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American Legal Education Through Indian Eyes

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ADDRESSES ON THE OCCASION OF THE UNIVERSITY'S CENTENNIAL CELEBRATION

The following addresses were given at the College of Law on March 20, 1953, as a part of its observance of the University of Florida's Centennial Year. The subjects are timely, and the Editorial Board wishes to make these comments available to those who were unable to be present at their delivery.

AMERICAN LEGAL EDUCATION THROUGH INDIAN EYES

SHRIDHAR G. CHITALE

Ever since I landed in the United States I have been watching and observing the spectacle of legal education in this land of democracy as it unfolded itself before my curious but wondering mind. I regret, however, I have had no time to pause and ponder. I have been gathering information, collecting materials and stuffing my mind with a variety of details, with the rapacity of a glutton; and it will be some months before I get some leisure to chew and ruminate over what I have seen and observed. This is, therefore, not the well-balanced and well-documented appreciation or criticism of American legal education by a writer surrounded by books and periodicals in his study room. These are but the impressions of a spectator sitting in a theatre, who has heard the great reputation of the drama that he is privileged to watch. Sometimes he claps and shouts loudest when a scene impresses him very deeply and sends him in hallelujahs. At others, in the humble spirit of a seeker after truth, he turns to his well-informed American faculty member and says, "Would I be right in saying that this or this is not a very happy aspect of your system of legal education?" Such is the state of the few observations I am going to make, and I request that they be received in that light.

India is today at the crossroads and is in the midst of a silent revolution in its social, political, and economic history. It is called upon not only to set its own house in order but also to lay down the foundations for future developments in many fields of its activities — the most important of which, to my mind, is the field of education. In order to help make these foundations strong and well-laid, I came

to this country to study the organization of legal education here and learn from your long and varied experience. In the past our minds turned toward England alone for any inspiration or guidance in such matters, and this was but natural and perhaps pardonable; but one of the good and highly desirable results of the last war — World War II — is the closer contact which it brought about between your country and mine and the reciprocal interest which it evoked in the minds of our respective countrymen. My presence in this country is an example of it. I am overwhelmed with the kindness and generosity with which I have been treated by the law schools which I visited and the facilities and the opportunities which were given to me for observation and study. Permit me to take this opportunity to thank them all.

I must confess I derived far greater benefit from my visit than I had at first imagined. My borrowings from your system of legal education have been many. It is not my object to indicate them all, but I mean to dwell on a few only.

Graduate Work

The organization of post-graduate work — or what you term graduate work — in law is very much to be envied. In almost all the law schools in India this work does not receive the attention it deserves. We have courses leading to the LL.M. degree, but actually very little provision is made for imparting instruction in these courses. The university contents itself by recognizing certain faculty members as post-graduate teachers in law. The student is expected to work under the guidance of such a teacher, who sometimes gives such guidance and help as he can in a personal interview with the student. No lectures, however, are delivered. Seminars in law schools are unknown. The result is that the student is left to himself. He has to fall back upon the library of his school, which in a large number of cases is a very poor thing in comparison with the law libraries in American law schools. It is not my present purpose to go into the causes of this situation. If I should undertake it I assure you that the law schools of India would stand vindicated in this respect. But nonetheless there is no use to deny that we have to learn a good deal from your experience and organization.

The American law schools generally have a dean to act as a friend, guide, and philosopher to post-graduate students. The normal method of guidance and instruction that is followed is that of discussion in a seminar. I have attended many such seminars and can bear testimony

to the excellent work that is done. Students not only do their assignments more seriously but almost invariably add their own readings to this work. The result is that the discussions are very well-informed, lively, and most instructive. Not only legal lore but information from other fields of knowledge, such as economics, politics, history, religion, and phychology, is brought to bear on the discussion on hand. Sometimes a seminar is conducted by a professor of law in conjunction with a member of another faculty. If integration of law and the social sciences is found to have been attempted at any stage of legal education in American law schools, it is at the post-graduate level. I am happy to note the development in this respect, because I am one who is firmly of the opinion that such an integration ought to take place throughout the education of a lawyer. In fact, law ought to be treated as a social science. I am sure American law schools are second to none in the matter of the organization of their post-graduate work.

