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Education for Legal Craftsmanship

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Much has been said in recent years, and much will certainly be said in this Symposium, about the necessity of integrating the law with the social sciences, and many plans have been advocated or actually developed for the achievement of such integration in law school curricula. Many have also been in recent years the analyses of the judicial process, far-reaching insights have been achieved into the workings of the judicial mind, and deeply have these insights affected law school methods and attitudes. The irrational elements of the judicial process have been laid open and investigated with zeal and gusto, and the “discovery” was made that not all decisional activity can be reduced to the simple application of the logical syllogism, that rules of law are problematical in their scope, formulation and significance. Many have been the gains, practical and theoretical, derived from this New Jurisprudence, and new possibilities and responsibilities have been opened for all branches of the legal profession. Great have been the achievements and greater still are the prospects.

Yet, a word of warning seems to be called for at the present juncture. The new jurisprudence is a reaction against what has been called conceptual jurisprudence, a method of manipulating seemingly self-contented rules of law and concepts contained therein without conscious regard to the social background from which those rules arose and to the social consequences in which their application results.

The reaction against the positivism and conceptualism of a past age of contentment was called for in our age of unrest and transition, and that much emotion entered the fight against what came to be regarded as obsolete or reactionary modes of thought was not to be wondered at. Nor was it strange that in the process of reaction the pendulum now seems to swing to as far an extreme on the new side as it had previously gone on the old. In the enthusiasm of discovery of the irrational we are in danger of underestimating the rational elements of legal mental activity, to forget that rules of law, once

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1 Perhaps, one should say; with the other social sciences.


3 See the magnificent appreciation of the new jurisprudence, its tasks and possibilities, in the recent article by A. M. Pekelis, *The Case for a Jurisprudence of Welfare* (1944), 11 Soc. Research, 312-53.
overestimated in their importance, exist as contents of our minds and as such influence our activities as judges, lawyers, and citizens; and with our insight that the lawyer must know life it almost seems as if we were sometimes forgetting that he must also know the law. To put it briefly: there is some danger that we have come to underestimate the element of craftsmanship in the lawyer's activities, and to neglect its development in his training.

By craftsmanship I mean familiarity with the material of the craft, and ability to use its tools. The material of the lawyer's craft consists of the rules and principles of law; his tools are thought and language. Knowledge of the law and skill to use the tools must be developed in legal education. They do not suffice to make one a great, or even a good, lawyer. There must also be knowledge of life, insight into its problems, and, in addition, that imponderable something, which distinguishes in every craft the master from the mere technician. But a man may have all the knowledge of economics, ethics, politics, psychology, and what not; he may even have vision or genius; without knowing the material of the craft and without expert skill in handling its tools, he is a bungler, and a dangerous one, too.

However much aware we may be today of the limited scope and importance of legal rules and principles, we ought not to deny that they exist as contents of the mind, and that they play a significant role in social life. It has been one of the results of the almost universal adoption of the case method in American legal education that the eyes of teachers and students and, consequently, of scholars and reformers, have become focussed upon the abnormal case, the case which has reached a supreme court because it happened to turn around a point as to which no rule of law has been developed in statute, precedent, or doctrine which would guide decision with sufficient clarity. We are prone to forget that these cases are rare. The percentage of cases reaching a supreme court at all is minute, and of those which find their way into case books is still smaller. The bulk of law suits is litigated in the trial courts and turns about questions of fact or is provoked by such contingencies of life as a debtor's inability or unwillingness to pay, by an individual's death giving rise to routine procedure in a probate court, by the insolvency of a corporation, or by the necessity of appointing a guardian for a minor or an incompetent and to keep track of his accounts. The majority of legal problems does not even reach the trial, probate, or insolvency courts. They arise in controversies which are quietly disposed of in lawyers' or business men's offices, or in negotiations concerning business or family matters, in the preparation of transactions and instruments such as wills, by-laws, insurance policies, deeds, contracts, etc. In the over-
whelming number of such affairs the rules of law are so clear and
well-settled that the layman does not even think of calling in a lawyer.
In those, still numerous, affairs where lawyers are called in as coun-
sellors, draftsmen, negotiators, or mediators, again the law is clear
in most of the cases. Even where controversy arises, it turns upon
question of fact more frequently than upon questions of law. Rare,
indeed, is the case where the law is uncertain and in need of definition
or re-definition by an appellate court. Yet, these are the only cases
which appear in case books and, consequently, in law school discus-
sion. Of necessity, there arises a distorted picture of the role and sig-
nificance of legal rules.

