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BOOK REVIEW

THE THEORY AND CRAFT OF AMERICAN LAW—ELEMENTS.

By Soia Mentschikoff* and Irwin P. Stotzky.**

New York: Mathew Bender. 1981. Pp. xxxv, 827, 37, 40. \$29.50.

*Reviewed by William C. Jones****

No pedagogical technique is more familiar to the American public than the case method of law study. Certainly, no other has been the subject of a movie and a television series. Yet few viewers of *The Paper Chase* can appreciate what Professor Kingsfield was trying to accomplish. The study of law by the case method is difficult to describe; it must be experienced. This experience is the basis of the program of instruction in American law schools. The case method instills analytic skills and problem-solving techniques. It trains students to "think like lawyers" or simply to "think." In the process, students learn some rules of law, but the mental agility they are acquiring is more fundamental to the process of legal education.

The modern use of the case method differs from that envisioned by its originator, Christopher C. Langdell. Langdell believed that students would uncover the principles of law by analyzing their source—the cases.¹ Most first-year teachers probably share his view to some extent. Most torts teachers, for example, believe that students should learn something about negligence, defamation, and manufacturer's liability in addition to legal analysis. Certainly, the students think that this is what they are learning. Second-year teachers assume that their students have a certain quantum of knowledge about torts and contracts. Bar examiners test this assumption. Nevertheless, most legal educators strive to teach their students to think and analyze; in the minds of many law teachers, the rules are subordinate to the analysis.

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1. See W. TWING, *KARL LLEWELLYN AND THE REALIST MOVEMENT* 10-12 (1973).

If thinking and analysis constitute the primary objective of legal education, then educators should inform their students of this objective. Professor Karl Llewellyn thought a course specifically devoted to method would benefit first-year law students. Professor Llewellyn first applied his idea by giving a series of introductory lectures at Columbia University in the late 1920's. These lectures were later published in a book entitled *The Bramble Bush*.² When Llewellyn went to the University of Chicago in the 1950's, he began teaching a course for first-year students called Elements of the Law. Dean Levi had been teaching a similarly named course at Chicago, but Llewellyn's course differed markedly in both method and purpose. Soia Mentschikoff, Llewellyn's wife and colleague, continued to teach this course at Chicago after Professor Llewellyn died. She introduced the course to the University of Miami School of Law when she became its Dean in 1974. Dean Mentschikoff formerly taught, and Professor Irwin Stotzky and other faculty members now teach, an expanded version of Llewellyn's Elements course to all first-year students.

The casebook that Dean Mentschikoff and Professor Stotzky created for Miami's Elements course, *The Theory and Craft of American Law*,³ is an outgrowth of the materials that Llewellyn originally compiled. The authors intend the casebook to be used in conjunction with *The Bramble Bush* and Edward H. Levi's *An Introduction to Legal Reasoning*.⁴

Because of its authorship and provenance, *American Law* is an important casebook for a course in Elements or Legal Process. For the same reasons, it is also an important statement about American legal education and American law. I will discuss these two aspects of the book: the book as the basis of a first-year course, and its significance for American law.

American Law is a unique first-year casebook. It consists of four parts, each centered around a group of related cases. Part I contains a 300-page introduction to the study of law, which alone could serve as the basis of a course. It concentrates on remedies and asks in a variety of contexts the Mr. Dooley question, "Do I get me money or property returned to me?" Part I begins the student's analytic training by including instructions on briefing cases (pp. xxviii-xxxv), and then introduces the student to some forms of

2. K. LLEWELLYN, *THE BRAMBLE BUSH* (reprint 1950).

3. S. MENTSCHIKOFF & I. STOTZKY, *THE THEORY AND CRAFT OF AMERICAN LAW* (1981).

4. E. LEVI, *AN INTRODUCTION TO LEGAL REASONING* (1948).

action (pp. 24-36, 61-65), remedies (pp. 175-229), and justiciability (pp. 231-61). Each case is followed by intensive questioning on the holding and its relationship to those of other cases.⁵

