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The Genesis of the Case Method and its Impact on the American Philosophy of Law

Abstract

The article discusses the Case Method – the dominant method of teaching in American law schools, based on an analysis of judicial decisions, created in the 1870s by Christophus Collumbus Langdell. Langdell perceived law as a science similar to physics or chemistry, and hence as an ordered system of objective knowledge, and the method of teaching that he created was intended to educate people dealing with law in a scientific manner. The article presents Langdell's concept of law and the impact of his teaching method on the trends in American legal philosophy – classical jurisprudence and legal realism.

Keywords: Case Method, Christophus Collumbus Langdell, legal realism, American classical jurisprudence, legal education, law as a science

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In an era of American cultural expansion, with elements of American culture being transferred to and implanted in other cultures, on the wave of globalisation processes and Americanisation, one of the major fields of its impact is also law.[2] The abovementioned processes are particularly evident in post-communist states of Central-Eastern Europe after 1989, and are manifested in a universal, often uncritical, acceptance of solutions borrowed from American legal and lawyer culture. Although the process of Americanisation has had a rather immaterial impact on the Polish legislative process and the shape of the legal solutions adopted in the country,[3] it has had a major impact on the philosophy of legal professions (a cult of professionalism, an emphasis on separation of such professions, building an own identity and emphasising own professional-ethical rules, different from those of other professions), the manner of legal thought or, finally, the narrative on the importance of law and lawyers in modern democracy.[4] One of the most important examples of impact of the American model on Polish legal culture is legal education and proposed solutions based on the teaching methods applied in American law schools.[5]

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2 The term 'Americanisation' is well known and often used in social studies and humanities. It refers to the influence of American culture on the cultures of other countries, particularly in the area of popular culture, customs, media, lifestyle, business practices, and political techniques. In the field of social studies, many researchers claim that in Poland after the transformation of 1989, the process of Sovietisation of social life was replaced with the process of Americanisation: C. Neil, J. Davies and G. McKay (eds.), *Issues in Americanisation and Culture*, Edinburgh 2004; H. Fehrenbach, U.G. Poiger, *Americanization Reconsidered* [in:] idem (eds.), *Transactions, Transgressions, Transformations: American Culture in Western Europe and Japan*, New York–Oxford 2000.

3 An example of such impact can be provided by the amendments to the Polish criminal procedure implemented on 1 July 2015 and effective since 15 April 2016.

4 In order to illustrate the spreading of the American approach to law and legal practice, some authors in the West have used the term 'Americanisation of law' or 'Americanisation of legal practice'. W. Wiegand, *Americanization of Law: Reception or Convergence?*, [in:] L.M. Friedman, H.N. Scheiber (eds.), *Legal Culture and the Legal Profession*, Boulder 1996, p. 137; R.A. Kagan, *Globalization and legal change: The "Americanization" of European law?*, "Regulation & Governance" 2007, 1, pp. 99–120; O. Pollicino, *Against The Idea Of "Americanization" Of European Judicature In The Context Of The New Era Of Judicial Globalization*, "Panóptica" 2007, 8, pp. 407–440.

5 Not law faculties, but specifically 'law schools' – this distinction emphasises their organisational separation, and also methodological separation – as regards the teaching methods – from other departments of American universities. American literature has often emphasised what law schools have in common with the rest of a given university is only the 'postal address', see P.A. Samuelson, *The Convergence of the Law School and the University*, "The American Scholar" 1975, 44, p. 258, or that law schools have as much in common with universities as dance schools or fencing schools with universities, and the relations between law teachers and students resemble those between sport

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The subject matter of analysis in this text is the Case Method – a teaching method prevalent in American law schools for nearly one and a half centuries.[6] It is commonly regarded as a symbol of good, practical preparation of law students to work in legal professions, and perceived as a source of success of American lawyers and, generally, American philosophy of legal professions in liberal democratic states in conjunction with a free-market economic model. According to the philosophy of law schools, they aim at professional preparation of future lawyers to function successfully in the legal services market as well as at equipping graduates mainly with a set of practical skills and legal knowledge to enable them to succeed in a competitive market. It is no surprise then that the Polish debates over reforms of law studies feature postulates for a greater practicality of legal education, modelled precisely after American law schools.[7] Yet, there are many myths surrounding the practicality of the American legal education – the model is perceived by some participants of the American legal debate as too theoretical and as hardly able to prepare students for the actual application of law as part of their professional practice.[8] Moreover, there have been arguments raised in the United States regarding the increasing discrepancy between the teaching in law schools and the reality of legal practice and the expectations of the clients taking advantage of legal services.[9] At this point, a Polish reader may experience a *déjà-vu* of sorts, as such objections have often been raised against the Polish model of legal education which has been offered a remedy in the form of solutions based on the American model. The aim of this article is to cover the sources of the legal education model prevalent in the USA, and to discuss the objectives that the said model has sought to achieve, which will make it possible to understand the reasons behind the criticism of the Case Method as expressed in the country where it was created and where it has been most successful.

