field as a whole, its problems and its institutions, the cases presented in extenso or in condensed form, must be supplemented by notes summarizing other cases, or at least by references.

Scholarly writing, which occupies a prominent place in the United States, is nowadays to be found not so much in comprehensive treatises as in monographic studies, largely contained in law reviews. Excerpts are frequently inserted in course books. But the book must also contain bibliographical references. Should they be so numerous as to be of help to the user who has graduated from law school and uses the course book as a starting point for research on a problem encountered in practice; or should they be addressed primarily to students interested in pursuing a point that has occurred to them in the course of study? The character and scope of references must vary with the purpose or purposes pursued.

An entirely new feature of the contemporary course book is constituted by text passages of the author himself. In the old-type case book, text passages were taboo. In fact, not only the author of a case book but also the teacher in the class room was expected as little as possible to reveal his ideas. Students were to form their own views and they were to derive them directly from the sources, uninfluenced by the subjective opinion that an author or teacher might have. Cases inserted in a case book are likely to deal with controversial matters. Which answer is the right one? The student ought to find it by his own wits, guided, it is true, by the instructor, but not so impressed that the teacher's view would be accepted unquestioned. No wonder then that freshmen students have been inclined to wring their hands in despair of the "confusion method."

Inducing the students to form their own views, to think autonomously for themselves, is still the aim of American legal education. But teachers and course book authors no longer scrupulously refrain from expressing views of their own. Indeed there are course books which are so conceived that they not only reveal but even propagate the author's views on issues of social policy or legal method. The books now cover by concise texts parts of the field that neither need nor lend themselves to presentation by cases. Space and time can thus be saved for topics for which study of source material is appropriate.

Analogous considerations have influenced the work of the classroom. It no longer consists entirely in the discussion of individual cases. Parts of the course book are merely assigned to the students for reading, occasionally tested by questions of the instructor, and supplemented by discussion which students may choose to initiate in class or in the professor's office. Now many a teacher even resorts to straight lecturing on those parts of a course which in his view can be presented in this way better than by time-consuming and often laborious discussion of source material.

Present day American legal education does not follow one single pattern. It never has, not even in the hey-day of the case method of the Langdellian style. Even where instruction is based entirely upon
cases, it varies depending on the case book used and, even more so, on the personality of the instructor. Under the modern approach case books greatly vary in content. In 1970, the teacher of the law of Contracts could choose among six books. There were seven on Torts, five on Conflict of Laws, six on Family Law. No two professors would use a book in the same way, but quite a few professors make up their own sets of materials, try them out in Xerox form, and elaborate them into printed books later on.

Variety is increased by the possibility of inventing new courses and regrouping material under new headings such as Trusts and Estates, Family Wealth Transactions, Urban Real Estate Transactions, Estate Planning, Transnational Law, or what not.

American law teachers are fond of experimenting with new books and with new methods of teaching, such as teaching law by assigning problems for discussion or for drafting, or by using audio-visual or programmed material.

The bulk of the curriculum is likely to continue to be presented in that method which, while still called case method, is no longer limited in its material to “cases.” But in addition to its “courses” a law school regularly employs additional devices. In seminars students usually of the third year, but occasionally also of the second, are permitted to engage in research on an almost infinite variety of topics. In a rapidly growing number of law schools the students are given an opportunity to meet practical problems by engaging in guided and supervised work of legal aid for indigent people. There are the moot courts and there is that unique American institution, the law review. Edited by students, these periodicals are the organ of publication of the bulk of the learned work done by the legal scholars of the country. Law review work is the privilege of the top students of a law school. Available to all is the constant accessibility of the professors. Each of them spends his whole working day in his office at the law school building. The door is open, literally, and every student can walk in at any time. On the wall of the Faculty Lounge at the Law School of the University of Chicago, we have framed the picture of a professor and a student talking to each other, together with the citation from that American classic, The Education of Henry Adams: “The only privilege a student had that was worth his claiming, was that of talking to the professor, and the professor was bound to encourage it.”

The number of students is rarely so large that personal contacts between professors and students could not develop. The ratio between professors and students tends to be around 1:16.5. At the University of Chicago Law School we take, for instance, no more than 100 students a year. The total student body is around 450, the number of professors 26.

