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## The Dwight Method of Legal Instruction

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The problem that confronts a teacher of law who seeks to map out a course of legal instruction for students is one of considerable difficulty. On the one hand he must take into account the enormous mass of judicial decisions and of legislative enactments which, taken together, make up the common law and the statute law of England and America. On the other hand, he must reflect that the time allotted to a course of legal instruction is only two or three years and that the students are beginners, having at the outset no knowledge of this intricate science except such as is of a most limited and elementary kind. The voluminousness of the material and the limitation as to time make it necessary that a careful process of selection should be exercised, so that, out of what seems at first an unmanageable mass of legal lore, that which is of essential importance should be chosen, and yet that this should be no more than the students' minds can compass within the designated period. At the same time, what is comprised must include all the important subjects of a comprehensive legal course, that is, the law of contracts, of torts, criminal law, the law of domestic relations, the law of personal property and of real property, the law of corporations, equity jurisprudence, the law of wills, the law of evidence, and of practice and pleading both at common law and under codes of civil procedure, etc., with all the subordinate topics embraced within each of these wide-reaching subjects. Furthermore, all these subjects must be presented to the students' minds in a

form which they, as beginners, can adequately grasp and thereby derive practical benefit. A prime condition of all true progress is that a student should understand what he studies and that he should not be forced ahead at too rapid a pace. The measure of his advancement is not to be determined by the amount which he reads, but by what he absorbs and assimilates.

These considerations must be kept in view, whatever mode of legal instruction be adopted. The teacher by the "case method" contends that the law must be taught by having students read the actual decisions of the courts, as set forth in the law reports; but he is embarrassed by the fact that these decisions in England and America now number several hundred thousand and are increasing at the rate of 25,000 or 30,000 annually. He therefore has to select from this great mass such as relate to the various cardinal legal subjects and such a limited number only as his students can hope to master during their law school course. What he does select amounts in consequence to a minute fraction only of the whole number, and even then he is forced oftentimes, even against his will, to demand of his students an amount of daily reading which is excessive and which, from this fact, overloads the memory and distracts the attention and so serves to confuse and bewilder the mind rather than help it to clear knowledge. A single case generally comprises several pages, and as the number of pages of solid reading of which the human mind is capable in a day is not large, as every

one knows, the number of cases that can be assigned to beginners each day is necessarily very small. A further noteworthy difficulty is that a single case is apt to decide only a single point falling within a broad general topic. Whatever qualifications such a ruling has received must be learned by reading other decisions in which they were established. Cognate rules and principles which must be known for a complete survey of the subject call for the reading of more decisions. To cover even a limited topic adequately is, therefore, likely to require the study of more decisions than the time that can be allotted to it will justify, or, if it is thoroughly covered, other equally important topics must be neglected. One instructor by the "case method" has proposed to meet this difficulty by the unique expedient of having his students read all the cases they can, and if there is not time enough to cover by this means all the topics that should be included, those which cannot be reached can be omitted. What this may result in is illustrated by the example of a certain law school where as much as two weeks was given to the study of the law concerning manure, because even the selected cases necessary to disclose all the phases of this subject could not be mastered in less time. Other expedients have likewise been adopted, as, *e. g.*, by limiting the course of study to the decisions rendered in the State wherein the school is situated, or by assigning to students for each lesson more matter than they can read satisfactorily and trusting to their getting through with it somehow.

The "Dwight method" meets the difficulties above suggested by not making the court decisions the direct basis of instruction, but by requiring students to study primarily the legal principles extracted from such decisions. The cases are viewed as of importance, not for themselves, but for the *principles of law* which they declare or establish, and for the *reasons* therein set forth upon which these principles are based. Treatises written by competent legal authors contain these principles set forth in orderly and systematic arrangement, and these treatises are placed in the students' hands as the sources from which they may derive at first their acquaintance with legal rules and doctrines. This method has conspicuous advantages. It reduces the great bulk of the law to manageable dimensions, and thus enables students to cover much more ground in the same space of time and in a way more congenial to the natural inclinations of the mind. From a case comprising several pages the principle extracted may be expressed in a few lines. A treatise of five or six hundred pages may easily contain the substance of several thousand cases. A glance at the table of cases cited, in any standard treatise, will make this evident. Even if only the most im-

portant cases among these be selected for students' reading, they are commonly found to extend over twice or three times the number of pages contained in the treatise. And even then a volume of selected cases is apt to leave much untouched that a treatise contains. For example, let Greenleaf's treatise on the general principles of the law of evidence (contained in the first volume of his general work on evidence) be compared with Prof. Thayer's volume of cases on evidence. The latter, as it is, is a huge book, but if it were printed with the same type and spacing as Greenleaf's volume, it would much more than double the latter's size. And yet, notwithstanding this bigness, not a few matters of which Greenleaf treats will be searched for in vain in the cases of the case-book. In like manner, Prof. Keener's book of cases on quasi-contracts extends to two very large volumes, while his treatise on the same subject is in one moderate-sized volume.

