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The Continuing Vitality of the Case Method in the Twenty-First Century

“The aim of teaching [is] to develop the [student’s] own powers and faculties rather than to impart facts; to show not so much what as how to learn. The important thing [is] not the end result but the process of learning”¹

I. INTRODUCTION

Law school pedagogy is truly a unique feature of the legal profession. The widespread use of actual, decided cases as the primary material through which students gain an understanding of the law is a vast departure from the normal educational system in which the material taught has generally been substantially “processed” prior to reaching the student.

Interestingly, the rise of “the case method” in legal education was not a gradual, natural development in the history of legal pedagogy. Rather, it was largely the result of an academic fiat by a single man: Christopher Columbus Langdell, Dean of Harvard Law School, in the early 1870s. Since Landgell’s time, the case method has constantly been under fire from its critics. Nevertheless, it quickly became and continues to be the primary method of education in American law schools.

Despite the phenomenon of Langdell’s pedagogical coup and the controversy that it engendered, there was “surprisingly little serious analysis of legal education” until the 1960s.² Since that time, however, Langdell’s legacy—the case method—has come under heavy fire, especially in recent years. As legal education enters a new century, it is appropriate to consider the vitality of the 130-year-old case method.

Part II of this Comment sets forth the background of

1. Anthony Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HIST. 329, 343 (1979) (quoting K. SILBER, PESTALOZZI: THE MAN AND HIS WORK 126 (1965)).

2. ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S xiii (1983).

American legal education prior to the institution of the case method, covering the period from colonial times through the 1870s. Part III chronicles the rise of the case method, including both the rationale underlying the method and some early criticisms. Part IV catalogues the merits and demerits of the case method, analyzing the validity of each, and concluding that the case method is a valuable tool in legal pedagogy whose continued use is justified. Part V suggests that the vitality of the case method could be enhanced even further by making adjustments based on general principles underlying legal education. Part VI provides a concluding summary of the analysis and recommendations addressed in the Comment.

II. LEGAL EDUCATION IN AMERICA FROM COLONIAL TIMES TO 1870

A. English Inns of Court, Apprenticeships, Self-Study

The idea of colonial legal training is largely an oxymoron since there was little or no formal legal training available in the Colonies before the American Revolution. In fact, in early colonial times lawyers were sometimes not even allowed to practice, much less encouraged to train themselves.³ Moreover, even when America came to its senses and recognized the need for competent legal advice, the availability of legal training remained sparse. Despite this apparent educational black hole, "[e]ven at the low point of professional self-government, no one practiced law without some pretense at qualification."⁴ This "pretense" generally came from one of three sources: (1) by studying at the Inns of Court in England, (2) by becoming an apprentice (a.k.a. clerk) to an established practitioner, or, later, (3) by self-study. In each case, however, the quality of education received was largely inconsistent.

3. See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 84 (1973). Among some early colonial communities, the very notion of a legal profession was a concept so "base and vile" as to elicit laws that effectively prohibited pleading for hire. *Id.* Thus, the only early colonial "attorneys" were generally laymen helping their friends out in court on the foundation of a legal education consisting of a smattering of legal knowledge or experience brought over from England. See *id.*

4. *Id.* at 278.

1. *English Inns of Court*

Those lawyers who chose to route their legal education through England received their training at the Inns of Court, in London. The legal training received at the Inns of Court was, however, fairly nominal by some accounts since the Inns of Court had, by the late eighteenth century, “ceased to perform educational functions of a serious nature”; and had become little more than living and eating clubs. Theoretically, a man could become a counselor-at-law in England without reading ‘a single page of any law book.’⁵ Predictably, after the Revolution, legal education by this method steadily declined in popularity in favor of the increasingly available and less expensive domestic alternatives.

2. *Apprenticeships*

The more common method of legal education among American lawyers was the apprenticeship system. The term “system” is used quite loosely since the quality of education received under the apprenticeship method was anything but systematic or uniform. In many cases, law students who chose the apprenticeship route to legal education fared no better than their transatlantic counterparts.⁶

How much the apprentice learned depended greatly on his master. At worst, an apprentice went through a hap-hazard course of drudgery and copywork, with a few glances, catch-as-catch-can, at law books. [One clerk denounced the apprenticeship system as] an “[o]utrage upon common Honesty . . . scandalous, horrid, base, and infamous to the last degree!” No one could “attain to a competent Knowledge in the Law . . . by gazing on a Number of Books, which he has neither Time nor Opportunity to read; or . . . be metamorphos’d into an Attorney by virtue of a *Hocus Pocus*.” A young clerk “trifle[d] away the Bloom of his Age . . . in a servile Drudgery nothing to the

5. *Id.* at 84 (quoting PAUL M. HAMLIN, LEGAL EDUCATION IN COLONIAL NEW YORK 16-17 (1939)).

6. Speaking of the apprenticeship system, Thomas Jefferson stated: “It is a general practice to study the law in the office of some lawyer. This indeed gives to the student the advantages of his instruction, but I have ever seen that the services expected in return have been more than the instructions have been worth.” ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 116 n.1 (1921) (citation omitted). Remnants of this aspect of the apprenticeship system can still be found today in the practice of local attorneys who hire law students out at what amounts to slave wages.

Purpose, and fit only for a Slave."⁷

Furthermore, "even when principals were diligent, the chances of any one office offering good all-around training were small."⁸

The method of instruction under the apprenticeship system included "hand copying of legal instruments that had to be done before the day of the typewriter; . . . small services in and about the office, including service of process. . . . [M]uch of [the apprentice's work], as in the interminable copying of documents, was of a rote character."⁹ Elsewhere, the content of the apprenticeship is described as follows: "For a fee, [apprentices] read Blackstone and Coke, and copied legal documents. If they were lucky, they benefited from watching the lawyer do his work, and do it well."¹⁰ The prescribed length of apprenticeships prior to the Civil War varied widely from state to state, ranging anywhere from three to ten years!¹¹

Regardless of its shortcomings, the apprenticeship method of legal education persisted as the primary path to the legal profession for more than 150 years—until the middle of the 19th century,¹² surviving the first institutional attack by the colleges, but ultimately succumbing to the second wave following the Civil War.¹³

3. Self-study

Between 1830 and 1860, many states gradually eliminated apprenticeship requirements, thus making self-study a viable alternative to a clerkship in some states.¹⁴ Even where self-

7. FRIEDMAN, *supra* note 3, at 85 (quoting HAMLIN, *supra* note 5, at 167-68).

8. STEVENS, *supra* note 2, at 24.

9. JAMES WILLARD HURST, *THE GROWTH OF AMERICAN LAW: THE LAWMAKERS* 256 (1950).

10. FRIEDMAN, *supra* note 3, at 278.

11. See REED, *supra* note 6, at 82-85. Virginia was the only state in which no specific period was prescribed. See *id.* at 82. Under the Virginia system, Patrick Henry was admitted to the bar after a mere six weeks of study! See *id.* at 83 n.1. Virginia persisted in this distinction until 1903, when it introduced a requirement of two years of study. See *id.*

12. See FRIEDMAN, *supra* note 3, at 525.

13. See *infra* Part II.C.

14. See ALFRED ZANTZINGER REED, *PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA* 207 (1927).

Apprenticeship requirements were abolished in Massachusetts in 1836, in Maine in 1837, and in New Hampshire in 1838. In 1800, fourteen out of nineteen jurisdictions had required a definitive period of apprenticeship. By 1840, it was required

study was an option, however, apprenticeships were generally preferred.¹⁵ Of course, the most famous self-taught lawyer, Abraham Lincoln, presented a more favorable view regarding the self-study method, stating that “‘the cheapest, quickest and best way’ into the legal world was to ‘read Blackstone’s *Commentaries*, Chitty’s *Pleadings*, Greenleaf’s *Evidence*, Story’s *Equity*, and Story’s *Equity Pleading*, get a license, and go to the practice and still keep reading.’”¹⁶ Indeed, the publication of Blackstone’s *Commentaries* in 1771-2¹⁷ provided an immense aid to those seeking bar admission through self-study (at the expense of any expansion of training in formal law schools).¹⁸

B. Private Law Schools: The Birth of the Lecture Method

The first educational institutions that might properly be called “law schools” arose as a natural emanation from the apprenticeship system.¹⁹ Some lawyers who proved to be good teachers began to attract more students than clients to their offices. As the demand for the pedagogical skills of such private teachers increased, some of them gradually began to practice less and less and teach more and more.²⁰ Apparently, the first²¹ to completely abandon the practice of law for the training of law students was Judge Tapping Reeve.²² In 1784, Judge Reeve established the Litchfield law school in Litchfield, Connecticut.²³ The Litchfield School was enormously successful; graduating more than 1,000 lawyers before it closed its doors in 1833.²⁴

by not more than eleven out of thirty jurisdictions. By 1860, it was required in only nine of thirty-nine jurisdictions.

STEVENS, *supra* note 2, at 7-8.

15. See STEVENS, *supra* note 2, at 7-8.

16. FRIEDMAN, *supra* note 3, at 525 (quoting Lincoln as recorded in Jack Nortrup, *The Education of a Western Lawyer*, 12 AM. J. LEGAL HIST. 294 (1968)).