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coaches and athletes rather than those between academic teachers and students. Th. Veblen, *The Higher Learning in America. A Memorandum on the Conduct of Universities by Business Man*, New York 1918, p. 211.

6 Obviously, it is not the only law-teaching method in the USA – apart from it, American law schools utilise – to a lesser or greater degree – other methods such as clinical teaching, problem-solving method or the so called Street Law. An overview of the American law school teaching methods can be found in: D. Barnhizer, *The Purposes and Methods of American Legal Education*, "Journal of the Legal Professions" 2011, 36(1), pp. 1–76.

7 A proposal of a radical reform of the Polish legal education to bring it closer to the methods used in the United States was made by e.g. Fryderyk Zoll. See F. Zoll. *Jaka szkoła prawa? Czy amerykańskie metody nauczania mogą być przydatne w Polsce?*, Warszawa 2004.

8 M.M. Siems, *World without Law Professors*, [in:] Mark van Hocke (ed.), *Methodologies of Legal Disciplines. What kind of Method? What kind of Discipline?*, Oxford–Portland 2011, pp. 71–87.

9 H.T. Edwards, *Growing Disjunction between Legal Education and the Legal Professions*, "Michigan Law Review" 1992, 91(8), pp. 34–76.

Moreover, the text includes a presentation of the impact the said method has had on the American philosophy of law.

In contrast to the European, continental school of legal education based on typical academic teaching, the American teaching model is based on an analysis of specific judicial decisions made in the classroom by the teacher together with their students. Instead of legal coursebooks, the basic source of knowledge for students are the so-called casebooks, i.e. compilations of rulings made by courts of appeal in the taught area of law.[10] Students are expected to independently analyse particular judgements, determine the facts for a given case, divide the facts into relevant and irrelevant, determine the content of the legal principle applied by the court and providing the grounds for the ruling, and to reconstruct the arguments and the entirety of the court's reasoning that has led to the final shape of the judgment.[11] A proper analysis of a given case is only possible after a careful examination of the jurisprudence applied in similar cases, which in turn requires an in-depth familiarity not only with jurisprudential literature but, even more importantly, with the so-called *yearbooks*, i.e. sets of court verdicts made in a given appellate jurisdiction, published in the form of annual volumes.

Only after such an analysis and after a thorough preparation can students attend a class during which court rulings are being discussed. Such classes are interactive and involve students discussing each ruling together under the supervision of the teacher. Rather than providing simple answers to students' questions or clarifying their doubts by way of an ex cathedra lecture, the professor's role is to skilfully direct their line of reasoning so that they can find a proper solution to the case themselves. The most important skill required from the teacher is the ability to ask proper questions leading their students to the right solution, but this role does not end there. By asking relevant questions, changing the facts of the case spontaneously, and asking students to make comments on fellow students' opinions, the teacher was supposed to teach future lawyers to approach cases from different angles and build up arguments supporting one's position, but also forced them to anticipate potential objections to the solution offered.[12] This teaching method is commonly known as the Socratic method – its name, naturally, originates from

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10 A. Farnsworth, *Casebooks and Scholarship: Confessions of an American Opinion Clipper*, "Southwestern Law Journal" 1988, 42, pp. 906–909.

11 C. Kissam, *The Ideology of the Case Method/Final Examination Law School*, "University of Cincinnati Law Review" 2001, 70, p. 137.

12 D.D. Garner, *The Continuing Vitality of the Case Method in the Twenty-First Century*, "Brigham Young University Education & Law Journal" 2000, 2, p. 327.

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the great Greek philosopher.[13] The application of the teaching methods mentioned above gave rise to objections as to their didactic value from the outset; however, on account of the scope of this text, there is no room for even a brief overview of those discussions.[14]

The author of the abovementioned law-teaching methods applied in the United States was Christophus Columbus Langdell – a long-term dean of the Law School at Harvard University. Since this lawyer is relatively little known in Poland, let us provide a brief account of his career.[15] Prior to taking the post of the dean of the Law School at Harvard in 1870, Langdell worked as a clerk in a law firm, and his duties included searching for court rulings to support the motions and claims filed with the court by his patron. He did not appear before courts himself, being familiar with legal practice from the back-office side. After taking the post of the dean of the Law School at Harvard, he introduced the teaching method outlined above, which has survived to this day without any substantial modification. Most Harvard law graduates of the last decades of the 19th century pursued an academic career path and, finding employment at other US university law schools, introduced Langdell's teaching methods there, spreading it across the entire country.[16] At the turn of the 19th and 20th centuries, the method was employed at many law schools, and after

