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EDGAR DURFEE: TEACHER AND SCHOLAR

*George E. Palmer**

EDGAR DURFEE was one of those rare teachers whose lives seem to become an almost inseparable part of the life of an institution. When the separation comes the institution will never be quite the same again. As I try to write about him, recollections flood in and more than ever I realize the importance of his being, to me and to many others. Above all else perhaps, his presence helped to sustain one's belief in the worth and goodness of life. He had a receptiveness to life which never diminished; if anything it increased as time went on. He saw the shape of a tree as we walked home from the campus and talked about its habits of growth. He loved growing things and was surrounded by them in his gardens. But his consuming interest was in man and all his works and though this found many outlets the most important was in the study and teaching of law. Here there were no boundaries to his interest and few to his high competence. If a colleague, after wrestling with a problem, needed to stand back for a time from the complexities which were beginning to overwhelm him, in order to regain perspective or gain a new perspective, Edgar Durfee was usually the man to turn to. He could help to shape the problem and it seemed to matter little that it was outside his fields of special competence. A fact that stood out was his responsiveness to us, so that any progress made seemed to come largely from us. In short, he was a great teacher, if we had the wit to learn.

He joined the Michigan law faculty in 1911, after two years in law practice and one year of teaching at the University of Idaho Law School, and continued to teach at Michigan until his retirement from active teaching in 1951. His courses that first year included Mortgages and four years later he published a casebook on the subject. He began teaching Suretyship in 1919 and continued to teach both of these courses until, in the mid-thirties, he

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combined the materials in a single course in Security. It was characteristic of his later years in teaching that he kept these materials in paper backs for seventeen years, with frequent revisions, before committing the work to the finality of the hard-cover edition of his *Cases on Security* (1951, 1953). In 1933 he took over the course in Creditors' Rights and, though he taught from his own, frequently revised, materials for some sixteen years, they remained in paper backs.¹ Among other things he was a complex combination of an experimentalist and a perfectionist.

Edgar taught Quasi Contracts his first year at Michigan and for many years thereafter, but Equity did not become his course until 1919. It remained his course for the next thirty years. This must have been a happy marriage from the start. All law fascinated him but equity surely was his deepest love and brought out the best that was in him. Although he had a mind that could deal with the most technical problems of suretyship and find them interesting, he was best suited to the openness of equity. Law was many things to him, but above all it was an instrument of justice. One of his truly outstanding qualities was that, in addition to knowing the dangers in the use of general principles, he seemed always able to put this knowledge into practice. Most of us are aware of the dangers but there are few indeed who can escape the occasional running of a principle into the ground. Edgar was not misled by abstractions—he used them in the process of thought but never as a substitute for thought. Among the innumerable bits of wisdom to be found in his writings, I like especially his addendum to a proposal he once made for pruning law school courses: "This proposal can not be disposed of by saying that, followed to its logical conclusion, it leads to absurdity. It has no logical conclusion. It merely presents an opinion on a problem of diminishing returns, of proportion, of balance."²

His first casebook on Equity was published in 1928 in a hard-cover edition but seven years later he turned to the use of a paperback revision and continued to use these later materials, several times revised, until his retirement. He was not a prolific writer but everything he wrote reflected legal scholarship of the first order. A number of his most important writings appear only in his casebooks and some of these, unfortunately, remained in

¹In the later editions of this casebook, Professor Russell A. Smith was co-editor.

²Durfee, "Broadening Legal Education," 31 MICH. L. REV. 206 at 212 (1932).

mimeographed or lithographed form. This issue of the *Review* contains two selections from these materials.

It is not an overstatement to say that Edgar Durfee was truly a master of two large areas of the law, Equity and that part of commercial law now usually taught under the titles "Creditors' Rights" and "Security." In addition, his knowledge and understanding of the whole range of the law was immense. He exemplified the truth that a teacher's mastery of one of the principal divisions of the law is likely to depend upon his understanding of law and legal processes over a much wider area.

As a teacher he expected a great deal of his students. Class discussion was conducted on the assumption that the students had studied the cases, and had applied to that study the knowledge and skills which should by then have been at their command. For men who met him on this level the gains were immeasurable—he forced them to think to the limits of their capacities and in the process helped to enlarge those capacities. Year after year he left a mark on some students which no one else could duplicate. For students who were not willing to meet this kind of challenge, the experience doubtless was sometimes unsettling. In the spring of 1958, in a talk to law alumni in New York City, Edgar himself gave a bit of testimony on student reactions in his early years. After expressing his high regard for Dean Bates he added: "And I'm deeply indebted to him because, when he became dean, he promptly brought me into his faculty, and I'm sure that I would have starved if I had stayed in practice. In other words, I took up teaching to make money. Not only did Harry give me a job. He stood between me and the howling mob of students who said 'Durfee must go.'"³ Exaggerated of course, but he still had a point to make; though it should be apparent that the quotation has been used for other reasons as well: qualities of the speaker show through which are easier to sense than to describe.

As students we were sometimes baffled by his persistent inquiry into causes and consequences, by his search for the right question in preference to the right answer, by the tentativeness of many of his conclusions, and by the broad sweep of many of his ideas. In the end, however, I think he reached most students

³ This is taken from his rough notes for the talk, which he turned over to George Spater. I am indebted to Mr. Spater for a copy of the notes.

(surely no teacher reaches them all), partly because of an element of delayed reaction in his teaching. There must be many who realized only after they had been in practice for a time that he was far closer to the realities of the law and the problems with which it deals than the black-letter men. He was a many-sided man and any search for a single judgment on his quality as a teacher is misguided. One judgment seems clear: he was a great teacher of jurisprudence who never taught a course in jurisprudence but taught jurisprudence in all his courses.

This has been almost entirely about Edgar Durfee as a teacher and scholar. Words are inadequate to express his greatness as a human being and the best I can do is to end on a highly personal note. For me, the association with him which came in the later years of his life was a priceless and irreplaceable gift. There were many who loved him and I was one of them.