17. See STEVENS, *supra* note 2, at 11 n. 8.

18. See HURST, *supra* note 9, at 255-56 (noting that St. George Tucker’s “Americanization of [Blackstone’s *Commentaries*], a work which purported to put all legal knowledge in a single treatise seemed to offer the ready instrument for the apprentice or self-trained lawyer”).

19. See FRIEDMAN, *supra* note 3, at 279.

20. See *id.*

21. The first, at least, to rise to any significant level of prominence.

22. See *id.*

23. See *id.*

24. See REED, *supra* note 6, at 130. Even more astounding than the 1,000 figure itself is the level of prominence to which Litchfield graduates rose:

For purposes of the present discussion, the numerical success of the Litchfield school is subordinate to the fact that Reeve instituted what may properly be called the first legal teaching methodology: the lecture method.²⁵ Litchfield claimed that it taught law "as a science, and not merely nor principally as a mechanical business, nor as a collection of loose independent fragments."²⁶ The Litchfield lecture method was modeled on Blackstone's *Commentaries*²⁷ and consisted of 139 lectures,²⁸ under ten headings,²⁹ given over a fourteen-month period.³⁰

The day-to-day routine under the Litchfield lecture method is described as follows: "[T]he complete course comprised a daily lecture, lasting from an hour and a quarter to an hour and a half Students were required to write up their notes carefully, to do collateral reading, and to stand a strict examination every Saturday upon the work of the week."³¹ The lectures were "supplemented by moot courts over which the schoolmaster or his assistant presided."³²

Following the lead of the Litchfield School, a number of other private law schools (or "proprietary schools")³³ sprouted

Two of them became vice-president of the United States, 3 sat on the United States Supreme Court; 34 became members of the highest courts of their states . . . ; 6 served in the cabinet; 2 were ministers to foreign countries; 101 were elected to the House of Representatives, and 28 to the Senate; 14 became governors, and 10 became lieutenant governors of their states . . . ; [s]everal founded or were identified with various law schools.

HURST, *supra* note 9, at 259.

25. See JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD* 7 (1914).

26. STEVENS, *supra* note 2, at 4 (citing TIMOTHY DWIGHT, *4 TRAVELS IN NEW ENGLAND AND NEW YORK* 295 (1822); see also REED, *supra* note 6, at 132 (documenting Litchfield's attempt to teach law as a "science").

27. See FRIEDMAN, *supra* note 3, at 279. The Litchfield lectures deviated from Blackstone in that they "paid more attention to commercial law, and little or none to criminal law." *Id.*

28. See REED, *supra* note 6, at 131. These lectures "were never published; to publish would have meant to perish, since students would have no reason to pay tuition and attend to class." FRIEDMAN, *supra* note 3, at 279.

29. See REED, *supra* note 6 at 453. The number of headings was later increased to thirteen and consisted of the following: introductory, domestic relations, executors and administrators, sheriffs and gaolers, contracts with its actions, torts, evidence, pleading, practice, the law merchant, equity, criminal law, and real property with its actions. See *id.*

30. See *id.* at 131.

31. *Id.* The students' copious notes provided them "with a set of elementary handbooks to carry with [them] into practice." HURST, *supra* note 9, at 259.

32. HURST, *supra* note 9, at 259.

33. *Id.* at 260.

up, each varying in size, endurance, and prestige.³⁴ These private law schools were "at their peak in the first quarter of the nineteenth century, and declined rapidly thereafter."³⁵ Two forces seemed to bear primary responsibility for the decline of private law schools: (1) as good legal texts became more available, they "robbed the schoolmasters' private lecture notes of their salable value,"³⁶ and ultimately, (2) college training incrementally replaced the apprenticeship/private law school models.³⁷

C. Educational Institutionalization by the Colleges: The Birth of the Textbook Method

1. Early failures

Even though the colleges ultimately triumphed over private law schools as the premier provider of legal education, the colleges' early attempts at teaching law lapsed, and the private schools held the upper hand for many decades.³⁸ As early as 1779, five years prior to the founding of the Litchfield law school, colleges attempted to bring the study of law within their walls.³⁹ The first such attempt was Thomas Jefferson's appointment of his own mentor—George Wythe—as chair of the school of "Law and Police" at the College of William and Mary.⁴⁰ Wythe's appointment earned him the distinction of the first American law professor.⁴¹

Following the example of William and Mary, a number of colleges appointed chairs in law.⁴² Describing the methodology of these early law schools, Justice John Marshall, who gained his only formal education from Wythe at William and Mary, described the system as one of lectures, combined with monthly moot courts.⁴³

34. For a summary overview of the Litchfield imitators, see REED, *supra* note 6, at 132-33.

35. HURST, *supra* note 9, at 259.

36. *Id.*

37. *See id.*

38. *See* STEVENS, *supra* note 2, at 5.

39. *See id.* at 4.

40. *See* REED, *supra* note 6, at 116.

41. *See* STEVENS, *supra* note 2, at 4.

42. *See id.*

43. *See* ALBERT J. BEVERIDGE, 1 THE LIFE OF JOHN MARSHALL 158, 174-76 (1916).

The professors who taught during this period produced a wealth of legal literature that served as authoritative legal texts for many years.⁴⁴ The most influential of this group of texts was St. George Tucker's *Americanization of Blackstone's Commentaries* in 1803, which "purported to put all legal knowledge in a single treatise."⁴⁵ The work of these early law professors "was marked by a breadth of treatment which did not again appear in formal legal education until the 1920's."⁴⁶ Ironically, this great achievement of the early college scholars was likely one of the primary causes of their failure to establish the college atmosphere as the appropriate method of legal education. As one scholar explained:

Tucker's work . . . fixed the Blackstone tradition in this country, and by ostensibly compressing all legal knowledge within the covers of a single book, undoubtedly discouraged the organization of law schools elsewhere. It made the apprenticeship method of teaching law practicable and sufficient.⁴⁷

Thus, these early attempts to institutionalize legal education "did not produce lasting results, from the standpoint of legal education."⁴⁸ "Professorships frequently lapsed or remained sinecures, and serious professional training took place at the private law schools like Litchfield."⁴⁹

2. *Ultimate success*

Despite its inauspicious beginnings, the college-based law school persevered until it ultimately succeeded in capturing the legal education market. The following statistical summary chronicles the rise of the college-based law schools:⁵⁰

In 1850, fifteen law schools were in operation; in 1860, twenty-one; in 1870, thirty-one; 1880, fifty-one; 1890, sixty-one. In the last ten years of the century, there was an enormous leap in the number of schools. By 1900, 102 were open

44. See FRIEDMAN, *supra* note 3, at 281. This group included Justice Joseph Story's *Commentaries* on "promissory notes, equity jurisprudence, the conflict of laws, agency, bailments, bills of exchange, [and] partnership," and Simon Greenleaf's treatise on evidence. *Id.*

45. HURST, *supra* note 9, at 257-58; see also REED, *supra* note 6, at 117.

46. HURST, *supra* note 9, at 258.

47. REED, *supra* note 6, at 117.

48. FRIEDMAN, *supra* note 3, at 280.

49. STEVENS, *supra* note 2, at 5.

50. See FRIEDMAN, *supra* note 3, at 526.

for business. In 1850, there were one or more law schools in twelve of the states; in nineteen states there were no law schools at all. In 1900, thirty-three states had law schools; only thirteen had to import school-trained lawyers from the outside.⁵¹

The resurrection of the college or university law school generally involved "absorbing" rather than "destroying" the existing private law schools.⁵² As early as 1820, colleges "began to provide an umbrella under which the private law schools might find shelter."⁵³ Two forces tended to drive private law schools into affiliation with the colleges and universities. First, the affiliation gave prestige to the private law schools since, in most states, only universities had the power to award degrees.⁵⁴ Second, this move was a part of a much wider trend by occupational groups in America toward institutionalization.⁵⁵ As one scholar put it, "Occupational groups felt an urge to professionalize and to stratify."⁵⁶

Despite the newfound prestige of the college atmosphere, the instruction of law students retained, to a large extent, the private law school/apprenticeship methodology.⁵⁷ "Thus, though the instruction was on a college campus, it was, like that at Litchfield, little more than an expanded form of office apprenticeship training."⁵⁸ And although, "it did eliminate the more rote, time-wasting clerical features of office learning, . . . [i]n terms of what was accomplished, until the 1870's legal education in the colleges and universities was part of the era of apprentice training and proprietary schools."⁵⁹

The major difference between the college law schools and the private law schools was that the reliance on the lecture method gave way to what has been called the "textbook method."⁶⁰ As the lectures that contained the jealously guarded

51. *Id.*; see also REDLICH, *supra* note 25, at 7 n.1 (describing with slightly different numbers the same general trend) (citing REED, *supra* note 6, at 433).

52. See REED, *supra* note 6, at 128.

53. STEVENS, *supra* note 2, at 5.

54. See *id.*

55. See *id.* at 20.

56. *Id.*

57. See HURST, *supra* note 9, at 260.

58. *Id.*

59. *Id.*

60. REDLICH, *supra* note 25, at 7.

secrets of the private law teacher became codified in various treatises, such "textbooks" took the place of lectures.⁶¹ The textbook method is generally described as follows:

The essential feature . . . is . . . that, from recitation period to recitation period, the students are assigned a specified portion of a regulation textbook to study, and for the most part to memorize; this is then explained by the teacher and recited on at the next period. In this method of instruction one part of the hour is occupied with the more or less purely mechanical testing of the knowledge learned by the students, the so-called "quizzing." Frequently . . . , the instruction was . . . supplemented by the appointment of special assistants—quiz masters—who conduct this part of the instruction in special hours.⁶²

Legal education remained more or less in this state until 1870, when its most significant development occurred.

