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The Recitation System

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favor of such an organization. All it needs is a leader. Who will be the Moses to lead Columbia's children out of the wilderness disintegration to the promised land, where an influential organization shall make its power felt wherever law is known? The Jurist will be happy to lend its aid when the leader appears.

Prof. Martin, the examiner of the Board of Regents, at the Law Students' Examination in the city, reports an increase in the number of applicants for the Regents' certificate, and a higher average in scholarship. This is very gratifying news, particularly the latter part of it. We hope that the Regents will make this examination sufficiently difficult so that a certificate from them will be a guarantee that the possessor has at least the foundation of a liberal education.

THE RECITATION SYSTEM.

The easiest way for a teacher of law to teach, or to appear to teach, is by lecturing. It is also the way most popular with law students. Is it the best?

The easiest way either of teaching or learning is seldom the best. It takes effort to produce result. Law is not drunk in as our native language is, or even as our native institutions are. Part of it is derived from days and lands of very different institutions, and very different ideas. Its rules often seem harsh and wrong. They sometimes are. They always are in part, let us believe; else were our legislatures busy to little purpose.

To learn law one must study law, and the lecture-room is but an indifferent place to study in. One can get suggestions, facts, rules, principles, inspirations there, but he must go elsewhere for reflection, comparison, digestion, consultation.

Nothing falls so dead on the ear as a lecture on an abstract subject, which is written out in full, and read, word by word, to the audience. Having ears they will hear not. Is not the same thing, they may well ask, to be read in printed books, to better purpose, in half the time?

A law lecture, to be worth anything to ordinary men, must be delivered in more or less of a colloquial manner. No doubt there must, if it is more than elementary, be full notes before the speaker; certain propositions should even be written out, and perhaps dictated in precise terms; but the general current of his words should flow naturally and freely as one talks to his friend. Questions should be encouraged on the part of the student, and time cheerfully given for their answer on the spot. This will, no doubt, break in on the continuity of treatment of the topic in hand. It will render the lecture less finished. It will give more prominence than it deserves to some one or two points. But these will be points which interest at least one student. If obscure to him, they are not unlikely to be obscure to some of his comrades. The interruption of the line of the lecture challenges the attention of every one in the room. They are curious to hear the question; curious to hear how the professor will treat it. He has, at once, a hold on the audience, and if he is a ready man, will not be slow to take advantage of it.

But take the lecture at its best, it is only the beginning of the student's work. It is a hasty review of some large subject by one familiar with it, before many who are unfamiliar with it. To make it of lasting value, there must either be a wearisome taking or transcribing of notes, or resort to published works on the same topic.

Why not go to these works first? The professor got his knowledge, mainly, from them, or books like them. Why should not you dig in the same mine, under his direction, but along with him? He can tell you where the veins of ore run thin, and how to put in your pick. He can throw a light into the dark galleries. He can tell you how deep to go, and how long your day's work should be.

This is the recitation system. We have always tried to follow it at the Yale Law School where we could. There are some topics on which the text books are inadequate, or are too lengthy for a student's use in the ordinary law school course. Here lectures must take their place. But when a good book, of moderate bulk, exists, I had far rather go through it with my class, page by page, than to treat the same topic in the medieval lecture chair. Much of our exposition, illustration, and addition, perhaps a
little of subtraction, will be needed in the recitation room. The class are not to be treated like school boys. We should try to find out from them not so much how the author lays down any proposition, as why he lays it down. The faculty of reasoning on law questions can be taught in few ways better than this. The professor should invite the fullest and freest questioning: "Fools can ask many questions that wise men cannot answer." There will be hard questions put, and foolish questions put. There will be found in every class the bumptious man who thinks he can pose the professor, and is only trying to do that; the thick-headed man who hardly understands how to put his question, or what the question is he wants to put; the man who has just read some newspaper item about a justice-of-the-peace suit in Oregon, and wants to know if the decision was right; and the man who wants advice about some case which his father is thinking of bringing. But there will be also the intelligent, quick-witted student, who is dissatisfied with some conclusion of the author of the book, or detects some dark point that has been glossed over, and asks what he really wants to know, and because he wants to know it.

To make such a recitation most useful, a large class must, of course, be cut up, in college fashion, into divisions. There should be an opportunity, daily, to ask every man who is willing, two or three questions during the hour. A few will be unwilling, or but half-willing.

A plan which I have found very convenient is to assign a certain number of the front seats in the recitation room to those who are willing, and to assume that those who, on any day, sit elsewhere, are not prepared to be questioned. The shy man, the middle-aged man, who has broken down in some other business, and has determined to try the law, the man who is also being questioned like a boy, the shirk and the dunce, can then keep in the rear, if they choose.

But I should not hesitate to predict of any class that the successful lawyers in it would almost always come from the front seats. The legal profession demands promptitude, alertness, readiness to seize and im-

prove every fair chance of fair advantage. These are things for the law student to cultivate, lest, when his day of judgment comes, it is found that the shy man is shy still, the shirking man a shirk still, the stupid man a dunce still, the airy man airy still. They may all build up for themselves a better character, and the front seat of a recitation room is a good place to begin in.

SIMON E. BALDWIN.

Yale Law School, Sept. 10, 1885.

GREENLEAF ON "CERTAIN" CIRCUM-STANTIAL EVIDENCE.

Mr. Greenleaf, in the first section of the first volume of his Treatise on the Law of Evidence, has endeavored to make a philosophical division of the various kinds of evidence. In this section he declares that only mathematical truths are susceptible to that high degree of evidence from which the conclusion necessarily follows, and this kind of evidence he terms "demonstrative." Matters of fact are proved by "moral evidence," which is not entirely obtained from intuition or demonstration.

Having made these preliminary definitions, one finds, with surprise, in section 13 A. that there is a kind of circumstantial evidence which may be called certain, or that from which the conclusion necessarily follows. That there is, apparently, some inconsistency between sections 1 and 13 A. is quickly seen; nor is it difficult to discover wherein it lies. The latter section is evidently based on the illustration that accompanies it. The case put supposes that the body of a person of mature age is found dead with a recent mortal wound, and the mark of a bloody left hand is discovered upon his left arm. The conclusion sought to be drawn is that, since the mark is that of a bloody left hand, some person other than the deceased produced this mark, and this conclusion, it is said, necessarily follows.

If the conclusion does necessarily follow, then we are no longer in the domain of moral, but of demonstrative evidence, and, according to section 1, we are dealing with a mathematical truth and not the proof of a fact by circumstantial evidence. For, in circumstantial evidence, the factum probandum and