The study of jurisprudence should be compulsory for all post-graduate students. If I am not mistaken, a student can get his doctorate in law without ever having taken a course in jurisprudence. This, in my opinion, is not quite satisfactory. A study of jurisprudence is necessary to give a broad basis to one's knowledge of law, and legal education is incomplete without some glimpses into the realm of legal philosophy; otherwise legal research is likely to drift into very narrow channels and a lawyer will be a poor lawyer without it.

The "Skill" Courses

Undergraduate legal education in the United States has been organized with a functional approach. Every effort is made to impart to the student as much practical skill as it is possible for a law school to give. I am told that this is the result of the political situation as it existed around 1935, when the Roosevelt administration came out with its New Deal. Legally trained young men were required in public services, and the law schools had to arrange for such a supply. I can imagine how the situation must have been helped by the demands which the practicing lawyer always makes on the law schools. He demands all practical skills from a fresh law graduate engaged by him in his office, and my own experience tells me that the bar is never satisfied with however much the law schools may do in this connection. These causes probably explain the practical turn which is given to the undergraduate training of a law student here. This

aspect of your legal education cannot escape the attention of a casual Indian observer. In this respect there is a complete contrast between the systems of legal education in the two countries. We in India do practically nothing to train a law student in such practical skills. We do not have law reviews. We do not give courses in legal research, legal method, or legal bibliography. We do not have counselling. Our moot courts are not at all well organized. Our emphasis in legal education is on the theoretical and the scientific aspect of law rather than on the practical. This is due partly to the influence of the English law schools and partly to the division of the legal profession into solicitors and barristers — a system which is in vogue in my city. But whatever the position in the past, the situation has now entirely changed. The dual system of solicitors and barristers is being abolished.

The present political situation in India is making the same demand on the law schools as the "New Deal" made on yours. The last five years' statistics in my school show that more than sixty per cent of our students are absorbed in services, both public and private. And this is natural. Since the attainment of independence we have been managing all our public and private affairs in a democratic way; and, with the Britisher out of the country, a large number of legally trained young men are required in government administrative jobs. The task of supplying this need has fallen upon the law schools in India, and we find ourselves in the same situation as the American law schools were during the Roosevelt administration.

To train law students for this work I intend to borrow from your experience. The courses in Legal Research and Legal Method, for example, are of such value that, left to myself, I would make them compulsory for all law students.

Law Reviews

I am amazed at the wonderful work which law students are doing in connection with the law reviews. It is the height of ambition of a law student to be selected to do work on the law review. The appreciation which the law officers have shown of this work gives an added zest to the young aspirant. Nearly half the pages of a single issue of a law review is the work of students; and the quality of this work is really high. This gives the law student an opportunity to do research. It gives him training in legal writing, in many respects different from what he would be doing in the ordinary routine of a law office. Even

the business management of this work is not without its benefits and rewards to a law student.

I have the desire to start law review work in my school, and this for more than one reason. There is not much of research in law in India. The criticism has often been made that India has produced many great lawyers of high eminence but scarcely any jurists. Conditions in the past can account for this lack of research so far; but the time has now come when research is a paramount need of the present, and the spirit of research has to be inculcated in law students and law teachers alike. The law review may do this trick. You will be surprised to learn that apart from journals, which are a sort of appendage to law reports, the number of legal periodicals in India can be counted on one's fingers. The law review will supply this need, in addition to the excellent training which it will give to the law student in other respects.