An American law school is a lively place. It is also a place of hard and intensive work for both professors and students. The “case method” requires preparation for each class hour and reviewing work to digest, tie together and systematize the discussion of the classroom. We usually figure that each class hour requires about three hours of work outside. The normal load of instruction for the student is 15 hours a week, so his weekly work load amounts to 60 hours more or less.

The case method, both old and new, has been criticized. The Socratic discussion is difficult in classroom application. It is more difficult than lecturing. It requires careful and ever renewed preparation by the instructor. In the hands of an inept instructor it can be exceedingly dull, and being inept in the manipulation of the discussion method is more frequent than in lecturing. If, and it still is by no means rare today, instruction concentrates on the analysis of cases, students are being bored by the monotony and repetitiveness.

The method is time-consuming. The incisive analysis of one single case can require two or even more class hours. How can one thus “cover” a whole field of the law in, normally, forty class hours? The answer is: the aim of instruction is not that of presenting any field of the law, but to teach the method of legal thinking. But even the most acute legal thinker cannot do without some modicum of the contents of the law. If he is to understand the meaning of policy, he must know the problem, and that cannot be achieved without presentation of fairly comprehensive segments of the socio-legal order. But comprehensive survey is not easy to combine with the incisive discussion of particular problems, especially when one tries to combine analysis of policy with that of judicial or advocational method. So the method is being blamed for failing to give the students a systematic comprehension of the legal
system as a whole or even of any one of its branches. It is blamed for teaching the students the details of the trees without acquainting them with the layout of the forest.

The case method is also apt to give students a distorted view of the law. The cases up for discussion tend all to be taken from the published reports of courts of last resort. But how many disputes reach these courts? By far the largest proportion of disputes are never brought before the courts at all. They are resolved by negotiation, mediation or arbitration. Of the cases brought before a court, the great majority is terminated by dismissal or settlement. In the trial court disputes more frequently are about points of fact than questions of law. Resort to a higher court must be based upon an alleged misapplication of the law. Appellate proceedings are time-consuming and expensive. So the proportion of cases that reach a court of last resort is minimal, and out of this number of cases the author of the case book is likely to have picked the most troublesome, those in which the law has been uncertain and perhaps also remains uncertain. Students principally exposed to such material can easily obtain the impression that everything in the law is uncertain, that there is nothing to hold on to.

All these critiques are true, true that is up to a point. The method can be dull, a waste of time, insufficient or misleading, if it is applied by an inept instructor, and the method is hard to apply, harder than the lecture method or the recitation method. The instructor's preparation must be comprehensive and perpetually renewed. Above all, the instructor must be a teacher. Ideally he ought to be inspiring. In any event he must be firm but patient, lucid but not oversimplifying; he must have the gifts of pedagogy; and who has them all?

In spite of its difficulties, the method of Socratic discussion is working well in the law schools of the United States. It is criticized often and at times bitterly by students, professors, and members of the legal profession. But nobody has so far invented any method that would promise to be more effective. By their fruits ye shall know them. And the fruits, the graduates of at least the "better" of the American law schools, have proved their mettle as practitioners, as administrators and as policy makers.

However, one fact remains undeniable. The discussion method is expensive. If the method is to function, it is necessary that the law school have an adequate building with classrooms, seminar rooms, offices for the professors, lounges for recreation and socialization. If each professor is to be not only a teacher but also a scholar, he must have adequate secretarial help. Finally, both professors and students must have a library, and even if the library is not to contain a full collection of American law, it must have a minimum of some 30,000 volumes. If, as the major law schools do, the library is to cover England and the other Common Law countries, it must contain some 20,000 volumes more. And if it is comprehensively to cover only the other leading legal systems of the world, the number of volumes must surpass the 100,000 mark. The larger the collection, the larger, of course, must be the library staff.

An American law school is expensive. Consequently, tuition tends to be high and funds for scholarships must be solicited continuously. Fortunately, as well situated members of the legal profession, the alumni are feeling a continuing affection for their old school which finds expression in generous giving.

In order to evaluate the American method of legal education it must be seen at work and in the full context of American life. I have tried to present some ideas of what the so-called case method is and how it developed as the way of preparing young people for the manifold functions of the legal profession of the United States. The American way of legal education may well contain features which might be suggestive for the legal educators of other parts of the world.

[At the end of the third day of the meeting, Professor Rheinstein was requested to make the concluding comment. He responded with the following remarks.]

