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## Problems with the Structure of Casebooks and Instruction

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# PROBLEMS WITH THE STRUCTURE OF CASEBOOKS AND INSTRUCTION

JOHN MAKDISI<sup>1</sup>

The case method of instruction has served to instruct generations of students from the time of its introduction by Christopher Langdell at the Harvard Law School. It has much to recommend it inasmuch as the lawyers who have been trained to think, analyze and solve problems by analyzing cases include some of the best minds in the country. However, this time-honored method of instruction contains some major flaws and it is time that we reexamine a pedagogic approach satirized for its punishing role in *The Paper Chase*.

Casebooks "hide the ball." Students read cases, categorize and talk about problems that have been solved. They are asked to piece together a disorganized jumble of rules strewn throughout these cases and construct a coherent outline of rules and rationales. The big picture is hidden. They are asked also to write exams that solve problems that have not been solved. The process by which they are to use their knowledge to solve these unsolved problems is hidden.

The results of this method of instruction range from powerful mastery to hopeless confusion. The former characterizes those students who are able to study the finished product of a problem solved and extrapolate sufficient knowledge about the process used to solve a case (or those students whose professors properly encourage problem solving despite the casebook). For those students who are forced to learn the process of legal reasoning on their own, the sink-or-swim mentality can actually produce some very strong students. Hopeless confusion is the fate of many others who do not have the time in the midst of preparing for six courses nor the ability to learn how "to think like a lawyer" on their own.

Commercial outlines and hornbooks do help explain and categorize information where casebooks do not and professors may not. Students need to understand the big picture so that they can explain and categorize the cases properly and move on quickly to an intelligent discussion of unsolved problems. Unfortunately, these aids without instruction on their proper use have proved too often to be a crutch substituting for the creative thinking so crucial to success in law school. Practice exams are also helpful in giving students some experience with problem solving. Unfortunately, one or two practice exams are a far cry from the constant practice with problem solving that is necessary to ensure success in law school.

Both casebooks and instruction in the classroom should focus on these two gaps in the case method of instruction. The big picture should be incorporated

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in the casebooks in hornbook fashion to provide background reading for each area of the law covered. Unsolved problems should also be incorporated in the casebooks to provide the basis for a more advanced discussion of the cases than mere analysis and categorization. This discussion should involve specific training by the professors in how to use knowledge gained from the cases to synthesize new and creative solutions to unsolved problems.

A pedagogic approach to law training that focuses on problem solving is not a new idea. Some authors in fact have incorporated unsolved problems in their casebooks. However, given the ready communication that is encouraged and exists among students concerning the content of their classes, it behooves the professor to compose his or her own set of unsolved problems anew for each class. It is not fair to give an exam that was taken by a prior class to a new class with access to it; it is not helpful to give a problem that was solved by a prior class to a new class with access to it. Perhaps it is this extra work and not the time-honored tradition of the case method of study that is the greatest obstacle to improving our teaching methods.