13 Socrates' philosophy was based on the assumption of objective truth which human mind was capable of discovering. Socrates believed that it is only possible where a man achieves truth themselves, having purified their mind of false knowledge – even if the wisest of men tried to impart the truth and reveal the falsehood by showing them directly, the truth would not be accepted by the listener when imposed from outside. These assumptions were put into practice by the philosopher by engaging in countless dialogues, during which he would direct his interlocutor towards the discovery of the truth by skilfully asking questions. He would always employ a certain stratagem in those conversations – pretending to be totally ignorant, he would ask his interlocutor to explain an issue, and then by asking proper questions he would lead him to contradict his earlier statements or some commonly known truths. Only after Socrates' interlocutor realised the falsity of their opinions, were they directed by proper questions towards the truth, but they had to achieve it themselves. In Socrates' opinion, just as a midwife's role was to help a baby to be born, a philosopher's role was to help one find the truth. For more on the Socratic method in teaching, see P.E. Areeda, *The Socratic Method(SM) (Lecture at Puget Sound 1/31/90)*, "Harvard Law Review" 1996, 109(5), pp. 911–922; D.G. Marshall, *Socratic Method and the Irreducible Core of Legal Education*, "Minnesota Law Review" 2005, 90, pp. 1–17; A. Kronman, *The Socratic Method and the Development of the Moral Imagination*, "University of Toledo Law Review" 2000, 31, pp. 647–648.

14 An outline of the American discussion on the merits of the Case Method and Socratic Method for didactic reasons can be found in: J. Srokosz, *The American discussion on the value of the Langdell's education method of teaching students to 'thinking like a lawyer', and possibility of its implementation in Polish legal education*, [in:] M. Večeřa, T. Machalová, J. Valdhans (eds.), *Aktuální otázky právní metodologie*, Brno 2014, pp. 132–146.

15 W. Schofield, *Christophus Collumbus Langdell*, "The American Law Register" 1907, 55(5); B.E. Kimball, *The Inception of Modern Legal Education. C.C. Langdell 1826–1906*, Chapel Hill 2009.

16 C. Menkel-Meadow, *Taking Law and ____ Really Seriously: Before, During and after "The Law"*, "Vanderbilt Law Review" 2007, 60, p. 563.

failed attempts at its elimination, or at least a significant modification made in 1920s, the method was commonly accepted and implemented across all American law schools.

Langdell made his mark in the American history of law primarily as the founder of the modern and absolutely dominating law-teaching model – and is universally deemed as the single most important person in the history of American legal education. However, Langdell's goal was not to create the most efficient law student education and to prepare student for their professional practice, but rather to spread his vision of law as science and accordingly to prepare those studying law in a scientific manner. The Langdellian ideas of law, as well as of an education system to implement them, were formed in specific circumstances existing in the USA after the civil war – which involved in particular the increasing demand for professional legal services in both the private and public domains.[17] Given the extent of this article, I will only attempt to outline the most important tendencies resulting in the appearance of new law-teaching methods, and also of viewing law as an ordered system, which – according to some authors – was a necessity of sorts, forced by certain already noticeable social trends.[18]

First of all, let us briefly describe how lawyers were educated prior to Langdell's reforms. Until the late 19th c., legal education was based on teaching through practice gained with law firms – similarly to the guild apprenticeship in medieval Europe.[19] The essence of such teaching consisted in work in a law firm of a practicing lawyer and a keen observation of their activities, gradually learning legal proficiency from the patron, just like a medieval apprentice would acquire their skills working under the guidance of a master in a given area.[20] However, unlike guild teaching, legal education would not finish with a master's exam with access to the legal profession being unlimited and unbounded. Naturally, such apprenticeship-oriented technical – practical – model had its origin in the English law-teaching

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17 The social and economic changes in the USA after the civil war, which had an impact on the teaching of law, are set out in: P.D. Carrington, *Butterfly Effects: The Possibilities of Law Teaching in a Democracy*, "Duke Law Journal", 1992, 41, pp. 774–786.

18 According to P.D. Carrington, one could say that had there not been Langdell, he would be created as he was only a product of the then-current social demands. P.D. Carrington, *Heil Langdell!*, "Law and Social Inquiry" 1995, 20, p. 707.

19 C.R. McMains, *The History of First Century American Legal Education: A Revisionist Perspective*, "Washington University Law Review" 1981, 59(3), pp. 597–659.

20 Till this day, Americans perceive law above all as a certain practice of action – an art rather than an ordered system of knowledge about binding norms. Such a view of law is characteristic of the trend of legal realism in philosophy of law. See further B. Leiter, *Legal Realism*, [in:] D. Patterson (ed.), *A Companion to Philosophy of Law and Legal Theory*, Oxford 1996; J. Stelmach, R. Sarkowicz, *Filozofia prawa XIX I XX wieku*, Kraków 1999.