I am sorry that not many of your students can take advantage of this facility. I am told that the disappointment caused to the students in this connection is both great and widespread. Is there any escape from this situation? In some schools efforts are being made to give all students, through the course in Legal Research, the same training that law review work gives to the few. This training is bound to fall short of the expectations of the students and cannot attain the same dignified position which tradition has assigned to law review work. May a foreigner with his very limited experience in this connection be permitted to make a suggestion in the interests of students? The law review work should be thrown open to students alone, and the space in an issue which is now occupied by the faculty members and outsiders should be denied to them, so that the students get double the space that they are getting now. This will open the doors of the law review office to a larger number of students, and I suppose the faculty will not mind it. I understand that there are 161 legal periodicals in this country. Hence this partial deprivation of the facility of publication of the results of his research will not cause any very great inconvenience to faculty members and will give more time for teaching, which is the main job of the faculty.

Moot Courts

The organization of moot courts leaves nothing to be desired. At Harvard it enables every student to take part in the moot-court competition, and thus the benefits of this type of practical training can

be shared by all. I am going to introduce the moot court in my school. Its value as a method of imparting practical instruction to law students has long been recognized in India, but the sessions are few and far between and have never been treated as an integral part of law school training. At any rate, it is not so well organized as in this country. Moot court training will not be as useful to my students as it is to the American students, inasmuch as we do not have the system of arguing on written briefs, but it will give a good, practical training to our students.

Case Method

Like all foreign teachers, I too cannot escape expressing some opinion on the case method, which has been universally adopted by American law schools for imparting instruction in the classroom. It is urged by the advocates of the lecture system that teaching by the case method is a very lengthy process. What a lecturer can impart in a few minutes would require sometimes more than a period by the case method; and this is especially true in subjects like procedure, in which very often mere information is to be imparted and the topics may not lend themselves to discussion. The result is that coverage is often meager in these areas and the case method is used at the cost of coverage.

Again it is said that the case method is most unsuited to teaching a large class. The success of the method depends upon all in the class — the teacher and the taught — taking an intelligent and an active part in the discussion. It is claimed that all are engaged in searching after truth — a very high-sounding claim, although as a matter of fact all are interested in what the law at a particular time is. But in a large class a student may take the risk and be unprepared. The result is boredom. The American law teacher turns around and retorts that lectures cause still greater boredom and at their best are sleeping doses which send the students dozing.

It is also claimed for the case method that it tends to develop the analytical faculties of the student and that this is what is most needed in the legal profession. Give a student the skill to analyze situations, discuss the pros and cons of law points arising, and leave the work of synthesis to be done by the student himself. Spoon-feeding must be avoided. Once again the foreigner asks: "Has the case method such merits that we should give up our age-honoured method of lecturing which has so successfully and effectively been used by generations of

our teachers and yours too and now start preparing casebooks from a far smaller number of judgments available to us?"

All these claims and counterclaims may or may not be true, and many of them may have more than a grain of truth in them. I, for one, would not like to enter into this field of controversy and take sides in this battle of case method versus the lecture system. Truth perhaps lies somewhere in the middle, and he is the wise teacher who will follow the golden mean. One thing, however, seems to be clear to me. The teacher is more important than the method. An able and capable teacher is likely to make a success of any method. In the hands of an incompetent teacher the case method may turn out to be a flop. Great care should be taken in selecting members of the faculty. The most important consideration that should weigh in this selection is the teaching ability, the power to impart, the skill to put ideas across the table. In the proper hands lecturing can be as useful and effiective a method as its rival.

Personally, I have no quarrel with the case method as it is actually used today by law teachers in the United States. Whatever might have been the drawbacks of this method as it was used in the past, during the course of years it has suffered a sea change into a rich and beautiful vehicle for imparting legal instruction. The casebooks were at first a mere collection of judgments. They then came to be arranged topic-wise. Soon introductions were added. This led to the inclusion of notes. Now a lot of material from statutes and other sources is added which puts into the hands of the students information which it was not possible for them to get from judgments alone. I have even heard some American law teachers express the opinion that suitable textbooks should be used as supplements to the casebooks. The advocates of the case method have moved a good distance from their original stand, and I deem it highly desirable that the foreign law teachers should move forward to meet their American brothers and help in the process of perfecting a method of instruction which will fuse into one the good points of both. The way for forging such a method is already being paved by the actual use of the case method as I found it in my visits to the various law schools.

