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On the Teaching of Law.

It is a very curious thing that in the literature of Modern Law very little may be found on the subject of teaching Law. Here and there, scattered throughout Law Treatises, a few suggestions may be found which show that the writers were not teachers in the technical sense, and knew very little about the method of teaching. It has only been within recent years that some attention has been devoted to the subject, and that more in the interests of criticism than in those of construction. The traditional way of teaching Law was very simple. Text-books and moots were employed in the Inns of Court in London. It is needless to state anything about the text-books or about the Court Rolls of the past, since they have all been analysed and their prominent features and knowledge embedded in modern text-books on legal subjects. Nor is there any necessity to refer to moots or Imitation Courts in which students have practised their knowledge of Law according to ordinary Court Procedure, and shown their eloquence and their ignorance. Such gatherings are to be found in all the Universities now-a-days and may be placed on the same level as Dramatic Societies and Political Unions. Both, however, serve to point out the facts that text-books are much used in the teaching of Law theoretically, and that the recently restored moots are being used for the application of Law practically. This means, of course, that a professor of Law or a practical lawyer is the Chairman of the moot, as he may also be the teacher of the text-book. The establishment, therefore, of an Imitation Court has to be considered in the teaching of practical Law. and especially of Procedure, a subject on which I will make some comments below. The fact remains, however, that but little attention has been given to the method by which Law ought to be taught. This lack has been recognised by the growing body of the teachers of Law and has been met in this way, that a yearly journal is being published by teachers of Law, in order to assist one and another and their methods through discussion and literature. It is a quarterly and is named 'The Journal of the Society of Public Teachers of Law'. Of course its pages are filled with articles that deal with more than method, but it is very valuable to those who have to teach any Law subject. Now, in order to keep my remarks within bounds and to concentrate them upon various phases of the subject, I think it necessary to divide this letter into four or five parts, all dealing with teaching and its methods so far as the legal subjects are concerned to which students generally devote their attention in /—

this country. It will be sufficient to arrange my remarks under the aim and the method of Teaching Law, the literature on the subject, the Text-books on certain subjects and the theoretical practice of Law.

The Aim.

On this subject one must speak very bluntly and say that the aim of the teacher of Law in South Africa is to give his pupils enough concentrated knowledge as will enable them to pass fixed examinations. There is no use of talking high falutin', the customary language of some people in this country about education, and declare their belief in its cultural and intellectual influence. Neither the parents nor the pupils trouble their heads much about influence. What they do is about certificates that will enable their holders to obtain employment, either in the Civil Service of the State or in the work of the Community. This is the brutal fact, talk as sentimentalists may, and it is as much a fact in ordinary and mission education as it is in technical and scholastic. It may be unfortunate, a most unfortunate fact, but it is the test and the aim of the teacher of any legal subject, the desire and the consumation to be devoutly wished of their student. It is this brutal fact of utilitarianism that acts detrimentally upon the teaching of Law and upon its teachers. For there is no subject that has within itself, if rightly taught, as great a cultural element as Law. This the great lawyers have always recognised, and in modern times through the application of historic criticism and history they have recognised its cultural influence. It is the brutal fact, however, that has to be taken into account for students do not come to learn Law save for utilitarian ends and in South Africa for the purpose of passing certain examinations. The teacher of Law may endeavour to embrace both the useful and the cultural in his methods of teaching but he will find that such a combination will not pay in the long run. He must confine himself directly and distinctly to the one aim, the learning of Law, and that along lines stereotyped in the examination papers of the University through the scholastic demands of examiners. There is no getting away from the fact that the best teachers are those who anticipate examination demands and who concentrate the attention of their pupils upon limited subjects of which they are supposed to know something. This fact influences the method of teaching considerably and has the tendency to emphasise the Text-book that is recommended by the examining authorities. Not the law of a subject, not the principles that

underlie Law, not the philosophy of Law, but the sheer application of practical causes is what is demanded by the ordinary examiner. Examine, let us say, the method of teaching by its demands, and the method of teaching is passed for such an end, that of the Text-book. No credit will be given to one who has a crowd of the principles of Law unless he is able to quote decisions and to ~~resle~~ resolve legal conundrums. You will notice that in these remarks two different considerations of the aim of the teacher of Law are implied employed, that are forced upon him by the examination system, and that recognised by him as the cultural element in Law.