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tradition.[21] The aim of such training was to prepare lawyers for the provision of legal services in the private sector, preparing them only marginally for civil service. Although since the beginning of the 19th century many laws schools had been established, introducing different teaching methods – including those based on the European approach – they remained for a long time outside of mainstream in legal education.[22] Many founders of such law schools regarded the preparation of lawyers for civil service as of particular importance, seeing that it was in that professional group where the rule of law as set out by the Constitution had support in. Actually – as Alexis de Tocqueville wrote – those to-be professional lawyers were even perceived as new aristocracy in a democratic state, where there was no traditional local aristocracy of landowners or where it had disappeared.[23]

In the first period of the functioning of the United States such a quasi-guild process of creation of legal elites seemed sufficient – lawyers were recruited from local leaders, often lacking a legal professional background, but enjoying the trust of their fellow citizens. This system, based on trust in local leaders' personality rather than professionalism, collapsed as a result of the legal chaos and never-seen-before scale of corruption that followed in the wake of the civil war, particularly in Southern states.[24] The legal chaos was amplified by the considerable discrepancies in court rulings, even within a single state's jurisdiction. According to Paul D. Carrington, those circumstances simply called for the legal chaos to be sorted out, but also for a change in the manner in which lawyers were prepared for the provision services to both private and public sectors.[25] On the one hand, the settling state structures required professional preparation for the service in administration, both on the federal and state levels. On the other hand, with the territorial development of the USA, and with the rapid progress of industrialisation and the development of new

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21 For more on legal education in England, see R.M. Stein, *The Path of Legal Education from Edward I to Langdell: History of Insular Reaction*, "Chicago-Kent Law Review", 1981, 57(2), pp. 429–454; S.R. Klein, *Legal Education in United States and England: A Comparative Analysis*, „Loyola of Los Angeles International and Comparative Law Review" 1991, 13, pp. 601–641.

22 See R. Stevens, *Law Schools: Legal Education in America from 1850s to 1980s*, Chappel Hill–Londyn 1983; B.J. Moline, *Early American Legal Education*, „Washburn Law Review" 2004, 42, p. 779; C.E. Klafter, *The Influence of Vocational Law Schools on the Origins of American Legal Thought 1779–1829*, "American Journal of Legal History" 1993, 37, pp. 310–313; D.M. Davison, *The Jeffersonian vision of Legal Education*, "Journal of Legal Education" 2001, 51(2).

23 Alexis De Tocqueville wrote: "lawyers belong to the people by birth and interest, and to the aristocracy by habit and taste; they may be looked upon as the connecting link between the two great classes of society". A. De Tocqueville, *Democracy in America*, Old Maine 2002, p. 305. More on the role of lawyers in the American society according to De Tocqueville see P.C. Neal, *De Tocqueville and the Role of the Lawyer in Society*, "Marquette Law Review" 1967, 50, pp. 607–617.

24 R.H. Wiebe, *The Search for Order 1877–1920*, New York 1967, pp. 27–43.

25 P.D. Carrington, *Heil...*, pp. 701–702.

market industries, there was a rise in the demand for professionally educated lawyers to serve clients from the private-law sector. This required educating a much greater number of lawyers than it had been possible in the quasi-guild system, which essentially ensured merely a generational replacement rather than a quantitative increase in numbers in the profession. Lastly, there was an increasingly common conviction of a need for an institutional guarantee of the quality of legal services, to be ensured by establishing a mechanism of access control to legal professions.[26]

It was also in the 1860s and 1870s in the United States when the 'American dream' idea emerged and became rooted in the society, emphasising the need for self-perfection, primarily in professional terms, with the peak being market success, achievable by everyone, regardless of the social background or wealth.[27] Personality began to be perceived as that element of human nature which can be properly shaped and moulded in order to take a desired shape – which was of particular importance given the extending list of jobs offering various social services, including lawyers. The best place to forge one's personality was universities, which – according to Torstein Veblen – were to be factories of human capital run by education entrepreneurs – 'captains of erudition' – and the law schools being established at universities were perfectly suitable for that purpose.[28]

The scientistic trends in science originating in continental Europe and dynamically developing in the late 19th century in the United States had a considerable impact on the creation of methodology of legal study and the shape of legal education as created by Langdell. The methods of studying the social reality, based on empiricism and induction, created by e.g. Augustus Comte, Herbert Spencer or Emil Durkheim, soon took root in the American conditions, forming a solid foundation for scientific positivism.[29] The trend assumed that a scientist studying social processes was supposed to describe and explain them, acting as an observer dissociating themselves from any political or moral assessments as regards the phenomena under scrutiny. Scientistic movements had a considerable influence on Charles Eliot, President of Harvard University, who decided to entrust Langdell with the position of the dean of Harvard's Law School. The impact of scientistic ideas can easily be seen in Langdell's view of law and in the methodology of studying law as a discipline.

According to Langdell's concept, law should be first viewed as knowledge, similar to chemistry or physics, hence having an objective rather than a speculative or

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26 1878 was when the American Bar Association was established. Its aim was to improve the quality standards of legal services. Ch. Warren, *A History of the American Bar*, New York 1921, p. 562.

