PAPER

READ BY

SIMEON E. BALDWIN,

OF NEW HAVEN, CONNECTICUT.

[BEFORE THE SECTION OF LEGAL EDUCATION.]

LAW SCHOOL LIBRARIES, AND HOW TO USE THEM.

Law may be learned, as a profession, with no other library than a few text-books, or with no library at all.

There has been no better way yet invented to teach philosophy than the Socratic one, and it would be an ideal training in the science of jurisprudence for a willing learner to get all he knew from a willing teacher, able and ready to make himself a speaking book.

But under our American system of reliance on judicial precedents, while the profession might be taught by word of mouth, it cannot be practiced to advantage, in any large way, without the power and the opportunity to consult books, and many books. In the larger States, and in the Courts of the United States, a careful study of digests, and generally of reported cases, is indispensable before any case of difficulty can properly be brought to the attention of the Court.

One great aim of legal education for America, then, must be to teach how best to handle such books, so as to get the most out of them, and to be able to present it in the most effective way. The scholar must learn to search out what he wants intelligently, quickly, accurately. He must learn where to go and when to go; what to look for, and how to read it. A book may be so read as to be worse than unread.

The way to do anything easily is to do it often. The way to know how to handle a book is to handle a great many.

HeinOnline -- 17 Annu. Rep. A.B.A. 431 1894

The ideal law library, then, in this point of view—is the library where there is the freest access to the shelves. How much more can any man of literary taste make of his own library, small though it be, than of the largest public collection! He knows the faces, or the backs, of every volume. He knows their tone, their aim, their merits and their shortcomings with that sort of familiarity which comes only from close personal acquaintance. The very page on which this or that weighty sentence is to be found is fresh in his memory.

So far as the Law School library can be assimilated to one's own private library, in these respects, so much the better for every student. This is one of the main benefits to be derived from training in a lawyer's office. What books he has are fully at the command of his clerks and students.

Such was the ancient practice also at our Universities.

The happy inability to provide a sufficient force of librarians and librarians' assistants, on account of the expense it would involve, left students generally free to rummage the shelves for themselves, each pursuing his reading by an alcove table, heaped, if he cared for them, with twenty books, to be exchanged in ten minutes, perhaps, by his own hand, for twenty others.

The President of a great University, where growth of numbers had driven the authorities to the adoption of the stack system, and the doling out of books, one by one, through a hole in the wall, said to me not long since that, free as he was to go behind the railing, and read where he would, and as he would, the whole atmosphere and spirit of the place were so changed for him that he made much less use of the library than ever before, and it had lost for him a great part of its attraction and utility.

The member of a Law School Faculty who has access to shelves from which the students are debarred feels that he has almost an unfair advantage over them, and is in danger of expecting more from them than he will find.

The best part of education, Herbert Spencer has well said, is what we get without knowing it. The best hold of a legal

HeinOnline -- 17 Annu. Rep. A.B.A. 432 1894

doctrine is often secured by a casual glance at some passage, met by accident while looking for something else, and which would never have been seen, had the student's search for what he was in pursuit of been directed and limited by the aid of a librarian.

The cardinal rule in library administration, then, I should say, is to give every student as free access to the shelves as is reasonably possible.

In law schools with less than a hundred students, I believe it is entirely practicable to give them such access without restriction. Such a school will naturally be divided into two or three classes, not over fifty of whom ordinarily can be studying the same subject at the same time. And of this possible fifty, half will make only occasional use of the library, and but eight or ten will be constant readers there.

Over numbers so small a single librarian can readily keep sufficient watch to see that the privileges they receive are not abused; nor will the same volume often be wanted by several, at the same moment.

Of certain books, several copies must, of course, be kept. Duplicates have an important place in every library of a public nature, but in none more so than in the law library. Our profession is not only explained, like other sciences, in books. For the American and the Englishman it is made by books. It is made up of or from the opinions of Judges in reported cases. Every such report fills to us the place of the specimen to the naturalist. But he may often meet a hundred specimens, in a summer's walk, each like the other in all important characteristics. We can turn to but one case for the introduction of this or that rule or doctrine into our law, or for its best statement or clearest application.