The Method of teaching Law.

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At least four methods have been recommended for the teaching of Law. They correspond to some of the methods adopted in the usual teaching of subjects and they had the same vogue in the old Schools of the Continent and America as systems of Heuristic have had in British Schools. The usual method that has been followed for ages in the teaching of Law is that of summary backed up by examples, for the two methods are really supplements one of the other. They have been very fashionable and have produced quite a literature of a distinctly teaching nature. Thus, for the subject of Criminal Law Text-Books have been arranged in which the Principles of Criminal Law have been set forth, such as Kenny's in English Law. These have been supplemented by summaries of Cases such as Kenny's Cases illustrative of English Criminal Law. I take the two most recent books in Kenny's Criminal Law and in his cases and as the method ~~presumed-b~~ pursued by the teacher of Law in dealing with crime. These books are the result of lectures given in Cambridge for many years and are intended for students beginning the study of Law. I believe that these books are recommended for the examinations of the Cape University and if so they will be those on which the examiners will base their questions. Whether they be recommended or not their latest editions should be in a College Library for reference as they are invaluable for such purposes. Or take the subject of Torts. Here again we have recent Text-Books adapted for the student as preparatory to the larger Treatises. So many Text-Books have been issued on Torts that the most recent is always the best. Underhill's Law of Torts, Fraser's Law of Torts are recognised summaries that will prove themselves useful as introductions to the larger Treatises on the subject, such as the standard work by Pollock. While the Text Book should be in the hand of the pupil the Treatise should be on the shelves of the College. A book of Leading Cases is necessary. They are generally dry reading but still they are useful. They are so numerous - only one is humorous - a famous first edition of Shirley - that it is difficult to suggest any but the most recent. There was a time when writers of Leading Cases embodied in one volume the Leading Cases of many subjects, Today each subject, even the Land Laws and owing to the rapid development of Statute Law. In connection with the purchase of ~~Land~~ Law books two catalogues should be on the shelves of the Library. Bibliotheca Legum, published by Stevens and Haynes several years ago, and a catalogue of Law Works sold by Stevens & Sons, both of London. I shall say more below concerning Text/-

Books. I am only giving these as instances of the methods that has been very commonly followed, Text-Book plus Leading Cases. I shall take one from South African Law, the Magistrate's Court Act, which is the text with the Leading Cases of Henry Juta and which is the students summary. I might remark, however, that the Leading Cases are out of date in some respects so are not full enough. The book is exceedingly expensive although very small like all the Leading Cases printed by Juta. Juta's Law Catalogue ought to be on the shelves of the Library for South African Legal Literature. So much then for the first method which is very like the second method, but the second method is more effective in giving a man a thorough grounding in Law, only it requires a man to have plenty of time at his disposal and pretty large note books ready in which to summarise his reading. Thus a very good example may be taken of this method from material purely South African. There is for example the Criminal Code of the Transkei - corresponding to Native Criminal Codes elsewhere. Now, in the teaching of this Criminal Law the Code is there. The method of the teacher might be the Second Method to which I have referred. He would take part of the Code and explain the phraseology from his knowledge of Law and from the recognised meaning of the Code at the present time. Further, he would summarise, if he had time for cultural development, the principles that underly the Code. For doing so neither he nor his pupil would receive any credit at the hands of the examiner and as I have stated above the examination system determines greatly the outlook or concentration of the teacher, Short lectures would thus have to be given but more of an informative and of an interpretative kind than of a legal. For part of the Code would be so extended and so interpreted as a whole in the first instance. Then would come details, and here the necessity for the Records of the Courts would at once appear. In the study of Law the Records of the Courts are not available to many men for they form a very expensive item even for a Library year by year. They will be required in practise and ultimately must be on the shelves of a Law Library, but they are not necessary to a student beginning to understand really the language of Law as that is all he can really do. Nevertheless this form of teaching - the explanation of a Code requires Leading Cases which either must be provided by the teacher himself either reading the Records, and of course I presume he has read them as a lawyer, or by getting summaries of them in the Digests that are now appearing in a new edition amongst Juta's Law books. Every year a Digest is published at 30/- or so by Cauld Bisset & Smith. It is from them that the