I hope you do not expect me to present a summary of the extensive and searching discussions which we have had these three long working days. It would go beyond my capacity and probably beyond the capacity of anyone to summarize all this within the few minutes which we still have at our disposal. So, what I am proposing to do is to state a few of my personal impressions, ideas which happened to come to me as I sat here and listened to the reports and to the questions, answers and discussions. The first statement I should like to make is that the discussions have been of an extraor-
ordinarily high standard. The enterprise is officially called a seminar, but I think a better name would be super-seminar. We have been privileged to listen to the expositions of leading experts, of scholars and legal educators who have given profound thought to the problems of legal education, and they have thought of it and spoken to us about it not in isolation but, and this has been the special feature of this super-seminar, they have placed legal education into context, into the context of the theories which we have about law in general: What is law? Is law a system? Is law an art? Or a technique? Education has been placed in the context of analytical jurisprudence and philosophy. Legal education has also been placed in our discussions within the context of educational systems in general. Thus we have seen—perhaps this might have been obvious from the beginning, but the obvious needs every now and then to be restated—that if the educational systems are different from country to country, obviously the systems of legal education cannot be the same. Legal education has been placed in the context of the structure of society and the process of the present transformation of society, the transformation of our society in technical aspects—industrialization, the expanding of the world, the inclusion of regions which until fairly recently have been regarded as far away, perhaps as exotic. We now see the world as a whole with all its tensions, with all the changes of its needs, its policies and ideologies. This, I think, is the most essential feature of any attempt to deal with legal education. It has also become obvious at these discussions—again I speak of something which should have been obvious all along, but which apparently is not, certainly not to all participants—that reform of legal education cannot mean a complete break. It cannot mean the reception in one part of the world of an educational system developed in another. But we can and must expect in all parts of the world the adaptation of their systems of legal education to the changed circumstances of their societies. That means, first of all, legal education must be adapted to the changed ideologies. It has been stated here repeatedly, at the very outset and time and again, that the bourgeois age, the bourgeois society of the 19th century and the early 20th century, is giving way to the welfare state, or the service state, as one may call it. It is one of the peculiar features of this transformation that services are expected of the state which it has never rendered before, but also—and perhaps this has not been fully emphasized here—the inclusion of the masses into the shaping of the state and of society. It was certainly one of the distinctive features of older times that that part of a society which counted was rather small. For a long time it was more or less limited to the aristocracy. Then we had a broadening by the coming of the bourgeoisie in all its variants. Now the masses are streaming into the fabric of society; they state their demands and they take an active part in the affairs of the state. With this we have complexities and complications, and so arises the need for adaptation. Now what does that mean for legal education? In the first line it requires its adaptation to the change of the ideology from the bourgeois society to that of the "new" society. What that new society will be, or even what it is at the present time, we have only vague notions. We have all kinds of tendencies, radical and reactionary and in between, but they all have in common a feeling that something must be done, that adaptation must be made. So probably the greatest need for legal education is the influx into the system of individuals who are imbued with the new spirit, which, as far as the law is affected, calls itself the New Jurisprudence. This process cannot be brought about by artificial or organizing means. It has to come by itself. It will come by itself—it is already coming by itself. We see a change of spirit in the law faculties and law schools of all the countries of which we have heard here. This is essential. There is a change of spirit, a new approach, a new ideology which, I repeat, should not bring a break with the past but rather an adaptation in which traditions are maintained. The new ideology requires practical implementation. Out of the mass of practical devices I wish to pick out only two. One is the expansion of the subject matter of legal education. We can no longer stick to what has been called the law. We shall have to look beyond the law into the field of social sciences. But that does not mean that a lawyer is to be turned into a social scientist. It cannot be done. It is difficult enough to learn to be a good lawyer, and if we try to do too much we shall achieve nothing. But what we can achieve, what we must try to achieve with all available means, is the opening of the mind, the sensitization of the lawyer, the opening to the world, the awareness that the law does not operate in a vacuum, that it cannot be
studied as a self-sufficient entity.

But there are practical limits. If we are to deal with the economic, political, religious, philosophical and sociological aspects of the law, we have to sacrifice in the curriculum some of the attention which we have traditionally given to certain fields of the law. We shall have to limit the time that has so far been given to private law. That means that we shall pay a little less attention to the legal “System” which has been mentioned here so often, but which primarily has been a system of private law. But we must deal with such matters as taxation, monopoly regulation and social welfare legislation, and if we deal with them as they ought to be dealt with, something else has to be sacrificed. That is one aspect—the expansion of the subject matter with a corresponding limitation of certain other traditional subjects which have long been the favorites of legal education.