The remaining three parts of the book consist of three sequences of cases, primarily from New York. Part II concerns a narrow problem with which the students may already be familiar—indefiniteness in contracts (pp. 295-554). By presenting a series of New York cases, with later cases being based on earlier ones, the authors demonstrate how case law develops. A series of questions follows each case to encourage the student to make an intensive analysis. A particularly interesting feature is the constant reference to the attorney's role.⁶ The authors ask: What did X do wrong, how should he have argued his case, and how did this relate to the court's opinion?⁷ There is also reference to the social context within which the cases were decided⁸ and to the style in which the judges wrote their opinions.⁹ This sequence ends with cases from a court of which Cardozo was a member, providing the student an opportunity to observe how a great judge functions both as an opinion writer and an influence on the court. Part II also includes the provisions on indefiniteness in contracts from Article 2 of the Uniform Commercial Code (pp. 519-23). This shows the students the relationship between the U.C.C. and the case law it has

5. See, for example, the treatment of *Hadley v. Baxendale*, 9 Ex. 341, 156 Eng. Rep. 145 (1854) (pp. 103-06). The Notes and Questions section begins with a direct question about the opinion, interjects the actual instruction by the assize judge, continues with some suggested arguments, quotes lengthy passages by two text writers, assigns the task of drafting a new charge on the new trial, and concludes by asking whether the pleadings could have been framed in tort.

6. The authors include attorneys' arguments for each case.

7. The notes following *United Press v. New York Press Co.*, 164 N.Y. 406, 58 N.E. 527 (1900) (pp. 341-44), provide a detailed discussion of what counsel for the appellant might have done. The student is asked: "[H]ow would you have argued the cause for plaintiff in *United Press*? *Phrase your argument exactly and in writing.* (You must, of course, critique [the attorney's] argument when shaping your own" (p. 343). The authors then change the case by using hypotheticals, requiring the student to rethink his previous analysis. The notes conclude with similar analytical questions directed to the respondent's argument.

8. An example of this is in the authors' discussion of requirement contracts (pp. 479-80). Questions asking why a six-cent damage case is twice appealed (p. 72), and why banks are worried about a particular decision (p. 807), also force the student to consider the social framework within which the cases were decided.

9. At the beginning of the sequence there is a lengthy quotation from K. LLEWELLYN, *THE COMMON LAW TRADITION* (1960) (pp. 318-21). Llewellyn detected two predominant styles of opinion writing. The first was the Grand Style, in which the judge clearly indicates that he is deciding on the basis of precedent, principle, and policy in an effort to find the best rule, both "for the new day and for the morrow" (pp. 318-19). The other is the Formal Style: "[T]he rules of law are to decide the cases; policy is for the legislature. . . . Opinions run in deductive form. . . ." (p. 321).

replaced, and how legislation and case law interact.¹⁰

These lessons are continued in Part III, which focuses on warranty liability to third parties (pp. 555-731). Although the principal cases are mostly from New York,¹¹ the courts cite cases from other jurisdictions more frequently than in the previous section.¹² Again, cases and statutes interplay, first the Uniform Sales Act and the Sale of Goods Act,¹³ and then the Uniform Commercial Code (pp. 717-28). Part III also illustrates the interaction between tort law and contract law.

Part IV returns to a relatively narrow problem from one jurisdiction: the treatment of foreign remittances by New York courts (pp. 733-827). The first cases were decided before World War I. Most involve a statute designed to protect immigrants who were sending money back home.¹⁴ The last case concerns a multinational corporation whose efforts to send money to several of its branches through an international bank were frustrated by the outbreak of World War II.¹⁵

The courts in these cases had difficulty finding a conceptual system that matched the facts with which they were working. Nor were the courts able to understand the commercial needs of banks engaged in international exchange transactions. The cases in Part IV demonstrate how the courts learned to deal with these transactions. The authors supply this sequence without notes, questions, or textual materials until all of the cases have been presented. Part IV concludes with Karl Llewellyn's discussion of foreign remittances from *The Common Law Tradition* (pp. 804-11), and a proposed draft, that was never adopted, of a Uniform Commercial Code section concerning foreign remittances (pp. 814-27).

10. Previously there is reference to the Code treatment of anticipatory repudiation (pp. 396-99).

11. The only exception is *Gedding v. Marsh*, [1920] 1 K.B. 668 (p. 616).

12. For example, in the final decision reported, *Greenberg v. Lorenz*, 9 N.Y.2d 195, 173 N.E.2d 773, 213 N.Y.S.2d 39 (1961), Chief Judge Desmond cites a sample bibliography of law review articles, mentions that 20 states have abolished the privity requirement, and quotes the U.C.C. (not then enacted in New York) (pp. 695-96).