III. THE RISE OF THE CASE METHOD

A. Langdell's Innovations, Including the Case Method

In 1870, the world of legal education was "ripe for reform or revolution."⁶³ In that year, the most important player in the shaping of modern legal education methods stepped onto the stage: Christopher Columbus Langdell.⁶⁴ Langdell was appointed Dane Professor of Law at Harvard⁶⁵ by Harvard President, Charles W. Eliot, (himself an important figure in shaping legal education).⁶⁶ In September of 1870, Langdell was also

61. *See id.*

62. *Id.* at 8.

63. FRIEDMAN, *supra* note 3, at 530.

64. *See id.*

65. *See* Hurst, *supra* note 9, at 262.

66. *See* STEVENS, *supra* note 2, at 36. Stevens noted that

[m]uch of the credit (or responsibility) for [the success of the Harvard method] ought to belong not to Langdell (who frequently seemed unaware of the revolution he was engendering) but to Eliot, whose innovations on both the undergraduate and graduate level of the university had a powerful influence over Langdell. It was largely through Eliot's efforts and his "social relations" that the Harvard Law school method was accepted by other schools and scholars; Langdell, taciturn and studious, surrounded his work with a "deep silence."

Id. Nevertheless, "it was with Langdell's name that the various reforms that place . . . have been associated." *Id.* *See also* Chase, *supra* note 1 for a more detailed summary of Eliot's influence in the Harvard reforms.

elected Dean of the law school.⁶⁷

Like his namesake, whose discoveries changed the world's conception of the earth as it was then known, Christopher Columbus Langdell sought to effect similarly significant changes in the arena of legal education. Among the reforms for which Langdell has been credited are (1) the requirement of a law school admission test,⁶⁸ (2) the institution of a three-year law degree program,⁶⁹ (3) the conception of a graded curriculum, divided into "courses" of so many hour-units apiece,⁷⁰ (4) the establishment of final examinations,⁷¹ and (5) the creation of full-time professorships.⁷² However, these reforms all pale in comparison to Langdell's most significant and far-reaching reform—the introduction of the case method of instruction.⁷³

The novelty of Langdell's case method was that it "cast out the textbooks, and [in their place] used . . . cases, carefully selected and arranged to illustrate the meaning and development of principles of law."⁷⁴ Instead of offering students the principles of law as ground up, pureed, and reconstituted by legal scholars who then spoon-fed them to their infantile students, the case method confronted students with the "raw" law.⁷⁵ In short, the case method exposed students to "the law," rather

67. See FRIEDMAN, *supra* note 3, at 530.

68. See *id.* at 530-31. The test imposed by Langdell was, however, only applicable to students who did not have a college degree. See *id.* at 530. The test itself consisted of the following: "The prospective student had to show his knowledge of Latin, translating from Virgil, or Cicero, or from Caesar; he was also tested on Blackstone's *Commentaries*. Skill in French was acceptable as a substitute for Latin." *Id.* at 531.

69. See STEVENS, *supra* note 2, at 36-37.

70. See *id.* at 36; see also FRIEDMAN, *supra* note 3, at 531.

71. See HURST, *supra* note 9, at 263.

72. See FRIEDMAN, *supra* note 3, at 528. Perhaps even more interesting was Langdell's appointment of full-time professors who had little or no practical legal experience. See *id.* at 533-34. According to Langdell, "[w]hat qualifies a person . . . to teach law, [sic] is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of cases, not experience, in short, in using law, but experience in learning law." STEVENS, *supra* note 2, at 38.

73. See FRIEDMAN, *supra* note 3, at 531. The practice of teaching law through cases, however, was actually not an original creation of Langdell's. See KERMIT L. HALL, *THE MAGIC MIRROR: LAW IN AMERICAN HISTORY* 220 (1989) (noting that the first casebooks had been prepared as early as 1810). John Norton Pomeroy had employed the case method at New York University Law School in the 1860s, but Pomeroy did not "shape the whole program of a leading school to a new technique." See HURST, *supra* note 9, at 261. Such a systematic application of the method was only achieved later through Langdell.

74. FRIEDMAN, *supra* note 3, at 531.

75. See STEVENS, *supra* note 2, at 54.

than the law as construed by any particular professor.⁷⁶

As a practical matter, Langdell's fundamental alteration of the basic materials of legal study did away with the rote memorization of legal principles, received at the feet of lecturers or textbooks.⁷⁷ Moreover, the role of the professor was transformed from that of a revelator of dogmatic legal principles to that of "a Socratic guide, leading the student to an understanding of concepts and principles hidden as essences among the cases."⁷⁸ Instead of simply laying out the blackletter law, Langdell sought to "show[] how [legal] concepts unfolded, like a rose from its bud, through a time series of enlightened cases."⁷⁹

Langdell arranged his casebooks by topic. Within each topic cases were organized in chronological order.⁸⁰ No statutes appeared in the casebook, and the casebook was void of any student aids such as notes, comments, or explanations.⁸¹

B. Rationale Underlying the Case Method

In many respects, the case method was a reaction to the ineffectiveness of the lecture and textbook methods.⁸² "Up to [Langdell's] time the main feature in American law schools had been the memorizing of more or less stereotyped subject-matter, systematically presented in the text-book."⁸³ Eliot, in describing the inadequacies of the lecture method, stated that "the lecturer pumps laboriously into sieves. The water may be wholesome but it runs through."⁸⁴ Likewise, James Barr Ames, Langdell's successor in the case method cause, decried the lecture/recitation system as not "a virile system. It treats the stu-

76. *See id.*

77. *See id.*

78. FRIEDMAN, *supra* note 3, at 531.

79. *Id.*

80. *See id.* at 532.

81. *See id.*

82. One commentator noted that

[t]he lecture method of legal instruction, which frequently amounted to little more than a professor standing before a class reading one or two chapters from a legal treatise and which, even in the hands of a brilliant scholar, often left the majority of students in dazed incomprehension, was the standard mode of teaching in the Harvard Law School in 1869.

Chase, *supra* note 1, at 336-37.

83. REDLICH, *supra* note 25, at 12-13.

84. STEVENS, *supra* note 2, at 54.

dent not as a man, but as a school boy reciting his lines."⁸⁵

Langdell's case method innovation did much more, however, than simply replace an old, worn-out method with a new-fangled alternative; the case method offered a reasoned rationale—a "scientific" theory—of legal education.⁸⁶ In short, the great initial contribution of the case method was that it provided legitimacy and respectability to college-level legal education.⁸⁷

Drawing upon the catchword of the day, Langdell's theory was that law was an inductive "science." As Langdell himself explained:

Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied.⁸⁸

The objective of legal education, according to Langdell, was

not precisely and only to educate young men to be practicing lawyers, though it [was] largely used for that purpose. It [was] to furnish all students who desire it the same facilities to investigate the science of human law, theoretically, historically, and thoroughly as they have to investigate mathematics, natural sciences, or any other branch of thought.⁸⁹

Langdell's notion of law as a science has long been discredited.⁹⁰ Nevertheless, to Langdell, law was a science—and the students were the scientists. The effect of this last comment was that the burden of constructing the framework of legal doc-

85. *Id.*

86. *Id.* at 52.

87. *See id.* at 51.

88. REDLICH, *supra* note 25, at 10-11 (quoting C. C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS i (1871)).

89. HALL, *supra* note 73, at 220 (quoting Gerard W. Gawalt, *The Impact of Industrialization on the Legal Profession in Massachusetts, 1870-1900*, in NEW HIGH PRIESTS, at 108 (Gawalt ed., 1984)).

90. *See* STEVENS, *supra* note 2, at 156.

trine was effectively shifted from the professor to the student. "The intellectual labor, namely, of disentangling the facts and the leading train of thought from the report of each decided case is to be performed by the students, quite independently, even although carried on to a certain extent under the guidance of the teacher."⁹¹ The idea was that, under the case method, "the student is practically doing, under the guidance of an instructor, what he will be required to do without guidance as a lawyer."⁹²

In addition to "training the legal mind," Langdell also set out to teach the fundamental principles of the common law. He "believed that the whole body of the common law" could be taught by means of the case method, during the three year program of study.⁹³ It soon became apparent that such a nice fit was largely impossible; thus,

[t]he fiction that even generalized national judge-made law was to be mastered, was abandoned. Portions of it were to be mastered, but large portions of it were avowedly not. American law became for the student not a field to be surveyed broadly, but a thicket, within which a partial clearing, pointing in the right direction, is made. The young practitioner is then equipped with a "trained mind," as with a trusty axe, and commissioned to spend the rest of his life chipping his way through the tangle.⁹⁴

Thus, at an early stage, the case method made its claim to methodological supremacy on the grounds that it effectively taught students to "think like lawyers."⁹⁵ As Roscoe Pound elaborated: "Langdell was always worried about 'Why?' and 'How?' He didn't care particularly whether you knew a rule or could state the rule or not. But how did the court do this? And why did it do it? That was his approach all the time."⁹⁶

With remarkable rapidity, the case method of instruction became entrenched as a fundamental component of law school education. By the end of the 19th century, the case method clearly "was recognized as *the* innovation in legal education."⁹⁷

91. REDLICH, *supra* note 25, at 12.

92. STEVENS, *supra* note 2, at 56.

93. Edmund M. Morgan, *The Case Method*, 4 J. LEGAL EDUC. 379, 380 (1952).

94. REED, *supra* note 6, at 380.

95. Chase, *supra* note 1, at 342.

96. STEVENS, *supra* note 2, at 55.

97. *Id.* at 63.