The tendency to underestimate the elements of certainty and the
role of well-defined and stable rules of law is increased in the United
States by the prominence given to constitutional cases in the public
mind as well as among lawyers. These cases are abnormal in several
respects.

Nowhere but in the United States are courts so extensively used as
the guardians of the constitution. Numerous questions brought before
American courts would not be regarded as justiciable anywhere else
in the world. In the United States courts are compelled to apply the
paraphernalia and outward techniques of the judicial process to the
decision of problems of high politics, i. e., questions as to which there
is lacking that consensus of public opinion which has become crystal-
lized in a more or less generally accepted rule of law. Controversies
involving the constitutionality of a statute, for instance, are last ditch
defenses of a political position whose defeat in the legislature is not
yet accepted as final. In cases dealing with due process and similar
constitutional devices courts find themselves compelled to define which
one of several still competing political value judgments is "fairer" and
"more reasonable," i. e., more in accord with the sentiments of
that political group which the judges regard as more representative
of public opinion. Such decisions move in the realm of high politics
disguised as law. They have little in common with a mortgage fore-
closure, a suit for separate maintenance, a wills contest, an action to
collect on a promissory note or an insurance policy, or a personal in-
jury suit. They do not contain suitable data for the formulation of
propositions on law and the judicial process in general.

The focussed attention on constitutional decisions and case book
cases, both abnormal specimens of the genus judicial process, have re-
sulted in a distorted view of the law which was drastically illustrated
to me just a short while ago. Asked to state the holding in Stanley v.
Powell,4 one of our best third year students delivered himself of the

4 (1891) Q. B. 86.
following: "When, in cultural surroundings analogous to those of England of 1890 a judge, endowed with hereditary factors and brought up and living in surroundings analogous to those of Mr. Justice Denman, is asked to decide whether a member of a pheasant hunting party, whose personal and social characteristics are analogous to those of the defendant in Stanley v. Powell, and who in the 1880's or 1890's discharged, after careful aim, a shotgun at a pheasant, but, by accident hit a branch of a tree, from which the bullet bounced off and hit the eye of a beater whose personal and social characteristics are analogous to those of the plaintiff in Stanley v. Powell, and if, on the day of rendering his decision, the judge has eaten a breakfast analogous to that which Mr. Justice Denman ate on the day he decided Stanley v. Powell, it is probable that the defendant will not be held liable."

This proposition was not meant as a joke. Experience indicates that it expresses an attitude which is characteristic for many students of the very leading law schools and thus, of future lawyers of influence. Overemphasis on rules and concepts has been so lustily and consistently attacked that the impression has been created that judicial discretion is everything and rules of law nothing. The achievements of many centuries of cultural endeavor are jeopardized by such an attitude which reduces to rule of law to the rule of judges. The creative, political, and personal elements of judicial decision have been grossly underestimated by former generations. Now we are prone to overemphasize them. Which of these errors results in graver danger for social order would be difficult to say. We legal educators ought to be aware of this danger and, while continuing to utilize the findings of the New Jurisprudence, must be on our guard. We must be aware, in particular, that the very case method itself is conducive toward a distorted view of the law and the judicial process.