13. The Uniform Sales Act and, to a lesser extent, the Sales of Goods Act are discussed in Prosser, *The Implied Warranty of Merchantable Quality*, 27 MINN. L. REV. 117 (1943), reprinted in part at pp. 649-64.

14. The first case in this sequence, *Cutler v. American Exch. Nat'l Bank*, 113 N.Y. 593, 21 N.E. 710 (1889) (p. 737), was decided prior to the enactment of the statute and was based on common law. The statute is discussed in some of the cases and by Llewellyn in *The Common Law Tradition* (pp. 804-11).

15. *Kerr S.S. Co. v. Chartered Bank of India, Australia & China*, 292 N.Y. 253, 54 N.E.2d 813 (1944) (p. 787).

Although the foreign remittance sequence concerns a narrow issue, the students will unquestionably find these cases to be the most difficult. Not only will they have difficulty understanding the facts, but they are also unacquainted with the relevant bodies of law, particularly negotiable instruments. On the other hand, they will receive help from Llewellyn's comments and the proposed Code section. This final part of the course, by requiring the student to demonstrate an understanding of the analytic techniques developed by the preceding parts of the casebook, will distinguish the outstanding students.

The authors intend *American Law* to improve the student's ability to handle legal materials, to give him a glimmering of what law is about, and, in the process, to help him become a lawyer. They have carefully crafted this book to accomplish these goals. The questions and cross-references constantly develop and build on basic concepts.¹⁶ The rigorous and subtle editing serves to focus the student's attention on the relevant subject matter. An example of this is the material on the forms of action; the authors include only enough to enable the students to understand the particular cases they will be studying. Many fascinating but time-consuming archaisms are pruned. Thus, while *detinue* is discussed fully (pp. 27, 30-36), *wager of law* receives only passing mention (pp. 30-31), and the development of *special and general assumpsit* is omitted completely.

The authors have carefully integrated the book's textual selections. In the remedies discussion, for example, the authors quote Blackstone (pp. 3-7, 24-32), Langdell (pp. 8-12), and Corbin (discussing Hohfeld) (pp. 12-24). The writings of these scholars are clearly an integral part of the legal world into which the student is entering. Through reading their works, the student is impressed with the importance of the legal tradition. Simultaneously, by applying the ideas set forth in the writings to the cases that follow, the student enters that tradition.

At first glance, the book looks like a great plum pudding stuffed with miscellaneous, albeit interesting, material. On closer examination, however, each part becomes related to the whole. The material should enable a student to learn what the authors intend

16. Each major sequence of cases ends with a question or group of questions that brings all of the materials together. For example, in Part II students are asked, "What precedent techniques does Cardozo employ in his discussions of [three named cases]?" (p. 518). Students are also asked to argue several of the earlier cases as if they had come up after the final case in the sequence (pp. 518-19).

him to learn. But will he?

It is impossible to give a definite answer. There are several possibilities. In the worst case, a resentful, mediocre student is forced to take the course from a resentful, mediocre teacher, who is forced to teach it. If this student is concerned about his grade, then assuming the teacher is fairly conscientious, gives an examination that in some way relates to the course, and grades it fairly strictly, the course will provide substantial benefits. One is that the student will learn about remedies in the first two to four weeks of law school. Law schools frequently skimp on instruction in this area. A knowledge of remedies will enable the student to understand his other courses better.

The student will also be forced to realize that a legal system is, among other things, a system for settling disputes. It is not just a group of abstractions. The system is one in which people get or suffer revenge, go to jail, pay money, and get divorced. Everyone involved in the system must be aware of this. Judges sign their names to judgments. Lawyers collect money from clients because they have done something for them. Frequently, legislators take action because someone seeks a gain for himself. This process cannot be separated from the concept or rule. Yet many students ignore the actual operation of the system in their eagerness to learn the "law" in terms of rules. But until they become aware of the dynamics of the system, they will not have learned the "law." What happens if the plaintiff wins is very basic information. Part I is thus very much a study of the law in action; it emphasizes the fact that rules of law are part of a system in which things happen to people.