Its rise to the top was not, however, without its detractors.

C. Early Opposition

“Opposition to innovation is deeply rooted in human nature.”⁹⁸ In no situation was this more true than in the initial response to the introduction of the case method. The first critics of the case method were Langdell’s students themselves, who apparently voted with their feet. In Langdell’s first year of employing the case method, students “cut Langdell’s classes in droves; only a few remained to hear him out. Before the end of the first term, his course, it was said, had dwindled to ‘seven devoted men . . . who went by the name of “Kit’s Freshmen” or “Langdell’s Freshmen.”’⁹⁹ Moreover, student opposition to the case method did not confine itself to Langdell’s classroom: the enrollment of the entire law school “fell precipitously.”¹⁰⁰

Langdell also faced opposition from his Harvard colleagues, all of whom continued to employ the textbook method.¹⁰¹ Moreover, the Dean of the Harvard faculty complained that Langdell’s ideas seemed to “breed professors of Law not practitioners.”¹⁰²

Likewise, practitioners claimed that Langdell’s ideas were “too theoretical, unsuited for the making of good lawyers.”¹⁰³ Furthermore, it was widely thought that the case method would be particularly inappropriate for anyone but the most highly intellectual students.¹⁰⁴ Others complained that the case method “severed the cords, already tenuous, that tied the study of law to the main body of American scholarship and American life . . . ,”¹⁰⁵ thus ignoring the influence of economic and political forces in shaping the law.

Even the ABA weighed in on the issue, expressing concern that the case method might encourage litigation.¹⁰⁶ In 1891, an ABA report on the case method lamented that it regrettably

98. REDLICH, *supra* note 25, at 13.

99. FRIEDMAN, *supra* note 3, at 533 (citation omitted).

100. *Id.*

101. *See id.*

102. *Id.* at 534. The Dean apparently was so upset about Langdell’s innovations that he lost a fair amount of sleep over it. *See id.*

103. *Id.* at 535.

104. *See* STEVENS, *supra* note 2, at 57.

105. FRIEDMAN, *supra* note 3, at 535.

106. *See* STEVENS, *supra* note 2, at 58.

failed to impart to the student fundamental knowledge of well-settled doctrine:

A limitation of the case method, and probably an unavoidable one, is its confinement to the doubtful part of the law and disregard of the great but settled principles upon which so much of the lawyer's reasoning depends. . . . The result of this elaborate study of actual disputes, and ignoring of the settled doctrines that have grown out of past ones, is a class of graduates admirably calculated to argue any side of any controversy, . . . but quite unable to advise a client when he is safe from litigation. . . . The student should not be so trained as to think he is to be a mere hired gladiator.¹⁰⁷

The ABA worried that the case method was "in danger of presenting the law in too disconnected, isolated and detached fragments, rather than in one continuous and steady flow."¹⁰⁸

Despite these early criticisms, the case method survived the onslaught and eventually flourished. A number of reasons have been postulated as to why the case method proved so resilient. First, despite its detractors—even those within Harvard—Langdell continued to receive support from Eliot, whose influence both within and without Harvard was great indeed.¹⁰⁹ Second, the introduction of the case method had the effect of "exalt[ing] the prestige of law and legal training; . . . it affirmed that legal science stood apart, as . . . a branch of learning that genuinely demanded rigorous formal training."¹¹⁰ Moreover, "part of the method's popularity was snobbism; once elite law schools had decided to approve of the system, those aspiring to be considered elite rapidly followed."¹¹¹ Third, the case method promised a solution to the problem of handling the local diversity in a federal system—i.e., it simply ignored diversity and taught general principles, leaving the fine tuning to the world of practice.¹¹² And finally, the "case-method system also held a trump card—finance."¹¹³ In other words, Langdell's method allowed schools to establish large classes, and "[a]ny educational

107. *Id.* at 59 (quoting Report of Committee on Legal Education, 15 ABA Proceeding 317).

108. *Id.* (quoting Report of Committee on Legal Education, 15 ABA Proceeding 368).

109. See FRIEDMAN, *supra* note 3, at 533.

110. *Id.* at 536.

111. STEVENS, *supra* note 2, at 63.

112. See FRIEDMAN, *supra* note 3, at 536.

113. STEVENS, *supra* note 2, at 63.

program or innovation that allowed one man to teach even more students was not unwelcome to university administrators."¹¹⁴ For these reasons, by 1921, one could say with confidence that the case method was

the inevitable accoutrement of the majority of American law schools. The steamroller seemed to be rolling inexorably on. The case method had succeeded in the face of the opposition of state universities, elite private universities, and the skepticism of [learned observers]. It was not merely a fad of the late Victorian era but the standard of the twentieth century. By the 1920s, anybody who was anybody in the law school 'industry' used the case method.¹¹⁵

Thereafter, the case method has continued to be the backbone of legal education.

IV. THE MERITS OF THE CASE METHOD: ANALYZING THE BENEFITS AND CHALLENGES

As noted previously,¹¹⁶ the case method has been under attack from its inception. Despite this, it was not until around the time of World War I that any "systematic, critical analysis" of the case method was attempted.¹¹⁷ The first influential study of this kind came from Joseph Redlich, an Austrian observer, who had been hired by the Carnegie Foundation to report on the case method.¹¹⁸ His 1914 report, based on visits to ten schools, pointed out some of the disadvantages of the case method.¹¹⁹ Another, more comprehensive report on legal education (also commissioned by the Carnegie Foundation) was published seven years later by Alfred Reed, a nonlawyer.¹²⁰

With respect to the case method system, the Redlich and Reed reports pointed out a number of drawbacks to this method of instruction.¹²¹ Among these, it was suggested that the case method (1) was ineffective for teaching statutory and other materials; (2) catered only to the particularly quick or talented

114. *Id.*

115. *Id.* at 123.

116. *See supra* Part III.C.

117. *See* STEVENS, *supra* note 2, at 112 (referring to REDLICH, *supra* note 25).

118. *See* STEVENS, *supra* note 2, at 112.

119. *See id.* at 113.

120. *See id.* at 112. (referring to REED, *supra* note 6).

121. *See* STEVENS, *supra* note 2, at 117.

students; (3) lacked a practical component necessary to prepare students for the actual practice of law; and (4) inhibited research and discouraged professors from publishing research on law rather than about law.¹²²

Despite their criticisms, Reed and Redlich did not necessarily call for the wholesale replacement of the case method. Indeed, Reed's primary concern had more to do with the skill of the faculty in employing the method. "I believe that while, in the hands of a genuine scholar, skilled in the Socratic method, the case method is indubitably the best, in the hands of a mediocre man it is the very worst of all possible modes of instruction."¹²³

In any case, the Redlich and Reed reports marked the foundation of modern criticism of the case method. Building upon their foundation, an analysis of the comparative benefits and challenges of the case method is summarized below.

A. Analysis of the Benefits

1. The case method teaches students to "think like lawyers"

Although the original intention of the case method was to educate students on the core principles, or substance of the law,¹²⁴ the focus shifted relatively early on. "The case method law school no longer professed to give its students a present mastery of judge-made law. It prepared them merely to master judge-made law in the future."¹²⁵ In other words, the case method teaches students how to "think like a lawyer."¹²⁶ The case method accomplishes this goal by requiring students to read actual cases, picking out holdings, tracing the court's analysis, sorting the relevant from the irrelevant, and distinguishing seemingly contradictory points of view. The process of making such an analysis requires the student, at least theoretically, to apply the same kinds of skills that a practitioner regularly uses. As Professor Keener, one of the most influential early advocates of the case method, explained:

[I]t is by the study of cases that one is to acquire the power of

122. These criticisms are summarized in STEVENS, *supra* note 2, at 112-21.

123. REED, *supra* note 6, at 382.

124. See Morgan, *supra* note 93, at 380.

125. REED, *supra* note 6, at 379.

126. Chase, *supra* note 1, at 342.

legal reasoning, discrimination and judgment, qualities indispensable to the practicing lawyer; . . . the study of cases best develops the power to analyze and to state clearly and concisely a complicated state of facts, a power which, in no small degree, distinguishes the good from the poor or indifferent lawyer; . . . the student, by the study of cases, not only follows the law in its growth and development, but thereby acquires the habit of legal thought which can be acquired only by the study of cases, and which must be acquired by him either as a student or after he has become a practitioner if he is to attain any success as a lawyer.¹²⁷

The new goal set forth by the case method of “thinking like a lawyer” had the effect of “transfer[ing] the basis of American legal education from substance to procedure and . . . mak[ing] the focus of American legal scholarship . . . one of process rather than doctrine.”¹²⁸ The goal was no longer the imparting of mere information which was “likely soon to be forgotten,”¹²⁹ but rather the imparting of “knowledge,” which was “a mastery of the law.”¹³⁰

Teaching students to think like lawyers has become the touchstone of the case method. More than any other positive result of the case method, training the legal mind has most effectively withstood the test of time. The success of this rationale rests primarily on the fact that few have disputed its truth, especially when the alternatives were the lecture and textbook methods, which “impose[] no stress on the student beyond the necessity of putting himself into a quite receptive state: of listening and remembering . . . wholly unlike the demands upon the resources of a practising lawyer.”¹³¹

The only valid criticism of this aspect of the case method is that it only works if students prepare and put forth the effort.¹³² The criticism lacks bite, however, since it is basically

127. Morgan, *supra* note 93, at 381 (quoting Keener, *The Inductive Method in Legal Education*, 17 A.B.A. REP. 473, 489 (1894)).