Granting that law book cases little reveal those aspects of the legal order which are settled and fixed, one might ask why we should not continue to concentrate on the novel, unsettled, and, grantedly, atypical cases, which are so more difficult and so more interesting. Undoubtedly, they are more fascinating, especially for the experienced member of the craft. But the poor student lacks the basis for their understanding and the frame of proper reference unless he knows the background of settled law upon which the troublesome case has arisen. Only too often does the case method fail to give him that knowledge. Yet, without close familiarity with the settled parts of the legal order the unsettled problem cannot be properly decided. The "proper" decision is that which applies to the new case those value judgments which are revealed as those of the society in question.
in its settled law. The New Jurisprudence is right that law is politics, that every legal decision implies a political decision. That insight ought not to be lost again. But we ought to state also, that it is not the individual judge's political value judgments by which we want our cases to be decided, but the value judgments of our society as crystallized in its legal order. If anything is to prevent judges from being despots, benevolent or other, it is adherence to the postulate that judges regard themselves bound by the value judgments which society has taken pains to express, or has allowed to find expression, in the sources of its law. Nowhere can these societal value judgments be found better than in those parts of the law which are settled.

Even in those branches of the law, if any, which might be regarded as politically indifferent, familiarity with the settled rules is indispensable for technical reasons. Certain complexes of legal regulation may be regarded as machines designed to achieve certain social purposes. The law of conveyancing, for instance, may be regarded as the machine designed by society to transfer wealth among the members of a free society; the law of negotiable instruments is the machine designed to transfer credit among the members of the commercial community; the law of decedent estates is the machinery designed to achieve the orderly transfer of the national wealth from generation to generation. An engineer would hardly think of repairing or redesigning an improperly functioning part of an airplane motor or a printing press without complete knowledge of the entire machine. How can the legal engineer properly deal with a defective part, or with a part needing redesigning, without knowing the entire machinery in all its parts and their interconnections?

Granting these arguments one might still ask how it would be possible to know, and to present to students, all the innumerable rules of law? The simpler answer is that it cannot be done and need not be done. What needs be done is something simultaneously more simple and more difficult: acquainting the students with those parts of the settled law which are expressive of basic social policies and, as to the "technical" fields, those features which reveal the basic structure of the machine and the basic principles upon which it functions. The discovery and presentation of these elements, together with the development of methods for the solution of unsettled problems of an insight into the social function of the law and its agents, and of the recognition of the responsibilities of those functionaries' tasks, all these, we can say, constitute the task of the law teacher. None of these tasks is easy. Presently, we are probably doing our best job as to the second, the development of methods for the solution of novel prob-
lems. But we cannot say that we are fulfilling it with complete adequacy without spending conscious attention to the first.

In pointing out a shortcoming of the case method I do by no means advocate its abandonment. I do advocate, however, that case book authors, in selecting their material, select cases which not only contain some problem novel to the court concerned, but which illustrate the process by which the new element is being integrated with the existing fabric of the law. I furthermore join in that growing chorus of law teachers who no longer regard the case method as the panacea and recommend that it be supplemented by other methods of teaching. Every course ought to aim at giving the student a bird’s eye view of the field concerned, at showing him the basic problems to be solved, the spirit in which they are approached and the outlines of the principal techniques applied. This end can be achieved by properly organizing the course and by introducing it with a brief survey designed to establish the framework within which there are to be placed the various problems to be discussed later as the course progresses. For a model for such an introduction one might look at K. N. Llewellyn’s recently published “Meet Negotiable Instruments”\(^5\) or to Barton Leach’s “Perpetuities in a Nutshell.”\(^6\)

No course is long enough in time to make it possible to spend that detailed attention to the discussion of even the major problems without which proper training in legal thinking has now come to be unimaginable. Close scrutiny of cases must, of necessity, be confined to a few carefully selected topics. But these topics must be connected with each other, and their places within the system as a whole must be explained to the students. For these tasks lectures are needed, and guided reading. Reference to outside readings will not serve that task well. What is needed are books specially written for students, elucidating the structure of a course, placing in bold relief the main problems to be solved, the principal issues and policies, and the structural connections. Such books should combine text presentation of the framework and the parts to be looked over in mere survey with cases covering those parts which are to be studied in detail. The text should not consist of scattered passages of different writers, but should be the author’s own coherent presentation of the field. We already have numerous books whose authors have overcome the superstitious shyness of presenting in their works everything but their own convictions; but their own contributions are still relegated to the role of annotations or chapter introductions. For the case-textbook, for which Albert Ehrenzweig has recently made so convincing a case, we