The worst-case student will also become familiar with the techniques of legal analysis. The text, by describing what a brief should contain (pp. xxviii-xxxv), and by following the cases with questions that focus the student's attention on the precise holding, will help this student to acquire skills in briefing cases. Furthermore, the course will force the student to consider the social context in which the courts decide cases. Even the worst-case student will learn something about the development and application of legal doctrine as something separate from any single field of law. The questions and the supplementary text material in the book, together with the supplementary readings in Llewellyn and Levi, emphasize this analysis. The worst-case student will have at least considered how a lawyer's argument can influence a case and perhaps will acquire a sense of how a lawyer works.

In the best case — the good, willing student who has a knowledgeable enthusiastic teacher — the results will be substantially greater. Such a student will not only acquire a sense of what it means to be a lawyer, but should also, to a considerable degree, become one. This is clearly the authors' intention.

American Law makes a significant contribution to both American legal education and American law. It is a reaffirmation of the standard position about the purpose and nature of an American law school: a professional school at the graduate level that is firmly attached to a university. Thus, the law school is a compromise between an institution devoted to technical training—a trade school—and one that is primarily scholarly. It has always been difficult to maintain the balance between the two norms, and there are always movements to push law schools in one direction or the other. The origins of *American Law* were in Llewellyn's lectures at Columbia University. These lectures were given at a time when Columbia had just thwarted an effort to change it from a law school primarily designed to train lawyers into an institution devoted primarily to scholarship and research.¹⁷ *American Law* is being published in a period when there is great pressure to have almost the entire time in law school devoted to skills-training, rather than scholarship in the traditional sense.

It is very difficult to describe the discipline of law in the United States. Law schools do not train students to become scholars, though law schools are located within universities and all of their students are graduate students. On the other hand, American law schools are certainly not equivalent to trade schools. Students are not taught entirely by practical training. Perhaps one could say that the discipline assumes that the practice of law requires instruction in law as an intellectual discipline or exercise, even though the purpose of the school is to produce lawyers not scholars. Indeed, the students are to become lawyers in the course of three years. During this time, students acquire a lawyer's vocabulary and habits of thought, and gain some understanding of the underlying structure and organization of the legal system. The theory is that they will acquire the technical details after they finish law school, and that a mastery of the details without the professional training does not make one a lawyer. The aim in other fields is similar. Graduation from a military academy, for example, is in-

17. The literature on the Columbia University struggle is considerable. Perhaps the most accessible treatment is in W. TWINING, *supra* note 1, at 41-69.

tended to mean that one is an officer. Mastery of gunnery or the experience of commanding men in simulated field exercises does not make one an officer. These activities, however, are part of the training and may contribute to achieving the goal. It is a matter of acquiring the attitudes and habits of mind of a member of a profession.

To this extent, there is nothing particularly radical or different about Llewellyn's approach as set out and continued in *American Law*. This approach reflects the implicit philosophy of most persons in legal education. Llewellyn departs from the general view by adding a dimension to the principal skills that are avowedly taught in law school, and indicating why the methods that law schools use are effective in training lawyers. He does this in part by redefining the concept of a lawyer.

The heart of Llewellyn's view of law is expressed in the following quotation from Levin Goldschmidt, a nineteenth-century German commercial-law scholar. Llewellyn gave much prominence to this passage in *The Common Law Tradition*, and it is quoted in *American Law* (p. 342 n.f):

Every fact-pattern of common life, so far as the legal order can take it in, carries within itself its appropriate, natural rules, its right law. This is a natural law which is real, not imaginary; it is not a creature of mere reason, but rests on the solid foundation of what reason can recognize in the nature of man and of the life conditions of the time and place; it is thus not eternal nor changeless nor everywhere the same, but is indwelling in the very circumstances of life. The highest task of law-giving consists in uncovering and implementing this immanent law.¹⁸

In the United States, the judge, or more accurately the legal system, may achieve this result only by an artful use of the formal legal sources in conjunction with a sense of the facts. The good judge will try to reach a solution, which in its expression and result, will achieve the goal that Goldschmidt and Llewellyn described. A good advocate or draftsman will be aware that this is what the judge wants to accomplish, and will frame his argument or draw his contract accordingly.

One acquires this skill through practice—hence, *American Law*. By analyzing what the judges did, what they said they did,

18. L. GOLDSCHMIDT, *Preface to Kritik des Entwurfs eines Handelsgesetzbuchs*, *Krit. Zeitschr. f.d. ges. Rechtswissenschaft*, Vol 4, No. 4, *quoted in* K. LLEWELLYN, *supra* note 9, at 122.

how they could have done better, what the consequences that followed were, and why it mattered, the student sees what it means to be involved with law, to be a lawyer. And as one sees it, one becomes it.