128. STEVENS, *supra* note 2, at 56.

129. Morgan, *supra* note 93, at 380.

130. *Id.*

131. Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943, 945 (1995-96) (quoting Thomas F. Taylor, *The “Dwight Method,”* 7 HH. 203, 209-210 (1893)).

132. *See id.* at 954-55 (suggesting that incoming law students “simply do not have the skills necessary to profit from methods of instruction other than lectures”).

true of any pedagogical method.¹³³

As the primary selling point of the case method, the concept of teaching students to think like lawyers forms the basis of a number of other merits of the case method.

2. The case method teaches students how to teach themselves

On a daily basis, the amount of legal knowledge available in any given area of the law continues to grow at exponential rates. Thus, the prospect of teaching law students all they will need to know substantively to make it in the practice of law is so unrealistic as to hardly merit mentioning. However, this truism serves as the foundation of another important justification for the case method, namely, that "the basic function of the educational process is to enable a student to learn how to learn . . ." ¹³⁴ By forcing students to analyze cases on their own and critically integrate them into a coherent whole of "law," the case method effectively equips students with the skills to be self-educators. Indeed, one commentator suggested that the case method simply "is the best method yet discovered or devised to lay the foundation for profitable, effective further study of the law by any method."¹³⁵

Critics of this justification might argue, however, that while it is clear that not *all* substantive law can be covered in three years of study, the case method's explicit rejection of substantive knowledge as the objective of legal education provides an easy excuse for failing to impart substantive knowledge to students.

3. The case method personalizes legal education

A third justification for the continued use of the case method is that refusing to simply lay out the legal landscape as plotted out by legal scholars in ivory towers forces the student to create her own mental framework for understanding the law. The result is that students' take ownership of their knowledge of the law, personalizing it within the mental constructs they themselves have created. As Professor Ames put it, the

133. Even a lecture environment will not "work" if students do not do their part to be receptive.

134. Frank R. Strong, *The Pedagogic Training of a Law Faculty*, 25 J. LEGAL EDUC. 226, 238 (1973).

135. Morgan, *supra* note 93, at 388.

student

is the invitee upon the case-system premise, who, like the invitee in the reported cases, soon finds himself fallen into a pit. He is given no map carefully charting and laying out all the byways and corners of the legal field, but is left, to a certain extent, to find his way by himself. His scramble out of difficulties, if successful, leaves him feeling that he has built up a knowledge of law for himself. The legal content of his mind has a personal nature; he has made it himself.¹³⁶

As a result of this forced personalization of the law, students learn to “question the validity and applicability of every generalization. [They] develop[] toughness and resilience of mind and the capacity and willingness to form and act upon . . . considered judgment in important situations.”¹³⁷

Critics argue that this is all good and well as long as the student is sophisticated enough to embark on such a difficult, active-learning task. Arguably, many students are not;¹³⁸ and while “in theory students profit most from active learning, in practice, today’s students have not learned how to receive information through active involvement in the learning process.”¹³⁹ This criticism, however, seems self-defeating in that it suggests that all students are in need of remediation. Moreover, even in those situations where it may be true, students often need the motivation of a difficult learning task in order to “rise to the occasion.”¹⁴⁰ Again Professor Ames’ response is apropos:

Any young man [or woman] who is old enough and clever enough to study law at all, is old enough to study it in the same spirit and the same manner in which a lawyer or judge seeks to arrive at the legal principle involved in an actual litigation. The notion that there is one law for the student and

136. STEVENS, *supra* note 2, at 54 (quoting JAMES BARR AMES, CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 130 (1918)).

137. James Eager, *The Right Tool For the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389, 400 (1996-97) (quoting Morgan, *supra* note 93, at 387).

138. See Richmond, *supra* note 131, at 954-55.

139. *Id.* at 954.

140. As an anecdotal example, the author’s first year civil procedure class was, by broad consensus, the most difficult class of those offered during the first year. Interestingly, it was in that class more than any other that students strove for academic excellence.

another law for the mature lawyer is pure fallacy.¹⁴¹

4. *The case method is more "real" than other methods*

A fourth argument in favor of the case method is that it provides a more realistic view of the law than other methods. The case system, though unable to "summon at will living clients, . . . put[s] at the service of the students . . . the adjudicated cases of the multitude of clients who have had their day in court."¹⁴² Moreover, "[s]ince judicial opinions involve real people mired in real controversies, they can stimulate greater student interest."¹⁴³

The critics argue that this justification is misleading:

[The "reality" argument] has validity. But, at the same time, the case method suffers from a dose of unreality. Students are not gaining actual experience with real clients and real disputes. They are reading about disputes that have already been resolved, some decades or even centuries ago.¹⁴⁴

Moreover, casebooks consist almost exclusively of appellate opinions on narrow issues with limited facts. In addition, most cases are edited for casebook publication, thus eliminating some of the "reality."

While these criticisms may be true, it is also true that real cases are more real than lectures or textbooks, which simply contain dogmatic principles of law or convoluted hypotheticals.

5. *The case method does not minimize the complexity of the law*

The case method also recognizes that the state of the law is ambiguous. In fact, with respect to those issues for which a lawyer's professional opinion may be sought, solid legal arguments can generally be proffered in support of two or more conflicting views. The case method does not minimize these gray areas in the law by reducing them to black-and-white rules. Rather, the case method presents the law in all its shades of gray and forces the student to do the difficult work of develop-

141. Richmond, *supra* note 131, at 948 (quoting James Barr Ames, *The Vocation of the Law Professor*, in LECTURES ON LEGAL HISTORY AND MISCELLANEOUS LEGAL ESSAYS 362 (1913)).

142. STEVENS, *supra* note 2, at 54.

143. Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 547 (1991).

144. *Id.* at 561.

ing legally defensible reasons for favoring one potential decision over another. Moreover, since the vast majority of topics covered in law courses (whether they have their basis in legislation or regulation) have been subject to relevant judicial scrutiny. Thus, some have argued that “[c]ase analysis may be the only way to fully determine the law in a given area.”¹⁴⁵

6. *The case method is institutionally efficient*

Finally, the case method is also supportable for a non-pedagogical reason: institutional efficiency. When combined with the Socratic method of classroom dialogue, the case method may be used in large classes. The Socratic method, although not technically synonymous with the case method, generally “involves a teacher asking a series of questions, ideally to a single student, in an attempt to lead the student down a chain of reasoning either forward, to its conclusions, or backward, to its assumptions.”¹⁴⁶ The Socratic method is a perfect complement to the case method in that it tends to further the primary objective of the case method by requiring students to examine the bases and implications of a line of reasoning in order to build new knowledge. Moreover, since the Socratic method’s one-on-one dialogue allows a professor to single out any given student at any given time, it purports to encourage student preparation, even in a large class. Langdell himself coined the term “Socratic method” in the legal education context¹⁴⁷ and saw “the Socratic dialogue [as] a necessary adjunct to the case method of study.”¹⁴⁸

The case method is also institutionally efficient from the standpoint that, once the initial materials have been collected, updating of casebooks is relatively easy through the addition of significant cases.¹⁴⁹

On balance, it seems that the justifications for the continued employment of the case method in law schools remain valid. However, this is not to say that the case method is free from flaws.

145. *Id.* at 563.

146. Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method*, 45 STAN. L. REV. 1571, 1573 (1993).

147. See REDLICH, *supra* note 25, at 12.

148. Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 406 (1971).

149. *See id.*

B. Analysis of the Challenges

Since Redlich and Reed's time, critics of the case method have continued to point out apparent deficiencies in the case method system. Some criticisms are merely continuing complaints based on the observations of early critics, while others are based on concerns arising from changes in the American legal system as a whole. Generally speaking, the criticisms of the case method fall into one of three broad (and somewhat overlapping) categories: (1) those which attack the objectives and scope of the case method; (2) those which attack the manner in which professors employ the case method; and (3) those which attack the general value system of law schools.