\(^5\) (1944) 44 Col. L. R. 299.
\(^6\) (1938) 51 Harv. L. R. 638.
have still to wait. The production of such books is, in my opinion, the most urgent task of American academic scholarship. This task is difficult. That the author of such a book must be a complete master of his field goes without saying, but, what might need saying is that such mastery implies more than familiarity with the cases, the statutes, and the literature; it means a firm grasp of the field as a whole, an insight into its function in society, and into its structural framework, its problems, issues and policies. The author must also be a teacher. The book must be consciously written for student use; that postulate implies that it should be different in arrangement, tone and selection of content from a practitioner’s handbook. We law teachers can learn much in this respect from text book writers in other fields of academic instruction. In legal instruction the very word “text book” has assumed a bad odor. In condemning the low-class, mechanical, spoon-feeding text we have come to overlook the pedagogical possibilities of the academic text written not by a hack but by a creative scholar and pedagogue. Such books as Croneis and Krumbein’s text on geology, Logsdon’s on mathematics, or Buchsbaum on zoology might well inspire creative thought in our field. Our colleagues in schools of education have developed techniques of teaching not only for nursery and elementary schools. We must acquaint ourselves with their work and engage their collaboration in the development of our own teaching techniques and teaching tools.

To be good craftsmen of the law our students must not only “learn the law” but must also become proficient in the use of its tools. These tools are concepts, logic, and language. Both concepts and logic are presently in bad repute. We are being told that “conceptual jurisprudence” must be replaced by a “jurisprudence of interests,” “sociological jurisprudence,” a “jurisprudence of welfare,” or some other “new jurisprudence”; and time and over again we are referred to Holmes’ bon mot that the “life of the law is not logic; it has been experience.” Both concepts and logic have been built up into regular bugaboos which the adept of the “new jurisprudence” has to shun like the arch fiend himself.

The advice to think without concepts is tantamount to the advocacy of thinking without thoughts, an activity whose impossibility is obvious according to both logic and experience. A concept is nothing but a thought as referring to a class of objects, i. e., a generalization. Since the human mind uses generalizations in its most elementary

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8 *Down to Earth: An Introduction to Geology*, 1936.
9 *A Mathematician Explains*, 1933.
10 *Animals Without Backbones*, 1938.
activities thought without concepts is impossible. The advice is discard concepts in thinking is as meaningless as advice to make music without tones, to talk without sounds, or to see without images. The problem is not conceptual v. non-conceptual thinking, but thinking with useful v. thinking with useless concepts. The phenomena of the world are countless and of infinite variety. Man cannot live in the world without ordering in his mind the numberless mass of shapeless impressions in groups, in which alone he can observe, remember, and deal with them. Concepts are but impressions arranged by categories. The categories under which the ordinary human mind arranges the common impressions of the world surrounding an individual are formed without conscious effort. The unconsciously formed, elementary concepts form one end of a scale, on the other end of which we find the technical concepts of science, elaborately formulated in a conscious effort of the specially trained mind.

The role of concepts is well illustrated by the special genus of concepts used in librarians’ catalogues. We would not know what books there are in a big library, we could neither find nor use them for any purpose if librarians would not catalogue them for us under author-names and subject-titles. As pharmacists, agriculturists, or mere friends or observers of nature, we would never be able to find our way among the overwhelming variety of phenomena of plant life if the botanists had not arranged them under morphological, physiological and systematic categories. Every science requires as its basis a taxonomic branch, by which order is made out of chaos.

How we formulate our categories depends upon the purpose for which we make them. A tribesman in a society of primitive food gatherers will probably divide all plants in edible and inedible, and, among the edible, will make sub-divisions according to taste or other criteria of food appreciation. A pharmacist will divide all plants into those relevant or irrelevant for medicinal purposes and will sub-divide the former according to their pharmaceutic properties. A landscape architect will form his categories according to aesthetic criteria. In addition to all the classifications made for definite practical purposes we also have the “scientific” system of the botanists, in which morphological properties are used for the formulation of the categories. It too serves a purpose, viz., that of over-all orientation, ready reference, and information about morphological properties.