The aim of *American Law* is to create a professional, a craftsman. Someone who, consciously or unconsciously, knows what the law must accomplish, what a lawyer's jobs are, and how to do them. There are many ways of obtaining this result. One may instill pride in the profession by drilling the student on technical matters such as citation form. This is the legal equivalent of close-order drill. Later in law school, the student may make arguments or write briefs and memoranda. But the central object for study is the case, especially the appellate case. In the judicial opinion, one sees a real mind struggling with a real problem. As the student empathizes with the judge's struggle, he joins the judge's profession. He can accomplish this only if he understands what the judge is really doing. If he thinks it is all just logic-chopping, not much is accomplished. It is an extremely tough intellectual exercise, but it has an emotional aspect because real people are involved.

In some ways, this is a very oriental approach. The Japanese gardener may look at a mass of trees and shrubbery for hours before he trims even one twig. Obviously, he has to know how to cut, and how to cut so that the branch will grow properly. But the basic skill is knowing in a very deep way what a Japanese garden is supposed to be, having a feel for it. Another example would be a Chinese official, whose traditional education instilled an understanding of men and government. He acquired this understanding primarily by studying how the Duke of Chou and similar worthies handled problems in the fifth century B.C. and before. He would then not find it difficult to cope with floods, bandits, and lazy monarchs.

Ours is a government of men, not of laws—though the two are not separate. To put it another way, the law is "not written in tables of stone but in fleshy tables of the heart."¹⁹ There are no abstract rules that men must follow. Law is not a passive body of doctrine. It is the activity of men performing law-jobs. If one has the vision, one will do the job well. If one does not have it, one will not.

It is particularly important to induce this sense of craft or profession once one has formally abandoned the traditional belief in

19. 2 CORINTHIANS 3:3.

law as immanent and invariable rules that are waiting to be discovered. Absent fixed rules, the judge could be free to decide as he wishes, according to whim, caprice, or prejudice, and then pretend the reason is his predecessor's decision. This is clearly a danger of which Llewellyn was very conscious. He believed, however, that a judge has a sense of craft or professionalism that enables him to perceive society's needs and requires him to act accordingly. A lawyer will do a better job if he and all lawyers are very clear about what is happening to man and society.²⁰

This is really what legal ethics is all about. Matters such as conflicts of interest and accounting for clients' funds are only details; a sense of professionalism is the basis of an ethical practice. One who has this sense will usually know and do what is right, although, of course, he must still learn the rules. Without this sense, a knowledge of rules will not be of much help.

I assume that the authors of *American Law* would agree that their book, or *The Bramble Bush*, or even a course in Elements is not essential to acquiring a sense of professionalism. Giving students this sense is what American law schools have been doing, at least when they are successful. This book should, however, make the job a little easier. It should make even the best students understand better and make the worst students understand at least a little. The authors apparently feel that by understanding the goals and fighting through the cases in Llewellyn's way, the students will receive a deeper experience of the law.

They make a very strong case. This is a very difficult book both to teach and to study. The authors are publishing a teacher's manual; it will be used. I believe the teacher should also read *Karl Llewellyn and the Realist Movement*,²¹ *The Common Law Tradition*,²² and *The Cheyenne Way*.²³ If both teacher and student work at it, they will come face-to-face with the heart of our legal system as one of its most astute observers saw it.

Is this what law schools should be doing? Everyone is weary of rhetoric. For every statement about the nobility of the profession, there is a plethora of information about its greed, incompetence,

20. This could be said to be the message of *The Common Law Tradition* taken as a whole. See K. LLEWELLYN, *supra* note 9, at 3-6, 19-20, 23-24, 45-50.

21. W. TWINING, *supra* note 1.

22. K. LLEWELLYN, *supra* note 9.

23. K. LLEWELLYN & E. HOEBEL, *THE CHEYENNE WAY* (1941). This book seems to be a key work in understanding Llewellyn's views. Observing a group like the Cheyenne Indians enabled Llewellyn to consider law in a context completely separate from the formal conceptual traditions of European law.

and dreariness. Like it or not, however, lawyers will be involved in almost any social struggle because most of those struggles become lawsuits. We, therefore, should want at least a few lawyers to have caught fire—to be passionate lawyers. Llewellyn was one, and he did not get that way by following the obvious route of participating in famous cases. He caught fire from the sparks set by his struggles with the ideas he found in cases on commercial letters of credit, negotiable instruments, foreign remittances, and similar matters. It was an intense intellectual experience, but it also produced emotional results. His own fire was never quenched, and he thought that others having the same experience would achieve the same result.

