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**MATERIALS FOR LEGAL METHOD, by Noel T. Dowling, Edwin W. Patterson and Richard R. Powell. Chicago: The Foundation Press, Inc.. 1946.**

John G. Stephenson III

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## REVIEWS

MATERIALS FOR LEGAL METHOD, by Noel T. Dowling, Edwin W. Patterson and Richard R. Powell. Chicago: The Foundation Press, Inc., 1946. Pp. xii, 580. \$7.00.

The practicing lawyer will find this book, although designed primarily for the use of law students, of particular interest. In the first place, it represents an important new development in legal education, in which the bar should have a vital interest. It provides a means for showing the law student at the beginning of his studies the nature and purpose of the knowledge he is to acquire. In the second place, it offers the practicing attorney a challenging opportunity to re-examine critically the tools of his profession and his own ability to employ them. Several practicing lawyers visiting my office have inspected the book, and have expressed a desire to read it carefully.

The case method of study is now almost universally used in American law schools. It places in the hands of the student from the very start the authoritative sources of the law, and teaches him how to evaluate them for himself. The practicing lawyer, however, realizes that his student concept of law as a systematic collection of rules derived from authoritative sources does not endure. Cases, he finds, do no more than evidence the law as it exists at the time of decision; future applications may be influenced by many variables of time and space, mind and matter. Ability to discern the factors which influence decisions and to mark trends in the development of law by the synthesis and comparison of cases must be the ultimate goal of the study of law.

The student may not become aware of this aspect of his study for some time. This is especially true if he is plunged immediately into unrelated courses in the various branches of substantive law. Realization that this process is wasteful has become more general in recent years. With the appearance of this book, prepared by members of the faculty at Columbia University, it is now possible to give the student at the outset some concept of what is involved in the actual practice of law.

The problems of legal method are inherent in the peculiar nature and source of our law: the common law system of jurisprudence, wherein rules of law are the by-products of the decisions of specific controversies by courts and other tribunals. Whether from a desire to avoid full responsibility for decisions or from a desire to form standards by which justice can be meted equally, courts purport merely to apply law to these specific controversies as they discover it. They deny any legislative intent. Whether in a given case the law is ordained by the court or is predetermined, however, is not so important for practicing lawyers as the fact that courts seek to rationalize their decisions by recourse to principles and policies which they recognize as the ultimate sources of the law.

The rules thus established may, of course, be altered or restated by the legislative power. The courts, however, tend to treat statutes, not as

declarations of policy and ultimate sources of the law, but as ordinary declarations of the rule of law to be applied in specific cases. In this function, they seek to determine legislative intent from the exact text of the statute, applying standards of interpretation closely resembling the parol evidence rule, but with sufficient liberality to bolster indecision with legislative history, committee hearings and reports, and the interpretation of administrative agencies. The term "psychoanalysis" has, not too inaccurately, been recently applied to this process.

These factors produce a system of law that is flexible in the hands of succeeding generations adopting new political philosophies and new standards of morality. How the members constituting our highest courts at the beginning of the century would stare and gasp at the concepts of the legitimate powers and functions of government which the stress of the last decade has taught us to accept! To illustrate the operation of this process in a field considered more stable than that of public law, the editors present a series of cases dealing with the liability of manufacturers to the ultimate consumer for defective wares. The cases, arranged chronologically, cover a century-and-a-quarter, and demonstrate the growth of the law under the incidence of new factors in the sphere of economics, such as the development of factory methods, wholesale merchandising, and nationwide advertising. Detached for the time being from detailed substantive law problems, the student observes how old rules yield to new by a process of distinction, differentiation, express disapproval, and statutory amendment.

While this broad introduction to the methods of common law jurisprudence constitutes the principal theme of the book, there are chapters designed to acquaint the student with specific legal tools. There is a description of the system of trial and appellate courts in England and the United States. The interrelation in our federal system of state and federal courts is described to indicate the relative authority of precedents from each type in particular fields of law. The concept of a federal common law, born of *Swift v. Tyson* and interred in *Eric Railroad v. Tompkins* is explained. The persuasive authority of the decisions of other sovereignties as evidence of the principles of law is discussed in such manner, it may be hoped, as to blast forever from the student's vocabulary those unfortunate shibboleths, "the weight of authority" and "minority view."

In order to evaluate the decision of a case properly, it is essential to know the propositions of fact which the court adopts as a premise to its argument. This depends to a very great extent on the way in which a question of law is presented for decision. Without exploring the intricacies of common law or code pleading, the editors have presented material illustrating the ordinary steps in a proceeding at law, and show how motions on the pleadings, motions before and after verdict, and appeals present questions of law for decision. Limitations which the nature of the proceeding place upon the court, as for example when a demurrer makes it impossible to examine questions of fact properly pleaded, are emphasized. It appears to the reviewer highly desirable

that the student understand these matters before he tackles forms of action and rules of procedure.

Having acquired a knowledge of the authoritative sources of law, the student is introduced to legal bibliography. He is shown the scope of the English and American systems of reports, and how to find pertinent cases through the use of accepted aids: treatises, digests, encyclopedias, and Shepard's citator. In this treatment, proper emphasis is placed upon the end of all legal research: the discovery, examination and interpretation of source material.

There is a chapter toward the end of the book which will challenge the attention of the most experienced lawyers. It deals with the formal analysis of the reasons which the courts advance in support of their decisions. This is an important field of inquiry since it is from the reason for the decision that there is deduced the ultimate principle which will determine the rule of law in future cases. For this purpose the editors introduce appropriate terminology from the art of logic, and show how the arguments of courts may be cast into the accepted logical forms. When the argument has thus been formulated in formal fashion, it is possible to detect the reasons for decisions which may not have been expressed, and also to test the validity of the argument.

It is not necessary, of course, to master the art of formal logic to analyze a case; logic does no more than systemize the processes of correct thinking which the lawyer is otherwise trained to apply. Nor does logic provide a solution to specific problems; it is a means, not an end. It will be apparent, however, to anyone who studies the problem cases with the help of the editors' notes that logical analysis provides a disciplined and exacting approach to what is in final analysis the very heart of legal method: determining the principles on which the rule of a case rests.

The lawyer who through practice has acquired a sense of legal method will enjoy finding many of the principles and relationships, which he knows only intuitively or casually, discussed systematically in this book. Such a study may well serve to lead him into the rich fields of contemporary jurisprudence.

JOHN G. STEPHENSON, III.\*

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\* Professor of Law, University of Miami.