As lawyers we have to classify the phenomenon of social life and the rules and principles established for its regulation by the proper law making authorities. As anybody else we have to form our categories in accordance with the purpose in which we are interested. Since we are interested in more than one purpose, we have to use
more than one criterion of classification. Our frequent mistake has been our tendency to use for one purpose a concept developed for another.

The following problem which I recently gave in an examination will serve to illustrate the point: T, a long time resident of state X, there executed an unwitnessed holographic will in accordance with the wills act of X. He died owning a claim against D, a resident of state Y, which claim was secured by a mortgage on a piece of land situated in F. By his will T gave the mortgage and the claim secured thereby to A. B, the intestate heir claimed that this provision was ineffective invoking, first, a statute of F which, while upholding as to personal property all wills properly executed under the law of the testator’s domicile, required for real property observance of the wills act of F, under which a will is to be attested by two witnesses; and second, a statute of F which declares that “a mortgage and the claim secured thereby are, as real property, subject to real property tax and real property transfer tax.” Who should prevail?

The point was, of course, that the classification of a mortgage as real property for purposes of property taxation does in no way determine whether or not a mortgage is to be classified as real property also for purposes of determining the validity of a will. The answer to the latter question is “no.” It did not so much matter whether the students knew that answer. What did matter, however, was whether or not they recognized that the sound and sign combination “real property” as used in connection with a tax law does not necessarily have the same meaning as the same sound and sign combination appearing in a statute dealing with conflict of laws as to wills. The students were expected to be aware of the fact that one and the same word may express different concepts.

An excellent illustration of the problem is presented in Circuit Judge Magruder’s decision in Sampson v. Channel. The federal court in Massachusetts, in applying the rule of Erie Railroad Co. v. Tompkins, was confronted with the problem of determining whether burden of proof of contributory negligence was a problem of substantive law, and thus to be decided under Massachusetts law, or a problem of procedure to be decided under federal law. Having chosen the former answer, the court then had to determine whether burden of proof was to be determined by the law of Maine where the tort was committed, or by the law of the forum, Massachusetts. In traditional
language this problem presented itself again in the form of substance or procedure; and this time the court held that the same problem which it had just labeled as one of substance, was one of procedure and thus to be decided under the law of Massachusetts. The case is startling only to one who is deceived by words. The same two words, substance and procedure, refer to different concepts, depending on the context in which they are used. Illustrations could be added *ad infinitum*, but *sapientisat*.

Closely akin to the troubles created by homonymous words are those flowing from what Karl Llewellyn has aptly called "lump concept thinking." We investigate whether title has passed, whether there exists a marriage between two parties, where an individual is domiciled, or where a corporation has its seat. The answer to each of those questions then is regarded as decisive for a whole number of separate problems. Yet, the considerations which determine at what moment goods pass from liability to attachment for execution by the creditors of the seller to liability to attachment by the creditors of the buyer, are not, or at least not necessarily, the same as those which are relevant for the determination of the moment at which the risk of accidental destruction or deterioration of the goods passes from the seller to the buyer, or of the moment at which the seller's claim for damages for non-payment of the price is converted into a debt due. The fact that a marriage has been dissolved in the sense that one party has been restored to the freedom of the marriage market does not, of necessity, imply that the other party is also not free to re-marry, and still less that the husband's duty to support his "wife" has been terminated. A determination that an individual is so connected with a state as to justify imposition upon him of the state income tax, does not necessarily imply that he also stands to that state in the local connection entitling him to vote, or rendering the state's intestacy laws applicable to the distribution of his estate. Again, the list of illustrations could be extended infinitely.

The late great Walter Wheeler Cook has spent the effort of a lifetime on the exposure of such fallacies. Nobody has more severely inveighed against the wrong use of concepts. He was impatient, however, with those who ascribe to him the idea that we could or should dispense with concepts.

"In attacking the infallibility of categories and of rules and principles, there is no intention to deny that we have them or that they have utility. Indeed, they are indispensable. The aim is merely to point out their nature and limitations.... Let it be emphasized..."
that it is not for a moment suggested that rules and principles are to
be ignored or discarded, but merely that their formulation, selection,
use and possible refinement should be carefully worked out in the light
of the social and economic purposes in view.”