teacher will be able to obtain summaries for entry into note books as he teaches a Law Code or as he teaches ~~in~~ any part of South African Law for the Digests cover these Laws. They are really indexes to Case Law or to the Reports but save a lot of time in teaching Law. This Digest appears first of all in the South African Law Journals and must be on the shelves of a Library in the interests of the student who will see from the articles written therein how to face problems that are continually occuring in practise. And yet the extra reading that this method involves on the part of the teacher and the student will have but little recognition by the examiners who confine themselves entirely to a Text Book as so many of them do. I have hinted practically at the fulness of this Second Method. I shall now summarise it by saying that it may be applied to any subject of Law but the teacher must have around him his Law Lexicon, the best book of Jurisprudence going, the complete and final text of his subject have codified, his Digests, his Leading Cases and his Law Reports. In other words, the method of lecture that must be followed in this case depends very much upon the aim of the lecturer whether to teach Law or to prepare for examinations. This is a favourite method in certain British Universities and keeps the teacher of Law very busily engaged, indeed throws a very heavy burden upon him of keeping himself up to date. I have attended Law lectures of such a nature where these two former methods have been employed. The one might be called Tutorial, or the Method of the Crammer, the other Expository, or the Method of the Teacher. The second is one that bears a close relation to practise, indeed is a preparation for practise. The first will hardly assist a man much in the practise of Law but it will enable him to get through his examinations where a limited range is demanded and Text-Books are simply cram books. Might I not be offensive in showing you how from the literary standpoint the Second Method gives one a great deal of work but brings him into touch with reality. Thus in my special study of International Law I have been devoting much time to political International Law and for years past Constitutional and Mandated phases of it. In considering Mandates I have followed the Second Method. First I have had before me in English and French the Treaty of Versailles. There is the document which like a Code has to be interpreted. It has been necessary for me to study this Treaty from the standpoint of English and of Continental Law seeing that phrases that appear in English as interpretations of the French Documents are only tentative or relative and can be interpreted in accordnace with their meaning in English Law. I selected on the inspira-

inspiration of one of the International advisers to the Crown, one particular phase that caused a great deal of discussion on the Continent and that of a very significant political nature. The discussion is not yet ended but the result of the Continental interpretation of certain phrases, one of which I examined, is still a matter of discussion between the French and the English Government. The political attitude that England has taken up towards the same subject was forced upon her by French interpretation as against English interpretation of the same phrase. Recently the political Acts of Britain towards Germany show that English lawyers are moving slowly but surely against the French, and forcing upon certain parts of the Treaty of Versailles a meaning that will not be liked by French lawyers as it is against the fundamental principles of the International and Constitutional Law of France. For in International Law there are differences in outlook between British and Continental and also in practise. Now, a teacher of International Law would have to take his text, as I am doing, in the interests of journalism and go through it with the greatest care first of all in relation to the types of Law that may be embedded in say a Code, and thus the types of interpretation that must be applied to the language of the Code. I have been five years at this interpretation work and have realised what blunders from the Legal standpoint have been made through haste in constructing the Treaty of Versailles and the Covenant of the League of Nations. NOw this is just one part of the method of the teacher who adopts the Second Method above mentioned. He must go carefully through the Document. Let me break in here with a comment that this first part of the system is the best that can be applied to the teaching of Roman Law. The best teachers of Roman Law take the Code, or that part of it which is demanded for examinations and interpret it most carefully in relation to the whole of Roman Law and emphasises the significance or insignificance of each part, say of the Digest or of the Institutes. The First Method would insist on the student getting up the matter thoroughly and the matter alone with such explanations of technical terms as was necessary. In other words, the First System is that of the Crammer and it suits admirably the examination papers drawn up for examinations in Law. Now, to return to my example, of how the Second works. You will see that the practical lawyer sticks to his Text just as the practical teacher of Religion or of Theology. The Text comes first and not the matter of the text, because the knowledge of the text in its intimate details soon creates in the mind a love of knowledge and the materials of