27 L.R. Veysey, *The Emergence of the American University*, Chicago 1970, pp. 264–268.

28 T. Veblen, op. cit., pp. 62–98.

29 P.D. Carrington, *Heil...*, pp. 702–703.

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contingent character, like the said two. Therefore, law as pure knowledge should be strictly separated from political or moral criteria, exactly on account of their contingent or subjective nature.[30] Lastly, like every other field of knowledge, law formed a system. Thomas C. Grey, reconstructing the essence of legal perception from Langdellian conception's point of view, identified five fundamental features of law, confirming its scientific nature: comprehensiveness, completeness, formalism, conceptual order, and predictability.[31] Comprehensiveness of law meant that it was capable of resolving every situation it covered, on the grounds of predetermined principles – thus, there were no procedural loopholes. Completeness, on the other hand, meant that in a specific legal situation there was only one correct resolution – this meant a lack of substantive loopholes or axiological inconsistency. Formalism of law occurred where it was possible to prove the adequacy of a resolution on the grounds of relevant reasoning, specific to law. Conceptual order characterised law where one could speak of a certain order in the relations between legal rules of different ranks (concrete rules followed from more general legal principles), and there was an institutional order in the relations between legal rules. Lastly, legal predictability, underlying the idea of the rule of law (rule of law rather than people), meant that one could plan one's actions taking into account the existing legal prohibitions.[32]

The features of law as a system did not essentially differ from the continental positivistic conceptions. It could even be argued that Langdellian vision of law was actually an attempt to transplant the European vision of law as a system of legal norms into the American reality. Nevertheless, those attempts should not be deemed as simply copying and transplanting the European philosophy of law to the United States – as this would not even be possible due the specific nature of the American law. Langdell's creative contribution consisted in adjusting the European positivistic principles to American common law, primarily as regards the methodology of legal cognition and its sources. He made court rulings an exclusive object of his research while ignoring all other sources of law, recognising them as secondary and not reflecting the essence of American common law.[33] However, in the reality of the 19th

30 Ibidem, p. 707.

31 T.C. Gray, *Langdell's Orthodoxy*, "University of Pittsburg Law Review" 1983, 45, p. 6.

32 Ibidem, pp. 6–11.

33 In contrast to the process of codification of law and gradual elimination of other sources of law, increasingly noticeable in continental Europe, and the decreasing role of judicial decisions in favour of the legislative efforts of the Parliament – in the case of Great Britain, the predominant source of law in the United States was court rulings – particularly in the area of private law. Moreover, according to Langdell himself, only court decisions provided an opportunity for common law principles to be fully articulated on account of the existing continuity of ruling. As opposed to judicial decisions,

century USA, where considerable differences were occurring between court rulings, not only between different states, but also sometimes at the local level, law appeared as a set of chaotic acts of multiple entities (federal and state legislators, state judges, and the Supreme Court), in which legal rules were created incidentally rather than in a planned manner, in agreement with other elements of the system. Under such circumstances, it would be difficult to speak of law as science, i.e. an ordered system, rather than of law as a set of certain social practices dependent on numerous contingent factors. The Langdellian method of case law study intended to bring order to this legal chaos and systematize it.[34]

According to Langdell's concept, as opposed to the common impression of chaotic nature of American law, there was a certain order, obvious and evident to every sufficiently qualified lawyer. First of all, the common law system was based on several basic principles form which, in turn, all other institutions and legal rules stemmed.[35] Those principles could be identified through an analysis of the case law of appellate courts – only they reflected certain tendencies occurring in the system, thus providing research material enabling the cognition of law. The fundamental legal reading, allowing for the essence of law to be understood, were the abovementioned yearbooks. Therefore, there is no better place – as Langdell emphasised – for a lawyer than a library, being for him what a laboratory is for a chemist or hospital for a physician.[36] Due to the assumption that law should be separated from politics and morality, the best source material was the body of rulings of appellate courts, which did not contain descriptions of facts of particular cases and their evaluation by the judge, but rather included analyses of specific cases from a jurisprudential point of view. Those rulings contained the most important information allowing one to notice the existence of legal trends in case law or even, more broadly, in the legal system. Even more importantly, they acted as a proof of existence of a given principle in the system of common law, and provided a point of reference for the evaluation

statutory law was always of an ad hoc nature, it was dictated by the needs of current political environment, and did not have to be consistent with common law principles, it could even contradict them, in fact. For this reason he was distrustful of this source of law, treating it as an anomaly – a result of coincidence of accidental factors, which resulted in the creation of new legal rules rather than discovering the objectively existing ones. Ibidem, p. 31.

34 P.D. Carrington, *Heil*..., p. 740.

35 T.C. Gray, op. cit., p. 11.

36 Langdell stressed that "the library is the proper workshop of professors and students alike; (...) it is to us all that the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists", C.C. Langdell, *Harvard Celebration Speeches*, "Law Quarterly Review" 1887, 3, p. 124.