The attacks so often now made upon logic are equally foolish when
they are meant or understood as attacks upon logic as such, but are
justified as attacks on bad and faulty logic. For thinking logic is as
indispensable as concepts. Logic simply articulates those ways of
thought which we have to follow if we do not wish to enmesh ourselves
in contradictions. The rules of logic are of a purely formal character.
Given certain premises we have to follow certain lines of thought to
discover the implications of these premises. In the choice of the prem-
ises, we are free, however. As starting point of a consistent line of
thought we may not only take some proposition expressing a true ob-
servation based upon experience, but also a purely imaginary or hypo-
thesised proposition. Even if we follow all the laws of logic our con-
clusions are true only if we have started with true premises. Hence,
logic and experience, far from being antithetical, are complementary
to each other. Unless we engage in flights of fantasy or in purely
speculative thought, we have to start with premises which have been
verified by experience. This statement holds true for law as well as
for any other science dealing with reality. Grave sins have been
committed by legal “thinkers” in the name of logic. With much
vigor and zeal has it been said, for instance, that it is logically im-
possible for a corporation to exist when all its stock is owned by one
person, or that it is logically necessary for a contract to be “gov-
erned” by the law of the place of contracting, and for a tort by the
law of the place of wrong. Whether the device of limiting liability
known as “corporation” shall be made available to a group of persons
only or also to a single person is a question of policy to be decided by
the law-making authorities. If it has been decided in the latter sense,
experience has to take cognizance of the fact, and all further thought
has to start with it. Conclusions reached upon premises neglecting
that fact, would be “wrong,” however “logical” the chain of thoughts
may be by which the conclusions have been reached. If, however, a
law-making authority, for instance the legislature, has left the policy
problem undecided, and there is brought before a court a case turning
around the permissibility or lack of permissibility of using the cor-
porate device for the purpose of limiting the liability of a single
owner of a business, the court has to make that decision as one of legal
policy and logic cannot free it of that task. Perhaps, the court may

16 The Logical and Legal Bases of the Conflict of Laws: An Unpublished Chap-
factually observe that so far the use of the corporate device has been limited to groups of persons, that there are facts indicating that the legislature and other law-making authorities of the community disapprove of the use of the corporate device by single persons, and that allowing such use of the device is likely to result in undesirable social consequences. Then, after such observation, logic has its place and will lead the court to the conclusion that a decision not sanctioning the one-man corporation would be more in accordance with the legal policies of the community than the opposite one.

It was again W. W. Cook who has revealed a striking misuse of logic in his penetrating analysis of the vested rights theory postulated as the basis of the conflict of laws by Beale and others. According to that theory it is a requirement of logic that contracts are "governed" by the law of the place of contracting, torts by the law of the place of wrong, and property rights by the law of the situs. These propositions are said to follow logically from the premise that each government has the exclusive power to regulate the legal relations of the persons and things being, and the effects of events occurring, within its territory. Cook has conclusively shown not only that the premise does not correspond to actual experience but also that even if the premise were factually true, the conclusions can be derived from it only by faulty logic. 17

Again, this and other criticisms do not constitute attacks on logic as such, but on bad logic or the wrong use of logic.

Both concepts and logic are indispensable tools of the legal craft. Lawyers must be able to use them properly and skilfully, and for that task they must be trained. Proper training in the use of concepts and logic requires insight into their role in thought.

At least the law teachers ought to have some familiarity with epistemology and semantics, and the help these fields of learning can provide ought also to be made available to the law students. I do not mean to suggest that formal courses in these fields should be injected into the already overcrowded law curriculum. I only mean that the use of concepts and logic should constantly be practiced in legal education and that, in the course of such practice, the instructor, upon the basis of his own, systematically acquired knowledge, should use epistemology and semantics to help his students to reach clarity about their own mental processes.