A plain and natural result is that much more ground can be covered in a year of study by the Dwight method than by the case method. This statement is sometimes ridiculed by advocates of the latter method, as if it were an assumption "made out of whole cloth"; but the facts as above stated permit no other conclusion, and case method instructors who are men of fairness have frankly admitted its truth.

Surprise has sometimes been expressed that law schools maintaining the Dwight method could profess to accomplish as much in a two years' course as those using the case method could accomplish in three, but the foregoing considerations afford a full explanation. A method that requires the study of a largely increased number of pages must inevitably consume more time.

The Dwight method permits the giving of shorter lessons, and students need not therefore be driven at an undue rate of speed. Students by the case method have frequently acknowledged to me that they were compelled to read so much matter from day to day that they could give it no careful attention, and their minds were, therefore, left in a state of muddle and bewilderment. As bodily digestion is impaired by over-feeding, so mental digestion suffers from a like process. The mind is benefited and strengthened only by what it is able to assimilate. Doubling or trebling the matter to be absorbed does not double or treble the receptive capacity, but, instead, weakens it. A common mistake in education nowadays, to which even some so-called experts in pedagogy seem to give credence, is to measure progress by the number of subjects studied, or the number of pages read in a given time, or the number of hours spent in the class-room, etc. A school with a three years' course, say such reasoners, must surely accomplish much more than one with a two years'

course, and students who read a hundred or a hundred and fifty pages a day must make more rapid progress than those who only read forty or fifty. As well might it be argued that a sermon of ninety minutes' length would be much more effectual for mental and spiritual nourishment than one of thirty minutes; or that a student who could read a volume of Macaulay's history at a sitting would be much better versed in English history than one who read slowly and carefully and attentively.

Making of pre-eminent importance the study of principles and the reasons therefor, as does the Dwight method, accords with the natural tendencies of the human mind. This seeks fundamental truths: in morals and religion, what is right and what is wrong; in the study of nature, what are the natural forces at work, and what are the rules guiding their operation; in jurisprudence, what is just and what is unjust, what is legally right and what is legally wrong. And even from early childhood the why and the wherefore of such things prompt incessant questionings. Therefore, in law, a well-settled principle or doctrine, established in the long process of development of English and American jurisprudence, can be taught in its definite and succinct form of statement, and when the reasons upon which it rests, which are taught at the same time, are understood, the mind is, by its natural inclination, prepared to accept it. There is no need to study the long list of cases by which it was developed, which would involve an expenditure of time which can ill be afforded, in view of the mass of knowledge of every kind which now demands attention. The nature of a contract, of a tort, of a crime, can be easily apprehended, and the definitions of their different kinds or forms can be speedily acquired, once for all. How simple, for example, are the elements of a tort? When a student is taught that it is (1) the violation or infringement of a person's *legal right*; that this means (2) a right recognized or created *by law* instead of by contract, and that legal rights are not identical with moral rights, and (3) that the right involved is the *private right of an individual*, instead of the public right of the community the violation of which would constitute a crime, a flood of light is thrown upon the whole subject of torts from the beginning, which makes the students' progress easy.

It has been matter of common observation among legal instructors that students by the case method are very weak in legal definitions and in the clear, direct statement of well-established legal rules. Their study of cases makes it necessary that they should spend much time and attention upon the varying facts of those cases. The mind has naturally little affinity for manifold circumstances and details, and as the

cases multiply into the scores and hundreds, it becomes increasingly difficult and soon impossible to keep the facts distinct, and the time and effort devoted to their acquisition have been spent to little purpose. In dwelling so much upon the facts, students are, of course, seeking to apprehend the legal rule or doctrine which the court applied in determining the issue, but they do not seem to study the art of expressing this rule or doctrine in definite and precise form, and when they are called upon to state it they are often at a loss. In fact, they have been known to say that their instructors held in contempt the power of giving definitions or of stating legal propositions. This seems ranking the things of less, as if they were of greater, importance. Suppose a student could keep distinct in his mind and separately state the diverse facts of two or three hundred reported cases, of what particular advantage would this knowledge be to him? On the other hand, if he could state clearly and accurately the principles which those cases announced, this would be a permanent mental possession for him of the highest value.