In the first place, the case method, if at all used in its ancient and traditional form — and I have yet to come across a professor who swears by such a method — is used only in the first year of the law course. This is done with the object of making the student unlearn some of his ways of loose thinking and inaccurate expression which he followed

in his A.B. courses and get him into the habit of clear and accurate thinking and of the correct use of language. As the student advances from the first year to the second and from the second to the third, progressively greater use of lectures is made, not without a very happy and judicious mixture of discussion of cases. The Socratic method of instruction which is so largely used in the first year gives place to an effective lecture-cum-case method. I repeat, therefore, I have nothing to say against the case method as it is in actual use today. I highly appreciate it and I shall do my best to introduce it in my school.

The Need for Quality Material

The exclusive use of casebooks by the student throughout his law course and even at the post-graduate level is doing him great harm. He is kept away from great law books and even a good many classical judgments. I have had the opportunity to go through the assignments in many law schools and I have very rarely found a reference to great textbooks or, in a subject like equity or torts, to any great judgments of the English courts. I have talked to many students, and when I mentioned Maitland, Austin, Pollock, Anson, Dicey, even Story, Holmes, Cardozo, they shook their heads and pleaded complete ignorance of the writings of any of them. The casebooks do not contain many judgments of the great English chancellors. It is not surprising, then, that students do not read the famous British trials or pass an entertaining hour or two in reading *Misleading Cases, More Misleading Cases,* and *Still More Misleading Cases,* or the lives of great judges and lawyers. Teaching by casebooks alone at all stages of legal education has been responsible for this state of affairs, and a student thus misses a great part of his education.

A casebook has to be merely suffered for its practical use, as a block of wood in the hands of a carpenter. In no sense can it be called a work of art — a great book. It is not as if a casebook is prepared out of the judgments of the Supreme Court alone, assuming for a moment that all such judgments are great judgments. In the preparation of these books recourse is had to judgments from all jurisdictions and all levels of courts. In the nature of things it is impossible that the quality of this sort of material can be uniformly high. There are judges and judges, and there are judgments and judgments. The poorer the judgment in the quality of its reasoning and language, perhaps the better it is for inclusion in a casebook, because that gives the class a lot of material for discussion and debate. The result is

that the law student is constantly handling very inferior material. It may no doubt help him to argue, to know the wrong reasoning, and to learn mistakes in the use of language. But this is like making an engineering student learn his lessons in architecture from the slum area of a city, never taking him to the city's best quarter and never presenting to him architectural beauty and grandeur. I am afraid casebooks must affect the student's whole outlook on law; and the case method is likely to create an impression on him that law is what dialectic success would give him, that there are no great issues involved, and that the basis of law is just convenience and utility, without any moral or human values coming into play.

If this is a correct picture, then I am sad that it is so. I am still old-fashioned enough to believe in the value of great legal literature. Even a nodding acquaintance with the work of great jurists and judges will not fail to have an ennobling influence on the student's mind. A legal classic raises the spirit, elevates the soul, broadens the mind, and widens the student's outlook on law and life; and it is a pity that the American law student should be deprived of this influence. I have heard it said that American legal education is tending to become a preparation for a vocation and not for a profession, much less for a learned profession such as the law. This has its origin perhaps in the fact that so much emphasis is laid on the imparting of technical and professional skills and less attention paid to such cultural and basic subjects as jurisprudence, legal history, and Roman law. There is now a visible tendency to broaden the basis of legal education by the integration of law and social sciences. Whether the fear expressed above be real or imaginary, inclusion of classic textbooks in the assignments given the student will bring him into closer contact with master minds, will give his legal studies a meaning and a purpose, and will be an education in itself.