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of how correctly law was applied by lower courts, which in turn was to demonstrate the existence of order within the system of law.[37]

It has often been emphasised in source literature that Langdell's method was similar to models applied in geometry, particularly the Euclidean method, based on the assumption of certain axioms from which conclusions are derived deductively.[38] In Langdell's methodology, certain axioms are adopted as well (the basic principles of common law), from which logical conclusion are then derived (legal principles from which, in turn, specific legal rules are derived);[39] however, this model was not based only on logical deduction as the way of reasoning. The Langdellian model was supposed to be based on a combination of the methodology of empirical studies and inductive reasoning coupled with deductive reasoning. These entirely different methods of reasoning were to be applied in a proper sequence: in order to obtain a catalogue of fundamental common law principles, an analysis of specific rulings (i.e. empirical facts) was to be carried out, and on the grounds of inductive reasoning, it was to verify and prove the existence of certain trends in case law, offering a reflection of the legal principles underlying the entire system. Once a certain foundation in the form of the most important principles was determined for the system, the validity of more detailed legal principles and rules was to be arrived at deductively.[40] The final outcome of such operations on legal principles and rules was supposedly the discovery and demonstration of law as a system of knowledge; one that was ordered, based on coherent axiological assumptions, and logically transparent. The word 'discover' should be stressed here, as opposed to 'create', since according to Langdell, such a legal system as a certain system of knowledge existed objectively, and lawyers' goal was only to demonstrate its existence, not to create it.[41]

The greatest problem for Langdell's concept, being incidentally one of the main reasons for it being criticised, was the issue of determination of the catalogue of the first essential principles of the common law system. Langdellian methodology could lead to a vicious circle – empirical research leads to identification of certain principles forming the grounds for future rulings, which in turn provides material

37 N. Cook, *Law as Science: Revisiting Langdell's Paradigm in the 21th Century*, "North Dakota Law Review" 2012, 82(2), p. 29.

38 T.C. Gray, op. cit., p. 16.

39 M.H. Hoeflich, *Law & Geometry: Legal Science from Leibniz to Langdell*, "The American Journal of Legal History" 1986, 30(2), p. 120.

40 N. Cook, op. cit., p. 31.

41 E. Rubin, *What's Wrong with Langdell's Method, and What to Do About it*, "Vanderbilt Law Review" 2007, 60, pp. 632–33.

for the emergence of other principles.[42] Of course, it was possible to justify this method provided that a certain sequence of actions was followed and assuming that empirical studies of court rulings should only serve to help one to determine the fundamental principles of the system, whereas once they have been established, one needs only deductively derive logical consequences of those principles in specific cases. Nevertheless, one should make an assumption that the fundamental principles of common law are invariable, or at least long-lasting. Following such assumptions, the empirical method as applied by Langdell was essentially to serve a dual purpose. Initially and once only, it was to prove the existence of certain systemic regularities and subsequently only to corroborate the existence of such regularities.

Another problem with Langdell's concept was the question of how the legal tendencies were to be demonstrated and deemed fundamental principles of common law. The problem would arise where two, or sometimes even more, contradictory lines of ruling occurred with respect to a legal issue, and they had all been consolidated in previous practice in one state or on the federal level. It would seem that following the example of natural sciences, the principles that would be deemed valid would be those that enjoy the support of the majority of judges and are predominant quantitatively in case law, and are socially acceptable.[43] However, Langdell, who believed that the basic principles of the system are invariable, comparable to the principles of physics or rules of nature, decided that they could not be identified on the basis of simple induction rules, and went on to indicate a priori which principles as expressed in case law he deemed as fundamental for the system and which he regarded a result of a mistaken line of ruling, i.e. false, in fact. The choice was to be obvious to every well-prepared lawyer, having sufficient knowledge of the system of law. Thus, identification of the fundamental principles was not to be based upon scientific principles, but rather on the grounds of a lawyer's intuition. The selection of primary principles deemed fundamental was made by Langdell himself, who recognised certain tendencies occurring in law as objectively valid, while treating other ones as mistaken; however, contrary to his declarations, the selection was justified not scientifically, but subjectively – the principles were identified not on the grounds of data obtained as a result of empirical studies, but under the authority of the author of their catalogue.

The abovementioned assumptions led to two implications. Firstly, for the sake of validity of an assessment of a judgment or line of ruling, having a majority of

42 T.C. Gray, op. cit., p. 24.

43 According to Dennis Patterson, Langdell put the scientific method upside-down as, based on an analysis of empirical data, he gave priority to the a priori theory over the results of an analysis of such data. D. Patterson, *Langdell's Legacy*, "Northwestern University Law Review" 1995, 90, p. 196.