Whether *American Law* will succeed in lighting any fires in those who use it is hard to predict. Nor is it even certain that the enthusiasm or passion for the law that Llewellyn preached is of much value or importance. There is no question, however, that he believed it was.²⁴ He believed completely in the common-law tradition. He wrote poetry about it.²⁵ He also dedicated his last book to “the undying succession of the Great Commercial Judges whose work across the centuries has given living body, toughness and inspiration to the Grand Tradition of the Common Law.”²⁶ Few branches of the law are less interesting to most lawyers and law students than commercial law. Yet the ability of those judges to wrestle with its arid concepts inspired Llewellyn’s very emotional final plea to the profession.

Llewellyn began his line of judges with Holt (1642-1710). While he probably should have gone back to Coke (1551-1634), Llewellyn was doubtful about Coke’s abilities as a judge.²⁷ Further-

24. See his interesting appeal for teaching this approach to the law in a dedicatory address at the University of Chicago Law School (pp. 272-92). One of the obstacles, he wrote, was “the tradition of the ordinary modern American intellectual: he feels shy about open expression of the things which most deeply move him, those by which he lives; and he commonly distrusts the value of more preachment, anyhow, to change the heart or stir the soul” (p. 290). But he felt it to be necessary:

It is of the essence in any aspect, it is trebly of the essence of the profession as a liberal art. It represents that line and variety of obligation without which all the rest becomes a menace. And much of the job depends so largely on knowledge and on vision that neither the needed insight nor the needed informed responsibility comes, to any but the more gifted, by mere exposure and osmosis.

(p. 290).

25. See K. LLEWELLYN, *A Come-All-Ye for Lawyers, The Common Law Tradition*, in *THE COMMON LAW TRADITION* 399-400 (1960) (printed with music).

26. K. LLEWELLYN, *supra* note 9, at v.

27. *Id.* at 223.

more, in commercial law, Coke is noted for impeding the development of a separate commercial jurisdiction in England.²⁸ Nevertheless, there is that great set-piece of common-law history, the *Case of Commendams*,²⁹ of which Llewellyn would surely have approved. There, judges had signed a letter to the King, protesting his interference in a lawsuit. In response, they were summoned to court and castigated for interfering with the royal prerogative. "[A]ll the Judges fell down upon their knees, and acknowledged their error for matter of form, humbly craving his Majesty's gracious favour and pardon for the same."³⁰ Coke, however, reaffirmed the substance of their position. Then Sir Francis Bacon, who was Chancellor, said that they were wrong on the law, and, in effect, asked them to recant. They all did, "the Lord Chief Justice [Coke] only except."³¹ Coke "said for answer, that when that case should be, he would do that should be fit for a Judge to do."³² It took courage to say no. He gave up his enormously successful career in the law and eventually went to prison for the sake of the law itself. A modern commentator wrote that Coke,

with a mind fanatically narrow, was possessed with a profound veneration for the law as it stood—for its technicalities as well as its substance—and he was convinced that it was not by change and reform but by the following of precedents that the liberties of England were to be defended.³³

Bacon, Coke's opponent in this and many other matters, was one of the great minds of Western Europe. He is a central figure in any history of western thought. Yet, Anglo-American liberties, such as they are, owe little if anything to Bacon. They owe a lot to Coke.

Karl Llewellyn, who was anything but narrow, was a reformer. But he also believed passionately in following the precedents of the common law—albeit in his own way. *The Theory and Craft of American Law* describes that way and shows how to follow it by the case method. American law schools could do worse than to use it.

28. See 5 W. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 491-92 (3d ed. 1945).

29. 5 F. BACON, *The Letters and the Life*, in 12 *WORKS OF FRANCIS BACON* 354-71 (J. Spedding ed. 1869).

30. *Id.* at 365.

31. *Id.* at 367.

32. *Id.*

33. J. TANNER, *CONSTITUTIONAL DOCUMENTS OF THE REIGN OF JAMES I*, at 176 (1930).