1. Critique on the objectives and scope of the case method

Many of the criticisms of the case method are not really criticisms of the case method itself so much as criticisms of the narrow objectives to which it caters—i.e., teaching students to “think like lawyers.” In other words, as discussed above,¹⁵⁰ the case method is concerned with mastery of legal reasoning skills rather than with substantive legal knowledge. Thus, the first group of criticisms leveled against the case method are, at bottom, objections to an educational method whose primary aim is process-oriented (i.e., intended to teach students to “think like lawyers”), rather than substance-oriented (i.e., intended to impart to students large amounts of substantive legal principles and rules of law). Critics espousing these viewpoints are likely to admit that the case method is actually very effective in achieving its objective of teaching students to think like lawyers. Their concern, however, is that students need to know so much more than simply how to think like a lawyer.¹⁵¹

a. The case method is a waste of time that often breeds no more than confusion. A common complaint from students (usually after discussing their fifty-second hypothetical based on the *Palsgraf*¹⁵² case in Torts) goes something like this: “I wish

150. See *supra* Part IV.A.1.

151. See Cynthia G. Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, 1998 BYU EDUC. & L.J. 1, 2 (1998) (“Gone are the times when it was sufficient to merely think like a lawyer—law school graduates need to be able to perform like lawyers.”).

152. *Palsgraf v. Long Island Railroad Co.*, 162 N.E. 99 (N.Y. 1928) (the famous torts case on proximate causation).

the professor would just tell us what the law is so we can get on with it." This complaint illustrates one of the concerns that regularly appear in critiques of the case method—that it is an inefficient way to convey large amounts of legal information.¹⁵³ Indeed, even in Langdell's time, curriculum cuts were necessary in order to accommodate the slow pace of the case method.¹⁵⁴

Part of the inefficiency of the case method is based on its requirement that students read and analyze cases reaching opposite results under similar fact scenarios, and more often than not cases of every shade of gray in between. Some of these cases may no longer be good law, having been overruled or superseded by statute. Sorting out such a jumble of good and bad law not only takes an inordinate amount of time, but may even encourage some students to make erroneous conclusions about the status of the substantive law. This is particularly true in those cases where a point of law is susceptible to two or more well-founded, but conflicting interpretations. Students in such circumstances may spend so much time developing arguments on both sides that when the dust clears, they are not sure which side actually represents the current state of the law.

Professors often minimize such confusion by overemphasizing the value of seeing both sides of an argument at the expense of reaching what (at least at the moment) is the actual status of the law, thus further adding to the inefficiency concern. The confusion engendered by the case method has led some critics to condemn the method as catering only to the intellectually elite at the expense of the average student.¹⁵⁵

In response, few case method advocates would disagree that much more substantive ground could be covered by employing a lecture method in which the professor simply spells out the

153. See Eager, *supra* note 137, at 401; FRIEDMAN, *supra* note 3, at 533 ("The dialogues in Langdell's classes went slowly, and covered very little ground, compared to the lecture method.")

154. See FRIEDMAN, *supra* note 3, at 533. Harvard even dropped constitutional law from the curriculum for a short period of time because Langdell "needed every scrap of time." *Id.*

155. See STEVENS, *supra* note 2, at 118 (documenting early commentators who opposed the case method because "it was not suited to the 'great and important class of men of average ability'"). Interestingly, Eliot believed that the reverse was true: "Perhaps a few outstanding students could profit from lectures delivered in the grand manner, but Eliot was concerned with the 'conscientious teaching even of mediocre students.'" Chase, *supra* note 1, at 334 (citation omitted).

blackletter law while students laboriously take notes. Covering massive amounts of substantive material is of little use if the student is unable to retain any of it.¹⁵⁶ More fundamentally, however, the case method advocate would point out that the inefficiency argument is not really an attack on the case method itself; rather, it is an attack on the objective of the case method. As discussed above, the major objective of the case method, and its main selling point, is to teach students to think like lawyers. It is concerned with the mastery of legal reasoning skills rather than with substantive legal knowledge. With this objective in mind, the time spent in painstakingly sorting out the analytical underpinnings of cases is time well spent. Thus, when critics argue that the case method is inefficient, what they are really saying is that, in their view, the case method is aiming at the wrong target.

With respect to the confusion argument, case method advocates would similarly argue that at least to some extent, confusion can be productive. The fact that similar cases reach conflicting results forces the student to perform more than a surface-level analysis; she must look more deeply at the cases to find the distinguishing characteristics or to ferret out the varying policy justifications that support each decision. Thus, although such analysis takes time, the valuable (and intended) result is increased mastery of legal reasoning skills.¹⁵⁷

b. The case method is inadequate for the study of legislation. A second critique of the case method is that it minimizes the importance of legislative enactments. Indeed, under Langdell's conception of the case method, "statutory and reform materials were not part of the science of law."¹⁵⁸ Since Langdell's time, however, legislation has been enacted on a widespread scale for nearly every facet of the law, and while many statutes have been judicially construed, many others have not. The failure of the case method to educate students in the interpretation of the latter has been termed by at least one commentator to be the case method's "most serious demerit."¹⁵⁹ Arguably, courses

156. See *supra* note 84, and accompanying text.

157. The skill of the professor in shaping and channeling the course of such "constructive confusion" will likely determine the effectiveness of the method in this respect.

158. FRIEDMAN, *supra* note 3, at 533.

159. Edwin W. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL EDUC. 1, 23 (1951).

such as those arising out of the Uniform Commercial Code or the Internal Revenue Code would be impossible to teach by pure case method.

Again, this criticism is not based on the assertion that the case method itself is inherently invalid; rather, it is based on the assumption that the scope of the case method is unduly narrow—providing only the case-analysis slice of the broader legal pie. In this instance then, it is not the use, but the over-use of the case method to which these critics object. Even staunch proponents of the case method recognize that it may not be appropriate for every class.¹⁶⁰ This criticism, though valid, also overlooks the fact that cases often provide insight into the skill of statutory construction.¹⁶¹ In many instances skills acquired in the analysis of case law are transferable to the legislative context.¹⁶²

c. The case method is unsuitable for covering practical problems not associated with litigation. Some scholars assert that the case method fails to teach students about practical problems with which lawyers commonly deal outside of the litigation context.¹⁶³ For example, the case method inadequately addresses “the organization of courts, the duties of the bar with respect to the needs for legal services of the indigent and of persons of moderate means.”¹⁶⁴ Furthermore, casebooks, with rare exceptions, “are often composed almost exclusively of appellate opinions, even though in certain areas of the law, e.g., torts, contracts and property, most decisions are rendered by state trial courts and are never appealed. Indeed, the vast majority of cases are never even tried.”¹⁶⁵ This focus on appellate cases obscures the lawyer’s role in the process:

The “facts” presented in an appellate opinion have been shaped and developed many times. Students do not see a legal problem in its raw form—as it was presented to the lawyer. They do not see what the lawyer did in terms of ascertaining

160. See *infra* Part V.B.

161. For example, a case involving a section of the Internal Revenue Code might look at legislative history, pertinent regulations from the IRS and other indicia of legislative intent, in determining the outcome of a litigated issue.

162. For example, the skills of distinguishing and analogizing from case law applies with equal vigor when the context requires comparisons between conflicting or analogous statutory enactments.

163. See FRIEDMAN, *supra* note 3, at 533.

164. *Id.*

165. Weaver, *supra* note 143, at 570.

and developing the facts. They also do not see the lawyer's tactical decisions. . . . A lawyer has many opportunities to develop and present facts in reference to existing precedent. How well he performs this task has a very important, if not determinative, impact on the outcome of his case. Yet, this crucial aspect of lawyering is partially concealed by appellate opinions.¹⁶⁶

Thus, although the cases help students see what courts do when confronted with a neatly packaged piece of litigation, they do little to teach the student how to "package" her own cases.

Nevertheless, this alleged weakness is not fatal. Moot court programs, courses in trial advocacy, and legal writing programs often help fill some of the gaps left by the "failings" of the case method. Moreover, when cases include concurring and dissenting opinions, students are well apprised of the different ways in which lawyers on each side "packaged" their cases.

d. The case method is inadequate for teaching non-litigation skills. As the popularity of alternative dispute resolution forums rises, the ability of lawyers to enter practice with skills in such areas as mediation, negotiation, and counseling is becoming increasingly important. However, by definition such skills cannot be taught more than tangentially by way of the case method.

Here again, this is a valid criticism which points out not that the case method itself is flawed, but that its narrow scope excludes the possibility of educating the student in areas of critical importance to today's lawyer.

However, this criticism overlooks the important point that many of the skills involved in "thinking like a lawyer" are relevant in non-litigation contexts. For example, an attorney going into a mediation or negotiation conference would seriously undermine her position (not to mention being perilously close to committing malpractice) if she failed to research the relevant case law on the issues, both to understand exactly what her bargaining power is and chances of success would be should the negotiations or mediations fail and court action become neces-

166. *Id.* at 570-71; see also Morgan, *supra* note 93, at 385-86 (noting the case method's failure to evaluate how the conduct of the attorney may have influenced the outcome where, for example, an attorney in a suit for damages caused by eating food containing a harmful substance makes only a claim for negligence and not a claim for breach of warranty).

sary. Further, under the professor's guidance, doctrines, principles, and ideas derived from case study can be injected into a non-litigation context by use of hypotheticals and supplemental problems.¹⁶⁷

2. *Critique on the manner in which teachers employ the case method*

The second group of criticisms aimed at the case method focuses more on the application of the case method in actual instruction. These criticisms, as will be illustrated, are more about the choices and skills of individual professors and casebook publishers than about the case method itself.

a. *The case method minimizes study of the philosophical and ethical bases of law.* The case method has been cited for focusing so much on the intellectual analysis of courts that the policy bases and the ethical foundations for law are sometimes overlooked.¹⁶⁸ Discussions of policy are often relegated to a footnote as subordinate to the logic of judicial analysis.