knowledge on which a man may think. Now, comes in the Second stage of the Second System. It means referenceto Text-Books of the usual type and especially to the most recent Text-Books on International Law in which, as in Oppenheim's Treaty, is summarised and its interpretation related to the general body of interpretative rules of International Law. Or to put this fact in another form, every Statute has its Text and its detailed meanings in relation to itself and in relation to general Jurisprudence, but every Statute has its facts modified considerably and its language considerably altered in meaning when it is applied to the realities of a Legal system already in action. This, of course, is what astonished the layman that a Statute read by him turns out in effect and interpretation something totally different from what he expected it to be. This is the delightful humour that exists between politics and Law, that politicians who treat inferences concerning the effects of Statutes upon Society show unwittingly their profound ignorance concerning the actual practise of Law, for their prophecies are generally wrong and their inferences wide of the mark. When, therefore, the Treaty of Versailles, which is practically the Universal Statute, comes into the practise of life amongst the nations, it finds itself suddenly confronted with an International organism of administrative rules by which it itself is interpreted and to the mercy of which it is subjected. Lawyers smile when they hear of the discomfiture of politicians who in their innocency fail to realise that it is not into a system of life Statutes have to enter and that in that system they have to take their proper place. The second system of Law teaching as applied to any branch of Law emphasises this method of discovering through the most recent books on the subject , the atmosphere and the circumstances as well past as present, into which, and in which, a Statute has to enter and find its place. Now, no Text-Book can instruct a man or a pupil in this matter. The light may be faint even when it proceeds from the most recent Text-Books. In other words, in my interpretation of the Treaty of Versailles I have had to embark on a pretty heavy expenditure in recent Text-Books and in six volumes of the British Year Book of International Law up to 1926, but Moore's Digest has been beyond me as it would cost, I guess, £150. The Digest or the Text-Books or even the references have had to satisfy me in my study of the Treaty of Versailles according to the Second system to which I have referred above. You will understand that I am dictating this letter and that I am doubtless repeating myself and that some of my phrases may be put in another way, but as the fire-place is the aim of the communication the matter may remain there.

Now, we reach the third stage of this system of teaching. In the case of the Treaty of Versailles I have read every article that has appeared in the greater newspapers and the cases that have arisen and been reported in the Year Books, the political articles in the larger magazines and long reports in the Times newspaper. I have also gone through Butler's Handbook on the League of Nations to see how a teacher of Diplomatics interprets the League. Other sources of information have also been studied and all in order to understand the Legal relationship of the Treaty and the Covenant to International Law. You will say that this has been an enormous task, I say it has, but it has been worth it for it has enabled a man to see what lies behind many of the political movements of the day and much of the partisan politics of various countries. Now, you will see from the foregoing how in International Law the Second system works. A student could not follow this system but a teacher of Law must and in the interests of the teaching of his subject take the salient things and lecture upon them. The crammer tabulates the questions that have been put and from them and from the cases to which reference has been made in them draws out his lecture notes. The Text-Book is reduced to a series of answers to questions as in summaries of Roman Law. But then examinations demand this and do not train a man for the practise of Law or even for its appreciation. For instance, let me give you another example from my own study as I have printed a few notes preparatory to a long article upon the subject. I have studied the subject of Mandates for three years as they appear in the Treaty of Versailles and the Covenant of the League of Nations. I must confess that I was greatly astonished when I read that word in the Treaty of Versailles, for if there is one Legal subject that contains within itself possible trouble it is the Doctrine of Agency, whether it be in English or in Roman Law. What possessed the Continental lawyers to use that word beats me. It was not because the German, Swiss and French Codes to which the modern lawyers have been accustomed to refer, from the beginning of this century gave them the idea, for therein little account is taken of Mandates. I cannot find it. I have been unable to find the idea or the word in the French Code. It is outside of English Law although it is recognised in forms of Law such as Scotch and Roman Dutch. Even in these Laws the subject is in many instances far from being clear. When I first read the word Mandate I suspected a trap and political humbugging of the nations. What genius devised it I do not know and what other genius would devise it divided into thee classes I do not know.