Hence, if we are teaching a class, we necessarily refer every one of them, at the same time, and in the same connection, to the same case or line of cases. We may do it directly, or, by the use of a text-book, citing certain authorities, indirectly.

HeinOnline -- 17 Annu. Rep. A.B.A. 433 1894

In either mode, the result for the willing and resolute student is the same. He takes the first convenient opportunity to look at the volume of reports to which his attention has been directed. If some one has been before him, and the only copy is in another's hand, he feels discouraged; if, on the other hand, he is the first on the ground, and bears it off to his reading table, he feels pressed and hurried by the thought that somebody else is watching his movements, and impatiently waiting his turn.

There is but one adequate remedy, the possession of duplicates. The Harvard library, the best, I believe, owned by any American law school, has three sets of all the leading American and English reports. Those of most of our schools have heretofore been generally supplied only with duplicates of the sets most commonly used; as those of the State in which the school is situated, and of the Supreme Court of the United States.

During the last ten years, however, the necessity of buying duplicates has been largely removed by the rapid extension of the "case system" of instruction, and the simultaneous multiplication of our reports by different compilations of the same decisions.

An instructor, by taking a little pains, or having some bright student take it for him, can now readily cite an authority by reference to two or three separate sets of reports, in each of which it will be given fairly well. The American Decisions, American State Reports, and the different series of Reporters, issued by the West Publishing Company, not to mention other publications of more limited range, have been, in this way, great aids in Law School work.

There are also, now, few of our schools in which cases are not given out for study, which have been printed and arranged especially for use in instruction. In many, these are bound up in text-book form; in some, each is printed and paged separately; but in all they render resort to the library, for the particular case under examination, unusual, if not unnecessary.

HeinOnline -- 17 Annu. Rep. A.B.A. 434 1894

Different editions of the leading text-books are, of course, still desirable, and in the case of a few, such as Kent's Commentaries, Cooley's Constitutional Limitations, or Benjamin on Sales, several copies of the last editions.

I have said that in schools with less than a hundred students the library may be safely opened to all as freely as to the librarian or to the Professors; but I believe that, under modern conditions, similar liberty can be given even to a much greater number. These conditions are not simply the various publications of the same cases, differently combined or arranged, with which the press now teems, but also the better knowledge we have come to have of the uses of a reading room near but separate from the main collections of the library. Here should be the reports of the Supreme Court of the United States and of the State in which the school is situated, with the leading digests and most-thumbed text-books.

The consulting room of a large Law School will have, thus arranged, at the hand of the student, a library perhaps superior to the entire collection of many a younger or weaker institution; and by giving each a desk or drawer of his own, under lock and key, will make him feel almost as much at home as if he were by his study table in his own room.

The school with which I am most familiar has an attendance of not far from two hundred, and we have never found it necessary to exclude our men from free access to all the books we own, with the exception of a few rare volumes or editions, which are seldom consulted, like Chipman's Vermont Reports, or some ancient Elzevir.

Occasionally, a book has been stolen; often one is carelessly used or misplaced; not a few are thumbed to pieces and worn out. But what are books for? The Romans distinguished between *use* and *usufruct*. *Usus* was the use of a thing; *usufructus* its use and enjoyment. I would concede to our students the usufruct of our books, even if they sometimes transgress the line which separates it from *dominium*, and abuse the gift.

HeinOnline -- 17 Annu. Rep. A.B.A. 435 1894

Whether the book is taken from the shelves by the librarian or by the student himself, it is taken that it may be handled and read. Many of our students have seen few books before they come to us. They are unaccustomed to their use. They do not know how easily a strong binding may be cracked, or a white page soiled by a dirty finger. They have had no home library to range through at will since the days of early childhood. They have just begun to understand what Zeno was taught by the oracle, when he asked how he should live, and was told to inquire of the dead. They know that our law is the growth and the wisdom of many generations, and are curious to see for themselves, when they please and as they please, the story of its development. Every railing and gate between them and the main bookshelves inevitably discourages such investigations. They are not great obstacles, but obstacles they are.