The other practical implication is that we have to intensify legal training. Perhaps the model of intensive legal training is that which we have developed in the United States and which has been presented here so persuasively by my colleague John Merryman. But the intensive training which he has described is not the training which all American lawyers receive. Mr. Merryman used the term “meritocracy” for this American legal education. It is, but American legal education is simultaneously democratic too. That means that almost anybody who has gone through college—and everybody who has a high school certificate can get into some college—can also get into some law school. We have in the United States about 250 law schools. There is a top group which consists of not quite a dozen. Below it you have a whole scale all the way down to law schools which are, to put it mildly, not very good. The very poor ones are not numerous. The general level has been rising continuously and most of the law schools are quite good. But a good many of the law schools at the lower end of the scale are night schools, where neither the students nor the professors are full time. Certainly not all of the schools which do not belong to the top group can give such an intensive training as the top schools give, and certainly not all of those who pass the bar examination are so beautifully trained to be social engineers, policy makers or leaders of society.

Here I touch on what I regard as one of the most troublesome problems with which European legal educators have to cope. Those American law schools which aim at the intensive and comprehensive training of policy makers can pick their students, and they pick them with care. They pick them out from a vast pool and they refuse to take the less well qualified students. You in Europe have to take everyone who has graduated from the gymnasium or the liceo. In addition, you have the problem that the law faculties have traditionally been the place for the young man or woman who has no other interests in anything in particular. He who has no great interest in anything is inclined to take refuge in the law. After all, the law degree opens many doors and is regarded as not too difficult to obtain. Consequently, you have vast masses of students faced by a very small number of professors. Here I see one of the really tough problems of European legal education reform, the problem of how to separate the sheep from the goats. Can you find ways to develop a two-track system, one track for the mass and another for the elite? One might think of a number of special schools for the particularly well gifted. Perhaps the most outstanding illustration of this type is Japan with its Legal Training Institute which takes about 250 or 300 out of the several thousands who every year graduate from Japanese law schools. Only those 250 or 300 can enter the legal profession. Obviously this Japanese system is too rigorous for Europe. It would not be politically feasible. But selection and diversification might be brought about in an informal way, simply through individual members of law faculties. It just so happens that in every law faculty you have some men who are excellent teachers and who have a great appeal to large numbers of students. But there are others whose minds and whose demands are so rigorous that the students, at least the mass of the students, stay away. From my own university days I remember that the law faculty had about three or four men who were extremely exacting, extremely rigorous. They were the teachers of a group of people who have had remarkable careers and have achieved positions of leadership. This informal way of long standing should be kept in mind in all planning of legal education. It would not require a great reform. It would simply continue something which has always been there, and always will be there.

Let me add one last word about a feature of
American legal education that appears not to be fully understood abroad. The method of American legal education is frequently called the case method. It has been repeatedly emphasized here that that term is misleading. Perhaps at one time law teaching in America was done exclusively by the use of cases. That time has long been past. Our materials for legal education are varied. Of course, we use cases, considerable numbers of them, but the cases are not necessarily the mainstay. We present the students with a lot of material which they are supposed to read and study. The materials may be statutes or legislative debates, discussions or reports. They may be discussions of bar associations, inquiries by psychologists or economists or sociologists, or they may be statistics, or even poetry or fiction. We use all and every means; we also use lecturing and perhaps every one of the several thousand law teachers in American law schools may have his own method. But there is one feature which is common to all American legal education, and which ought to be emphasized. It is not the use of cases. The distinctive feature is self-study. Our system is not so much a system of legal education, as it is a system of legal study. We expect our students to study law from materials which we hand to them and which we expect them to read critically. We thus rely on self-study, which, of course, we stimulate, and which we try to guide by classroom discussion to be carried on among students or with the instructor; and we supplement it with such teaching devices as moot court, law review, or legal aid clinic. But the distinctive feature of American legal education is the reliance on the student's own efforts. The subject matter is not given to the student by the professor. No, he has to get it himself, with the aid and under the guidance of a professor. This feature of American legal education is transferable. It could well be tried outside of the United States.