The habits of thought and the modes of mental operation impressed upon one in his student days are apt, though of course the rule is not invariable, to remain with him in later days. Hence it has been noticed that a lawyer trained by the case method is prone to begin his study of a question by seeking for a case having like facts, while one trained by the Dwight method asks himself first, what is the just legal rule or principle that should govern the decision of this question now before me. If he reasons justly and soundly, he expects to find the cases, when he searches them out for citation to the court upholding his conclusions and is not at a loss even in instances where he can find no case exactly in point. He learns with painstaking accuracy the facts of each new case with which he has to deal, but is not concerned if the facts of all past cases which he has read drift away from him. Those facts, he knows, are not of importance, but only the principles deduced therefrom, and to these principles he seeks to have his mind hold fast.

The mental operation of one so trained is often exceedingly interesting. Governor Hughes, of New York, was educated by the Dwight method under Professor Dwight himself. It may doubtless be said that the native bent of his mind is similar to that of Dr. Dwight. At all events, in his prosecution of the gas and insurance investigations, he exhibited this mental habitude by always reaching down to the bedrock of principle,—the fundamental rules of action which had guided the conduct of those whom he investigated, together with the reasons for their proceedings, and by striving to bring into the clear light of

day and to have embodied in legislative enactment the principles upon which such forms of business should be conducted. It was a most noteworthy illustration of what remarkable results can be accomplished by a mind of this order of development.

It has been said with much wearisome iteration that the case method follows the inductive, and the Dwight method the deductive, mode of reasoning, and this has been confidently thought to settle the question in favor of the former method. The appositeness of these comparisons is not, however, apparent. From the observation of facts the inductive process reasons to general laws explaining those facts, as Newton from the fall of the apple and the motions of the heavenly bodies derived the law of gravitation. But the facts involved in a law case call for the selection and application to them by the court of the proper rule or principle of law to justly determine the rights and obligations of the parties. In general, the court's function is simply to decide what rule or principle will accomplish this result, chosen from among the numerous rules or principles *already established and known*. Not even this method of the court itself would be called the inductive process, according to Bacon and Mill, Huxley and Faraday. Still less does this conception apply to students who read the decided cases in which the facts are recited and then the judges set forth the principles which they have applied. To what extent does the student by this process himself determine general laws from accumulated facts? The question supplies its own answer.

The truth is that, even in those sciences where the inductive process is really applied, the laws already discovered and thus made a definite part of human knowledge are taught to beginners in the rules or principles which have been formulated. It is not thought necessary to carefully withhold from the young Newton's laws of motion and set each one to observing the fall of apples and other objects to ascertain if he cannot work out the laws for himself. He studies the laws as Newton revealed them, and illustrations or experiments are supplied so that he

may more clearly understand them. He is taught the known with as much saving of time as possible, and can afterwards, if he desires, press forward himself in search of the unknown.

As the *New York Law Journal* recently said, "To carry such principle," which the advocates of the case method inculcate, "out to its logical end would be to require each person who came into the world to abjure the generalized results of generations that have gone before, and proceed independently to acquire all his knowledge by his own observation and generalization therefrom."

It is sometimes supposed that the Dwight method makes no use of the reported cases, but this is not true. As stated above, the teaching of the truths of science, ascertained by induction, is greatly aided by illustrations or object-lessons showing their application. In like manner, the cases decided by the courts are highly useful to show the application of legal principles. But for this purpose a smaller number only need be used than the case method requires. Many principles are easily grasped and comprehended without any object-lesson, while as regards others a single reported case may suffice. In this way the student's mind is not unduly burdened, and yet he derives the full benefit which the cases in themselves are adapted to give. He is made to realize that the principles are fundamental, and that the cases have their chief value in showing how the principles are applied to human affairs.

Incidental features of the Dwight method are, to begin with elementary topics and pass gradually to those which are more difficult, and, further, to pursue a particular topic, after it has been begun, continuously from day to day until it is completed. By these means the student is never beyond his depth, and each subject is kept fresh in his mind while it is under discussion. These are important conditions of rapid and satisfactory progress.

In short, it is believed that the Dwight method is the truly logical and philosophical method, and its notable success in developing capable lawyers and judges amply confirms this view.