Faculties

I greatly admire your law faculties for their scholarship and their very valuable research. This has won for them the esteem and the respect of the bar. Government has relied upon the faculty for help and guidance in framing legislation and in other allied matters, and many faculty members are being called upon to work on government committees. There are not a few examples of members of the faculty being drawn away from their professorial chairs to occupy the highest positions on the bench. In the case of such faculties it would seem al-

most sacrilegious to make any adverse comment; and hence it is with a good deal of hesitation and in all humility that I venture to make one observation. Faculty members have missed their role in law schools. Their first and foremost duty is to the students and not to research. The law teachers in this country are more interested in research than in teaching, with very unhappy consequences for education. In the selection and appointment of members of the faculty far greater emphasis is laid on scholarship and interest in research than on teaching ability. The law teacher in this country feels that his promotion and reputation depend upon the contributions he makes to legal periodicals. The yardstick with which the reputation of a law school is measured is the research which its faculty members have been zealous enough to make. The result of this attitude has been rather disastrous to faculty-student relationship.

I am sorry to say that I noticed an attitude of indifference to the student body on the part of faculty members. The law teacher does his appointed teaching work in the classroom honestly and sincerely, but outside the classroom he seems to forget that he has any duties toward the student. I have heard law teachers expressly warning the students that they should get their difficulties solved in the class, as their work in their offices would not permit them to spare any time. The teaching performance of many is poor. They mistake telling for teaching and are ignorant of the technique of effective teaching. Good teaching, and even an occasional inspired class performance, is an exception rather than the rule. This may appear to be a harsh indictment, and I would not give expression to it were I not convinced that students receive the least attention and concern in law schools, which I believe exist for students and not for providing facilities for research. Many a law student has spoken to me about the indifferent attitude of the faculty towards the students, and not much love is lost between them. The relations between the teacher and the taught seem to me to be more formal and business-like than affectionate and cordial.

I come from a land where there is a long and ancient tradition of filial connection between the preceptor and the disciple; and this tradition is sought to be kept up today. In India he is considered a great teacher to whom students go for advice even on personal matters, from the buying of pins to solving matrimonial tangles. The American law student is deprived of this influence and thus loses a great benefit of education. It is the duty of a law teacher, as much as that

of any other teacher, to give his students the benefit of his experience of life. All education, including even higher professional education, is a preparation for earning one's own bread, but man does not live by bread alone. It is a preparation for life, and a very great responsibility in this respect rests on the shoulders of the teacher. The sooner this is realized by the American law teacher the better it will be for legal education in this country.

THE RELATIONSHIP BETWEEN THE FLORIDA BAR AND THE UNIVERSITY OF FLORIDA COLLEGE OF LAW

WILLIAM A. MCRAE, JR.

In speaking on the subject of the relationship between the integrated bar and the College of Law at the University of Florida, there is one fundamental principle which should always be borne in mind. The bar is interested primarily in the standards of the college and in the results which it accomplishes. As an organized bar, we have no business telling the administration how to design the curriculum, a subject which is beyond our special competence. And we have no business telling the administration how to run the college. The bar in the past has happily avoided intrusions of that kind.

One of the most common complaints that we hear from practicing lawyers, directed not only against this college but against most colleges of law, is the cry that the subjects taught are not practical enough. It is urged that what we need is more practice courses, so that the graduate will know how to prepare pleadings and how to look up records in the courthouse. This criticism, in my opinion, is utterly without merit. It is submitted that the young lawyer who knows something about the Assize of Novel Disseisin, the Statute of Uses, and the Rule in Shelley's case is better prepared for the practice of law than the one who can talk glibly about the files in the courthouse but who lacks fundamental training.

The Florida Bar is vitally interested in working with the faculty in building the kind of college which in time can be characterized as a true legal center. It should be noted that one of the major long-range objectives of the bar — and they are essentially the same as the long-range objectives of the American Bar Association — is the maintenance of high standards of legal education and professional conduct,