Though this critique may be the case in actual practice, it need not be so. Nothing inherent in the case method mandates this result. Cases and casebooks certainly deal with issues of policy and ethics, and presumably, thinking like a lawyer means taking such issues into consideration in formulating legal opinions. Thus, the lack of discussion on such issues, where it exists, seems to be more a product of a professor's preference than a method inadequacy.

b. *The case method does not prepare students for bar exams or even for typical law school exams.* Others have argued that a major flaw in the case method system is that it fails to prepare students adequately for the type of exams they face in law school and ultimately for the bar examination.¹⁶⁹ In this critique, as in the inefficiency critique, the argument is that the case method fails to impart to students the amount of substantive knowledge that is necessary to equip them to perform well on law school and state bar examinations. Such exams often reward students more for breadth of coverage than for depth of

167. For instance, in a business associations class, after reading a case on the contentious dissolution of a partnership, discussion could focus on how, from a planning perspective, this litigious result could have been avoided.

168. See Patterson, *supra* note 160, at 23.

169. See Eager, *supra* note 137, at 401-02.

analysis. Thus, since the focus of the case method is on depth of analysis, such an approach seems to be working at cross-purposes with the ultimate hoops through which students must jump in order to enter the legal profession.

With respect to law school examinations, simply put, the test should reflect the method. Thus, professors who conscientiously employ the case method should award more points for reasoning than for result, i.e., they should reward students for "showing their work,"¹⁷⁰ even if they end up arriving at the wrong substantive conclusion. As for the bar exam, this is a more difficult question. In any event, students have long relied on bar review courses to equip them with sufficient substantive knowledge for bar exams on subjects for which they never even enrolled in law school.

c. The case method minimizes the influence of relevant extra-legal materials. The case method has also come under fire for failing to take into account extra-legal factors that impact legal decisions.¹⁷¹ Political, social, and economic factors often play a large role in the development of law. For example, discussion of cases such as *Lochner v. New York*, *Brown v. Board of Education* and *Roe v. Wade* are not self-contained, i.e., a full understanding of the conclusions of the Court and the rationales which support them would be severely limited without some discussion of the extra-legal influences which surrounded and followed these cases. The same holds true for legislative decisions. Moreover, relevant information from the fields of psychology and insurance as well as a host of others is often overlooked by strict adherence to the case method.

This criticism makes a good point, but the solution need not be the abandonment of the case method. Rather, the solution is for case books to include and professors to provide such relevant materials.

d. The case method breeds boredom. Some critics are willing to accept that "in the absence of real clients, cases are generally more interesting and stimulating than a text."¹⁷² Nevertheless, "student interest cannot be maintained at a high level for three years. Week after week, students are asked to read twenty to thirty pages a night for each class. The repetition leads to

170. A phrase borrowed from the high school math classroom.

171. See Eager, *supra* note 137, at 401-02.

172. Weaver, *supra* note 143, at 561.

boredom and numbness.”¹⁷³ Critics argue the ability to read and analyze cases “like a lawyer” does not take three years to develop.¹⁷⁴ In fact, some have argued that “[a] student who cannot read [cases] after six months will probably never learn to do so.”¹⁷⁵

Even ardent case method advocates might concede this point. On the other hand, case analysis is the daily bread and butter of most practicing attorneys, even transactional lawyers, whose work may someday be subject to judicial scrutiny. If it is that boring, maybe the problem is not with the method, but with the profession. The enthusiasm and methodological variety with which the professor approaches a topic can often cure “methodological boredom.”

3. *Critique on the institutional effects of the case method*

The third group of criticisms relating to the case method deals primarily with institutional issues, the blame for which some have pinned on the case method.

a. *The case method minimizes jurisdictional variation in the law.* The case method has been condemned for failing to take into account the variations in the law among different jurisdictions. The student “learns to evaluate authorities in a mythical legal system, The Law of This Course, and does not learn thoroughly the law of any one jurisdiction.”¹⁷⁶

Though made in connection with the criticisms of the case method, this is merely the educational consequence of the federal system of government. Confining the legal education offered at a given institution to a single jurisdiction would prevent law schools from attracting students who wish to practice outside that jurisdiction. In addition, such a system would deprive students of the exposure to the skills of using persuasive foreign precedent to effect change in any given jurisdiction.

b. *The case method deters creative legal scholarship.* One of the criticisms mentioned by Redlich and Reed was that the case method’s obeisance to adjudged decisions has taken too many legal scholars away from creative legal scholarship of

173. *Id.* at 561-62.

174. *See id.*

175. *Id.* at 562.

176. Patterson, *supra* note 160, at 23.

lasting value.¹⁷⁷ As one commentator noted, "Professor James Barr Ames, a brilliant and inspiring teacher, produced many annotated casebooks and only a single volume of essays."¹⁷⁸

Professor Ames notwithstanding, law schools today put enough pressure on professors to publish that this is no longer a significant issue. Moreover, it is unclear how abandoning the case method would remedy such a problem.

c. Students are too immature for the case method. Some scholars have argued that students, especially in the first year, are too immature to make a good synthesis of legal doctrines or concepts, based upon case materials.¹⁷⁹ The truth of this assertion may be difficult to establish empirically; however, it is certainly true that the case method of education generally represents a vast methodological departure from the methods that most incoming law students experienced during their undergraduate studies. But coddling law students does not seem like a helpful alternative.

C. Summary Evaluation

Within the scope of the objectives the case method seeks to achieve, the method has proved to be effective and should continue to be used. Nevertheless, the case method is subject to legitimate criticisms. However, most if not all of these criticisms can be dealt with by (1) confining use of the case method to situations in which its basic objectives coincide with the objectives of the course; (2) altering case books and teacher application of the case method in order to address criticisms; or (3) recognizing that some criticisms of the case method are inherent in the law school institution, and as such are independent from the case method itself. Part V provides some analysis on how such improvements might be implemented.

V. RECOMMENDATIONS

A. Establish Pedagogical Objectives

The first recommendation is to establish clear pedagogical objectives within the law school community. This recommenda-

177. Weaver, *supra* note 143, at 562.

178. Patterson, *supra* note 160, at 23.

179. *See id.* at 22.

tion, along with that of Part V.B., is intended to address the first group of criticisms, relating to the scope and objectives of the case method.

When the case method was introduced in 1870, it had to fight against the inertia of the incumbent lecture and textbook methods. Today the case method is the beneficiary of a similar historical inertia and thus is often uncritically accepted as the most effective methodology for legal education.

New law professors gravitate to the case method because that was the system under which they *themselves* learned the law.¹⁸⁰ The fact that the law professors themselves, who generally have outstanding law school records, thrived on the case method only heightens their natural affinity for employing the method. Moreover, even if new law professors were prone to adopt a different method, many may resist for fear that the deviation may come back to haunt them in their quest for tenure.¹⁸¹

The foregoing is an obvious overgeneralization. Certainly some law professors are very conscientious in choosing their teaching methods. Nevertheless, it is certain that some accept and employ the method uncritically as an effective and reliable inheritance from their forebearers in legal education.

Part of the problem stems from the fact that "most faculty enter law teaching from practice with little formal training in teaching methods or theory."¹⁸² Indeed, the availability of such training is extremely limited.¹⁸³ Certainly, the establishment of a more formal pedagogical training program for law professors would be an immense asset in improving legal education. To come to fruition, however, such a proposition would require action of revolutionary proportions, and thus it is impractical in the short term. In the meantime, there is one fairly simple yet

180. See Weaver, *supra* note 143, at 544.

181. See *id.* (stating that, "At most law schools, one would have difficulty obtaining a teaching position if during the interview process he openly stated a preference for the lecture method. Junior faculty who consider other teaching methods may stick with the case method for fear of retaliation in the tenure process. Although faculty are free from such restraints once tenure is received, few alter their methods at this point.").

182. *Id.*

183. "There are a few post-graduate programs designed for those who intend to teach law, but few faculty graduate from those programs. From time-to-time, the Association of American Law Schools (AALS) sponsors a new teacher's workshop which focuses on teaching methods, but most law professors entered teaching without the benefit of this program" *Id.*

immensely important suggestion that has the potential of making the use of the case method more effective: the establishment of formal pedagogical goals, both at the law school level and at the individual class level.

A method without an objective is like a trip without a destination. Without a destination, there is no way to determine whether the path chosen was an effective means to an end. The same is true in legal education: a professor must understand her objective if she wishes to evaluate the effectiveness of the method that brought her to the place at which she finds herself at the end of the semester.

This setting of objectives should be done on at least two levels. First, on the level of the law school as a whole, a pedagogical "mission statement" should be drafted with input by the professors, outlining the fundamental pedagogical objectives of the law school. This mission statement should then be used by individual professors to shape the more specific objectives they intend to achieve in their individual courses.

The mission statement and the class objectives should be formally memorialized in writing. This will force professors to think seriously about their objectives and will encourage them to consider how the methods they employ will facilitate the achievement of those objectives.