I am glad to see a book worn out by honest use. I wish, in these days of *multa*, *non multum*, that more were.

It is our custom at Yale to look over the library carefully, at the beginning of each Summer vacation, for volumes with loose pages, cracked binding or "started" covers and send them to the binders, and during the last ten years our average annual expense for such repairs has not exceeded a hundred dollars. We have, however, but about 9,000 volumes. At Harvard, where the number of students has been considerably larger and there is a library of 33,000 volumes, the annual expense has averaged nearly $600 during the last twenty-five years, although for the greater part of this time most of the books were not directly accessible to the students upon the shelves.

There is no library which it is so easy to select and maintain as the American law library. All the books will be upon one subject. There will be no schools among the authors, or almost none. There will be no apparatus to be illustrated by prints or photographs. The cataloguing may be of the simplest; the most obvious mode of arranging the books is the best.

HeinOnline -- 17 Annu. Rep. A.B.A. 436 1894

If I were to commence the collection of a Law School library with, as is ordinarily the case, but a few thousand or a few hundred dollars to expend, I would begin first with the statutes, reports and digests of the State in which the School is, and to which, therefore, a large portion of the students will always belong. Next should come those of the United States, beginning with the purchase of the Supreme Court reports.

The English Common Law reports should follow, and then those of the State, whatever it may be, whose laws and institutions are most like those of the State to which the school belongs. Not until these sets, with the appropriate digests, have been procured would I buy a single text-book.

When the library includes all the American reports in the official editions with the latest revision of the statutes of each State; all the English reports with the British statutes at large and State trials; the latest digests of these various reports; and about five hundred volumes of the best text-books, new and old, it will have cost perhaps $40,000, and will contain everything the ordinary student will need to consult. The Irish, Scotch and Canadian reports can be added later, and works on English and American constitutional history and Roman law. General and comparative jurisprudence should receive attention in due time; and this may mean as little or as much as the state of the treasury and the bent of the teachers may justify or require.

The expense of keeping up all the sets of reports which I have mentioned, with their attendant digests, and the new revisions of general statutes, will be not far from a thousand dollars a year. The purchase of duplicates, which will become necessary as the library and, with it, the number of students increases, will involve a continually greater and greater outlay. To maintain a really great library, one, say, of thirty thousand volumes or more, where purchases are freely made of institutional works illustrating all the great systems of administrative law, and the general history and principles of jurisprudence, from five to ten thousand dollars a year may easily and wisely

HeinOnline -- 17 Annu. Rep. A.B.A. 437 1894

be spent; but three-quarters of this would be really laid out for the benefit of the instructors, or of scholars engaged in the examination of special topics but remotely connected with the subject of legal education.

I have said nothing specifically as to the purchase of legal periodicals. They have a function in assisting and marking the development of legal doctrine; but my own conviction is that they are often dangerous and misleading reading for the ordinary law student. His business is to learn what the law is, rather than what it is going to be; to learn it from the voice of authority and of time, rather than that of the anonymous reviewer, or the passing comment of the month; to study the great works and the great cases, rather than the newest ones, or than what somebody says of them.

Let me add two more brief suggestions. 1. As to shelf arrangement. In arranging the reports upon the shelves, the librarian should be careful to leave space for the new volumes likely to appear during the succeeding five or six years, and to close up each file by something that will prevent the last volume from falling over on its side, and also keep its covers from warping. For this purpose I believe the best thing is a solid block of hard wood, cut in the form of a very thick octavo volume, of law book size.

2. As to library hours. Library hours, in a school of any considerable size, ought, I think, to be extended into the evening. Books are the plant of our business, and a working plant pays best when it is in most constant use. Between the men who are supporting themselves by some outside occupation, the athletes who spend half their afternoons at the ball-field, and the hard workers who are making the most of their opportunities every evening will find some in the library. The adoption of this plan will ordinarily require the employment of an assistant librarian, but it will always be easy to select from the students a competent man for such duty, who will be glad to perform it as an equivalent for his tuition.

HeinOnline -- 17 Annu. Rep. A.B.A. 438 1894