but I have a feeling that Jewish hands had much to do with the framing and and the Mandatory system. Now, what I discovered two years ago is coming to light in the affairs of the nations and especially in South Africa. I studied originally the text and found so many difficulties that I expected political confusion and such has arisen and will arise more seeing that the whole system has been based on an atmosphere.and type of organisation that does not exist to-day, with the result that the Mandatory system can neither enter into nor remain in the present administration and organisation of International Law unless it be entirely reinterpreted. With that reinterpretation will come a change and a very considerable change in certain doctrines of International and Constitutional Law, that like sovereignty and independence, have played political tricks in this country in the way of deluding men but not legal as delusions of politicians are easily circumvented. I am not speaking on behalf of Mandates, what I am pointing out is that according to the second method of teaching, the Text of Mandates has to be carefully interpreted in relation to itself and in relation to the system of Law from which his phraseology has been derived. It has next to be placed into the practise of life whereas in its case it proves itself to be perfectly inefficient or misleading or is forced by circumstances to be reinterpreted into another language so that the lawyer may get rid of the prejudice that the word has created in his mind. Of course, the Mandate reflected the uncertainty of politicians who were not able to face the situation that they themselves had created. I have not been able to find out the discussions that went on over the Mandates. They will not be revealed during our generation I am afraid for the journalists were kept out of them. It is very obvious, however, that the legal mind will have to bring all its power to bear upon the work of the Mandatory System until it comes that Mandate will mean annexation, or the establishment of independent nations with sovereign powers. Now, to teach the Mandatory System in International Law requires a large amount of research, keeping your eyes open to every document that appears on the subject as well as on the political situation of the hour. This the Second System of teaching Law demands. It is the Teachers System but not the Crammers. Through it a man learns Law and its relationship, but it is a very expensive system both for the Library and the teacher and no credit is given to it by the examiners. However it is the best system of preparing a man to be a lawyer. The teacher of it refers his students to the sources of information and gives them essays to write on parts of, or say/

a Code, not of a couple of pages but of at least a dozen or twenty and that for weekly reading with him. This method is being urged more as every day the Law teachers of Great Britain and the American teachers are following suit, although in America they have boasted of another system that they believe would be as effective in results. This is my transition now to the third method which may be followed in teaching Law. Let me sum up then in two or three words the first two; the first, Text-Book with Leading Cases and examination papers to guide both pupil and teacher. Summaries in note books, both of principles and of Cases, but such summaries as are only necessary for examination purposes.

The Second System stick to the Text of the Act, Statute or Treatise that may be suggested for study. Detailed examination of the Text and correct interpretation of it in accordance with the general principles of legal interpretation. By the way, the Doctrine of Legal interpretation is assumed to be known at least by the teacher so far as is set forth in Treatises like Maxwell on the Interpretation of Statutes, indeed a few lectures at the beginning of a Law course should be on methods of interpretation and that after an assumed or thorough drilling in grammar, English, Dutch and German. The lack of such a drilling falls heavily upon a teacher and the omission of lectures of interpretations on the student. It is assumed of course that his knowledge of Jurisprudence also will be thorough.. To go on, the interpretation of a Statute etc., in relation to the circumstances into which it will enter. The Case Law that generally speaking means interpretation, the Comparative study in dual systems that may find expression in Texts. As I have said the first appeals most to the pupil and to the teacher, it gives less work but it certainly does not create or credit the legal mind train the lawyer. Now we come to the third system which owes it origin to America. It is rather an interesting system and throws an enormous amount of work upon the teacher who must know his books as a lecturer and his Reports and Statutes as a lawyer. If there had been a Law Library in this country I might have referred you to the original articles that direct the attention of English lawyers to this School. They have been reprinted I think from the Harvard Law Journal and are to be found also in Ames's Lectures on Legal History. I shall give you a summary of the method from memory as I studied the matter years ago. The new method is associated with Professor Langdell of Harvard University but I believe it has not accomplished what was expected of it. It usually trained a man for the practise of Law but it did not give him a