Most importantly, the mission statement and the individual class objectives should be clearly communicated to the students in an open and candid manner.¹⁸⁴ Doing so has a dual benefit. First, students who clearly understand the pedagogical objectives of their classes from the outset will be able to set realistic expectations of themselves and of their professors. Second, the professor, knowing that her communication of objectives with the students has created certain expectations, is encouraged to be accountable for ensuring that deviations from the objectives are corrected early on and that the overall goal of the class will ultimately be achieved.

B. Employ Alternative Methods: Match the Objective with the Method

Certainly the establishment of a mission statement and of individual class goals does not inescapably mandate the use of the case method. Even strong supporters of the case method

184. See Weaver, *supra* note 143, at 581-82.

admit that the case method is not appropriate in every legal educational environment:

All this is not to say that every part of every course, even in the first year, should be taught by the case method. Some matters are so simple and well settled that the student may get a thorough understanding of them through lecture or text Nor is it to say that the case method alone is the best for all or even most of the subjects in the second and third years. And especially, it is not to say that the case method alone provides an adequate training in the various skills required in the efficient practice of the profession.¹⁸⁵

Indeed, with respect to certain classes, such as taxation, the mission statement and individual class objectives may directly counsel *against* use of the case method. Even within a course where the case method is employed, certain sections of the course may lend themselves to the use of another method.

There is a wealth of recently published literature on the various alternatives to the case method, each of which comes with its own set of "pros" and "cons." In addition to the lecture and textbook methods, suggested alternatives include the problem method¹⁸⁶ and clinical legal education.¹⁸⁷ Moreover, the case method itself may be applied in a variety of forms.¹⁸⁸

185. Morgan, *supra* note 93, at 388.

186. The problem method, considered by some an "advanced" case method, is described as having three essential features:

The first feature is, of course, the problem. The problem involves several issues cutting across several cases and statutes. It is meant to resemble a complex situation that a lawyer might face in practice. The problem may be framed in the context of litigation, negotiations, drafting, or planning. The student must approach the problem in a specified role, such as advocate, judge, advisor, planner, legislator, or law clerk to any of these. The second feature is the advance distribution of the problem. Students are expected to work on the problem at home and come to class prepared to discuss it. . . . The third feature is that the problem is the focus of the class discussion. . . . The assigned cases, statutes, and other materials become tools for helping solve the problem.

Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241, 250 (1992). The problem method is said to do "everything the case method does" and is said to be "particularly well-suited for use in code-oriented courses." Eager, *supra* note 136, at 404-05. For a summary of the pros and cons of the problem method, see Hawkins-Leon, *supra* note 152 and Gregory L. Ogden, *The Problem Method in Legal Education*, 34 J. LEGAL EDUC. 654 (1984).

187. For a concise summary of the advantages of clinical education, see Frank S. Bloch, *The Androgogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982).

188. See Morgan, *supra* note 93, at 383-84 (outlining three variations of the case method, from least difficult to most difficult). Such a "graded" use of the case method

Nevertheless, it would be appropriate to use the case method, at the minimum, as the primary pedagogical method in the first year of law school. Two reasons support this proposition. First, as the case method is at its best when the subject is the common law (which by definition was developed through judicial decisionmaking), its employment is particularly helpful in first year courses, whose subject matter typically revolves around common law subjects: torts, contracts, property, etc. Second, focusing on developing the analytical skills of "thinking like a lawyer" is entirely appropriate during the students' introductory year since the earlier students develop such analytical thinking skills, the better.

In the second and third years, by contrast, emphasis on the case method should be reserved for those courses, such as constitutional law, which clearly arise from and thus lend themselves to case method analysis. Other courses might employ the lecture, textbook, or problem methods, or some form of clinical legal education, as appropriately indicated by the nature of the course. As mentioned above, even within a particular course, some combination of methods may be necessary and appropriate in order to achieve the desired result as well.

C. Alter Casebooks

Another recommendation that relates specifically to the second group of case method criticisms is to alter casebooks to address more of the concerns raised by case method critics. Admittedly, case books have come a long way since Landgell's case book on contracts, which "was totally bare of aids to the student—notes, comments, [and] explanations."¹⁸⁹ Nevertheless, including more and relevant extra-legal materials can and should be a priority for casebook authors and publishers. Relevant material from history and other academic disciplines should be emphasized where their inclusion would aid the student in understanding and analyzing the cases. Questions, hypotheticals, and problems associated with the cases should conscientiously include application of the concepts derived from the cases to planning, mediation, negotiation, and counseling

may be the "middle-ground" solution to address the concerns of those who feel first year students are not mature enough to learn using the case method. See *supra* Part IV.B.3.c.

189. FRIEDMAN, *supra* note 3, at 532.

context. Additional "background" material could be included in teacher supplements. Armed with such background and a desire to use it, law professors would be capable of remedying many of the criticisms leveled at the case method.

D. Remember the Role of the Instructor

The final recommendation is to hire professors who care about teaching. This recommendation has implications for all three groups of criticisms, but more specifically for the second group relating to teacher application of the case method. Though intimately bound up in the success of any pedagogical methodology, the quality of the teacher has been all but forgotten in the literature regarding legal teaching methodologies. Referring to the case method, one commentator noted that, in determining the effectiveness of any method in facilitating the achievement of pedagogical objectives,

[m]uch if not everything, depended and still depends upon the instructor and his capacity to arouse in the student an enthusiasm for the subject and a strong determination to get to the vitals of each problem, and to accept no solution on the mere say so of the instructor or of a textwriter or of a single judge or of a particular court. . . . [In short], no teaching is good which does not rouse and "dephlegmatize" the students,—to borrow an expression attributed to Novalis,—which does not engage as its allies,¹⁹⁰ their awakened, sympathetic, and co-operating faculties.

Although this recommendation is not specific to the case method, it is still extremely important because the success of any pedagogical method rests primarily upon the teacher who employs it. Indeed, a "good" method will generally not save a bad teacher, nor will a "bad" method necessarily undermine a good teacher. The issue of quality teaching is an important part of advancing the quality of legal education.

Unfortunately, in the law school environment,¹⁹¹ students too often achieve in spite of, rather than because of, their professors. Largely at fault in this respect is the institutional overemphasis on choosing professors solely on the basis of their scholarship rather than their teaching ability. Traditionally

the process for selection of law faculties discloses little if any

190. Morgan, *supra* note 93, at 381-82.

191. Or in any educational environment with top students.

attention to teaching's unique requisite. Great care is taken to test for legal acumen by examination of the paper trail, by letters of recommendation, and by personal interview. Judgments made on other qualities, even general personality traits, are superficial.¹⁹²

The result of this "ivory tower" mentality in choosing professors is often that "by and large law faculty members come to their academic positions outstandingly able in their own legal capacities but quite lacking in their conception, let alone understanding of the teaching-learning process."¹⁹³

Such an overemphasis on academic qualifications may disadvantage law students. Professors should be selected using a more balanced process. Although the prestige of the professor may enhance the image of the law school, inattention to quality of instruction may impoverish the next generation of law practitioners.

Accordingly, if the case method, or any other method, is going to be pedagogically effective, law schools, in choosing their professors, must keep in mind that "[l]earning on the part of the student is the end objective, not learnedness on the part of the instructor."¹⁹⁴ Certainly there is some balance that must be achieved between the academic pursuits of the professors and the pedagogical interests of the students. Nevertheless, it seems fair to say that the pendulum has for too long swung heavily in favor of the former.

VI. CONCLUSION

"Mounting evidence from educational psychology confirms that the basic function of the educational process is to enable a student to learn how to learn."¹⁹⁵ The aim of the case method—teaching students to "think like lawyers"—is a key component in enabling law students to be self-educators. As such, it continues to deserve a place in law school pedagogy. The decision to use or not to use the case method should not be a strictly either-or proposition. Rather, law schools should first take the time to clearly define the objectives they are trying to achieve and then, where those objectives are in conformity with the

192. Strong, *supra* note 134, at 226.

193. *Id.* at 227.

194. *Id.* at 226.

195. *Id.* at 238.

ends of the case method, law schools should employ the case method.

In addition, the case method could be improved and its objectives expanded to encompass many of the aspects it has been deemed to be lacking. One way this can be accomplished is by including in casebooks more relevant material from non-legal academic fields, such as psychology, history, etc. Moreover, practical information from other academic fields and outside industries should be incorporated into case books and teacher supplements. Casebooks should include problems, questions, and hypotheticals that take the student out of the litigation context and apply the principles learned from cases in non-litigation counseling, planning, and negotiation settings.

Finally, law schools should make hiring decisions with an eye towards balancing the candidates' teaching skills and enthusiasm with their academic credentials—rather than placing inordinate reliance on credentials alone. Such a step is necessary to ensure that pedagogical methods are effective in the classroom since, whatever else may be said about the case method “in the hands of a mediocre man [or woman] it is the very worst of all possible modes of instruction.”¹⁹⁶

Langdell's legacy has been a fundamental part of law school pedagogy for well over a century. Its staying power is based on decades of successfully teaching law students to “think like lawyers.” As the needs of society continue to shape the definition of what it means to “think like a lawyer,” the case method should also adjust and improve in order to remain an effective tool in the hands of qualified professors as the new century dawns.

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196. REED, *supra* note 6, at 382.