The intensive study, analysis and discussion of cases affords the opportunity for practicing the use of logic and concepts. However, such practice ought to be supplemented by a systematic study of those

17 The Logical and Legal Bases of the Conflict of Laws (1942), chapters 1 and 2.
concepts which are basic in the structure of our legal system, and
familiarity with which is indispensable. Experience shows that stu-
dents are not always sufficiently familiar with even such fundamental
concepts as right \textit{in rem} and right \textit{in personam}, not to speak of such
more refined distinctions as that between assignment of a claim, nomi-
nation of a third party beneficiary, and facility of payment clause,
or that between release of an easement, abandonment, and estoppel
against its enforcement. The illustrations could again be multiplied
\textit{ad infinitum}. Some place ought to be given in the curriculum to the
study of at least the basic legal concepts, and a short course in Roman
law, as suggested by Albert Ehrenzweig,\footnote{Article to be published in the April issue of the University of Chicago Law Review, Vol. 12 (1945).} might well constitute an
appropriate means.\footnote{Such a course might also furnish the student of American law with the basic grammar for understanding the language and techniques of the Civil Law. For other purposes, however, Roman law has no proper place in the undergraduate American law school. Roman law as such cannot be understood without prolonged and intensive study, for which there is neither time nor need in the curriculum.}

In addition to case study, further and, perhaps, even more effective
opportunity to practice the use of concepts and logic can be provided
by problem cases, discussed orally in class or, even better, to be treated
in writing.\footnote{See David F. Cover, \textit{In Advocacy of the Problem Method} (1943, 43 Col. L. R. 449).}

Frequent term papers are also the principal help for the develop-
ment of that other indispensable tool of the legal craft: language.

Whatever we lawyers do, we have to use language, and we have to
use it effectively and persuasively. As trial lawyers, we have to per-
suade a jury or a court of the rightness of our client's cause; as ap-
peal court lawyer we have to convince the court, through written
brief and oral argument, that the decision below ought to be reversed
or affirmed, as the case may be; as a judge we have to convince the
legal profession and also and quite particularly, the losing party,
that our decision is the inescapably proper one; as members of a leg-
islature, or of a committee dealing with legislative problems, we have
to state in persuasive language the position for which we are fighting;
as administrators we have constantly to use language to convince
superiors, opponents, losing parties, or law makers of the propriety
of this or that course of action; as law teachers or writers we must
be able so to use language as to present our topic incisively and under-
standably; as draftsmen, we have to use language with that precision
and clarity which is required to forestall future controversy about
ambiguities.

Training in the use of English is, primarily, the task of elementary,
secondary and college education. Law schools should be able to assume that these agencies have fulfilled their task. Unfortunately, time and over again we have to make the sad experience that that assumption is unjustified. Time and over again we encounter students who are inarticulate in spoken language and unable to express themselves properly in writing. Much as we may dislike it, we have to continue—or should we say, to begin—the future lawyer’s education in the proper use of good English. There is only one way to achieve this end: to assign term papers in considerable number—and to grade, correct and discuss them, too, not only for content, but also for style. That task is formidable, so formidable, indeed, that we, at the University of Chicago, have found it necessary to hire special tutors to guide the first year students in the art of writing.

Not every lawyer can be a stylist of the brilliancy of a Holmes or Cardozo. What he must be able, however, is to express himself in plain, clear English. The most wonderful ideas are worthless unless they can be communicated. Besides, thought and language are so intimately connected with each other that one cannot have clear thoughts without using clear language. It may not be superfluous, also, to state that the lawyers’ language ought to maintain some dignity. In elementary and secondary schools great care is now being taken to encourage the student’s “self-expression.” That tendency is laudible, provided self-expression is not understood as sloppiness. The lawyers’ English ought to be neither stilted nor high flown or artificial, but it ought not to be sloppy either; and it ought to be English, good American English, rather than slang.

Finally, in oral or written presentation, the thoughts ought to be arranged systematically and clearly. Both style and structure must be cultivated in legal education.

Familiarity with the law, ability to think, and facility in the use of language, these are the basic elements of craftsmanship in law. To be a master, more is required: knowledge of life and its problems, a vision of the good society, and a sense of duty born out of faith.

In one of my son’s high school books it is stated to be characteristic of an essay that it is incomplete. Surely, this article must be an essay.