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judges, or even the society convinced was not relevant; what was relevant was the objective validity or erroneousness thereof. Naturally, one could not have denied the existence of rulings or even lines of rulings deemed erroneous by Langdell, but they were omitted in constructing the principles of common law. They were considered as failed experiments, which admittedly did occur, but were of no significance to the validity of objective legal rules.[44] Secondly, if an assumption was made that there was a certain lawyers' intuition, resulting in certain principles being found as obvious, it was necessary to remodel the legal education so as to teach lawyers to apply such intuition – and this was the aim of the Case Method.[45] The ultimate objective of this method was to teach students to 'think like a lawyer'.[46] Although Langdell did not coin that phrase himself, it was the actual aim of his teaching method, harmonised with his conceptions of the scientific nature of law. It set out to shape lawyers' mind so that they could, at a first glance, intuitively recognise whether or not something was obvious in terms of validity – i.e. to create a certain canon of thought characteristic of lawyers. This mode of thought was to be based on empiricist methodology and rather rely on canons of scientific thought. The purpose of this method was to educate a group of lawyers to think about law in scientific terms, and to bring order to the network of interrelations between legal rules and principles in the same manner.[47]

The common adoption of this law-teaching method resulted in, first of all, the shaping of legal professions – appropriate education offered to lawyers, delivered in a similar way in a majority of law schools led to the stage of legal education

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44 P.D. Carrington, *Heil...*, p. 709.

45 T.C. Gray, op. cit., p. 23.

46 Although commonly used in the debate over American teaching of law, the term has never been defined – with a large degree of oversimplification, one can assume that it is a manner of critical thought based on precision and scrupulous analysis of facts, characterised by a lack of emotional response to the analysed case, and also carried out in line with the rules of logic and the established *topoi* of legal thought. More on thinking like a lawyer, see E. Mertz, *The Language of Law Schools: Thinking Like a Lawyer*, Oxford–Nowy Jork 2007; F. Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning*, Londyn 2009; K.J. Vandevellde, *Thinking Like a Lawyer: An Introduction to Legal Reasoning*, Boulder 2011. This mode of thought was to be accessible to and exercised by lawyers only, which was to distinguish them from members of other professions. The assumption of uniqueness and autonomy of legal reasoning distinguishing itself from the reasoning applied by members of other professions is highly questionable. Many authors have emphasised that this assumption is false, adducing arguments from e.g. the area of cognitive science. For instance: L.O.N. Gantt, *Deconstructing Thinking Like a Lawyer: Analyzing The Cognitive Components of The Analytical Mind*, "Campbell Law Review" 2007, 27 p. 413; L.M. Christensen, *The Psychology Behind Case Briefing: A Powerful Cognitive Schema*, "Campbell Law Review" 2006, 29, p. 5.

47 N.L. Schultz, *How Do Lawyers Really Think?*, "Journal of Legal Education" 1992, 42, pp. 57–58; R.J. Gerber, *Legal Education and Combat Preparedness*, "The American Journal of Jurisprudence" 1989, 34(1), p. 61 and 67.

becoming the first period of professional socialisation of future jurists. It was the stage where the manner in which one was to view law and the manner of one's conduct were shaped, where one's specific way of thinking about law was internalised, but also where the fundamentals of a lawyer's ethos were taught – with the profession of a lawyer being marked as different from other professions, with an own ethical system and rules of conduct.[48] In addition to the late 19th-century trend to create lawyers' associations and a gradual increasing restriction of access to the profession by means of requirement of adequate qualifications confirmed by a professional examination, it was the manner of education as created by Langdell that contributed to the formation of the professional identity of lawyers' circles in the United States.

Secondly, Langdell's methodology of scientific approach to law largely contributed to American common law being ordered and being given the form of an ordered system of rules inferred on the grounds of logical interdependencies. The idea of existence of certain fundamental system principles from which more detailed principles and rules follow was commonly adopted, although there was a debate over their catalogue and manner of their recognition. Lastly, the practice of issuing rulings in the last decades of the 19th century and the first decades of the 20th century gradually eliminated the contradictions and made lines of rulings uniform, which in turn led to law becoming an internally consistent system, which took place largely under the influence of Langdell's assertions. The American classical jurisprudence grew out of all that – which was an equivalent of the European legal positivism and which dominated the American judiciary and jurisprudence at the turn of the 19th and 20th centuries.[49] This dominance was only overcome by the legal realistic movements of the 1920s and 1930s.

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48 A major role of socialisation and adaptation to the legal professions in the course of legal education was emphasised by Karl Johnson and Ann Scales writing about American law schools; they drew a conclusion that they resembled medieval monasteries with the offered education reminding essentially of novitiate. First of all, law students, like those entering the monastery, are required to live in isolation from the world, abandon their current way of life and thinking, are given sacred books (casebooks), which they have to master before the moment of passage – the passing of the exam. In the course of education they must get rid of any doubts – if they have doubts as to the righteousness of their actions, they are not fit for the legal profession. Lastly, only the best ones, without doubts, are ready to be saved – pass the bar examination, thereby joining the group of the chosen ones – lawyers. K. Johnson, A. Scales, *An Absolutely, Positively True Story: Seven Reasons Why We Sing*, "New Mexico Law Review" 1986, 16, pp. 438–439.

49 In the American jurisprudence, the period of 1870–1920 is defined in many ways, i.e. as 'classical legal orthodoxy', T.C. Gray, op. cit., p. 6; 'mechanical jurisprudence': R. Pound, *Mechanical Jurisprudence*, "Columbia Law Review" 1908, 8, p. 605; 'classical legal thought': M.J. Horwitz, *The Transformation Of American Law, 1870–1960: The Crisis Of Legal Orthodoxy*, Cambridge–London 1992, pp. 9–31 and D. Kennedy, *Toward an Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America, 1850–1940*, "Research in Law & Sociology" 1980, 3, pp. 3–24; 'liberal legal theory': R.W. Gordon, *Legal Thought and Legal Practice in the Age of American Enterprise, 1870–1920*, [in:]

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Despite early successes of both the method of studying law and the method of teaching law created by Langdell, it was only the latter that has survived the test of time and has been in use until this day. The scientific method of studying law, although having played an immense role in putting law in order during the chaotic period of the late 19th century, was soon deemed naive, and thus erroneous and incompatible with the reality and, consequently, rejected. The heaviest blow came from the criticism by the supporters of the broadly understood legal realism, demanding that law be treated as actual decisions made by bodies and entities applying legal rules rather than as a set of rules contained in the judicial decisions published in yearbooks. Oliver Wendell Holmes, in uttering his famous line saying that "the life of the law has not been logic; it has been experience", criticised exactly the Langdellian concept of law and its assumptions, regarding it to be 'legal theology', based solely on logic and a priori assumptions, rather than something based on experience resulting from past rulings.[50] Although American realists strongly opposed to Langdell's idea of law and his research methodology, they were much more favourably inclined towards the Case Method as a law-teaching method.

For, paradoxically, Langdellian teaching method contributed largely to the formation and consolidation of certain assumptions of legal realism. The universal acceptance of the teaching method by the legal circles in the USA undoubtedly contributed also to the considerable increase in the significance and prestige of the rulings and the authority of judges themselves. For if one accepted the assumption that the most important thing for a lawyer is analysis of court rulings as it is them that form the essence of law, it was also necessary to accept the priority of judicial decisions in the American legal discourse. The emphasis on the study of law, through an analysis of rulings alone, was a corroboration of the legal realist claim that law is actually a social fact, i.e. decision taken by judges. Moreover, the analysis of judgments alone provided realists with arguments to justify the claim that the ultimate shape of a ruling was often accidental and resulted from the experience of the actors applying the law rather than logic, and also that it was dependent on a number of factors, including the personality of the judges.[51] Realists argued that, based on empirical studies, it was difficult to speak of law as an ordered and transparent structure, as it was viewed by Langdell, but, on the contrary, as a permanently change-

G.L. Gerson (ed.), *Professions And Professional Ideologies In America*, Chapel Hill 1983, pp. 70, 88–89; 'Langdellian formalism': N. Duxbury, *Patterns of American Jurisprudence*, New York 1995, p. 79.

50 In reviewing Langdell's work published in 1880, *Summary of the Law of Contracts*, Holmes dubbed him 'the greatest living legal theologian'. O.W. Holmes, *Book Review*, "American Law Review" 1880, 14, p. 234.

51 P.D. Carrington, *Heil...*, p. 753.

able judicial practice of sorts, as a result of which current rules and principles were changed and new ones were created all the time. Thus, the law-teaching method intended by its creator to make the American legal thought once and for all scientific in its nature and to prove the assertion that law is was stable, transparent, and logical set of principles and rules, contributed to a certain extent to the creation and justification of the realistic conception of law as a contingent and dynamic social fact.

The Case Method created by Christophus Collumbus Langdell is deemed the most important reform of legal education, which produced many generations of lawyers, shaped their manner of thought, contributing to the uniformization and development of a unique character of American legal circles, but its impact is not limited only to that. It resulted in American common principles being ordered and made to a certain degree uniform, not only on the federal, but also on the state level. Lastly, studying judicial decisions as a method of teaching law students found its followers not only in the USA itself, but there were also attempts or postulates to implement it in other countries because it was perceived the most efficient law-teaching method, practical through and through, and offering future lawyers the best preparation to enter the legal services market without the need for additional training in the form of legal apprenticeship. Although it is perceived as a practical teaching method, the aim of its creation was actually to make the American legal practice more 'theoretical' and 'scientific'. Certainly, the first decades of the method's functioning in practice made it possible to achieve at least a part of the aims set by Langdell, contributing to the formation and consolidation of the American variety of legal positivism, termed classical jurisprudence during that period. Nevertheless, the impact of this law-teaching method was not exhausted in that doctrine as it led, so to speak, incidentally to the emergence of the key principles of legal realism. Although nearly 150 years have passed since the creation of the Case Method, and it has often been subjected to severe criticism throughout that period, and postulates have been made for changes in legal education every now and then, and there have been attempts to implement other education methods, it is still the most common law-teaching method used in the USA. Its further functioning, despite the claims about its twilight announced once in a while, seems unchallenged as it has shaped the American approach to law, and it has helped prepare future lawyers to function in the legal community to the greatest extent so far.

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