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AN INTRODUCTION TO LEGAL REASONING, By Edward H. Levi. Chicago: The University of Chicago Press, 1949.

Robert Meisenholder

is never shown to be related to the forces shaping the personality of the offender. From these facts, it follows that this volume is little more than a collection of pornographic materials. One of the amazing statements made by the author is found in the discussion of a "sadistic rapist." The author draws the reader's attention to "the full lips and dreamy eyes, characteristic of the sexual criminal." Just how "full lips and dreamy eyes" are related to the psychoanalytic explanation of criminal behavior is not made clear by the author. A gruesome touch, for which there seems to be no justification, is the inclusion of photographs of the victims of sexual acts. These photographs reveal the bodies of the victims as they were mutilated by the attackers. The relationship between these photographs and the dynamics of abnormal behavior is far from clear.

Those who are interested in reading sensationalism will find much in this book to attract them. The student of abnormal behavior will find little or nothing to justify the time spent in reading the volume.

JESS SPIRER DIRECTOR, UNIVERSITY GUIDANCE CENTER
UNIVERSITY OF MIAMI

AN INTRODUCTION TO LEGAL REASONING. By Edward H. Levi. Chicago: The University of Chicago Press, 1949. Pp. 74. $2.00.

ACCORDING to the jacket Mr. Thurman Arnold describes this volume as " . . . the greatest piece of jurisprudential writing that has ever come to my attention . . . ." This statement rates with a more enthusiastic endorsement of a brand of cigarettes, "I have never smoked anything but —— cigarettes." There is a suspicion that the endorser has at one time or another sneaked down a dark alley with a different brand. There is a stronger suspicion that Mr. Arnold's reading has been wider than his statement indicates. However that may be, it is true that this seventy-four page reprint from the University of Chicago Law Review is an excellent analysis of a judicial method of handling cases.

Mr. Arnold's endorsement may not be all to the good. Unlike the tobacco endorsement which presumably increases sales, his reference to "jurisprudential writing" may serve to discourage some potential purchasers and readers. They shouldn't worry. Happily, Professor Levi has eschewed technical terminology and has adopted a concrete, case-illustrated method of presentation of his subject.

He summarizes this subject as "an attempt to describe generally the process of legal reasoning in the field of case law and in the interpretation of statutes and of the Constitution." That is a rather large order.

The central thesis of his analysis is one that has been stated many times.[1] Legal reasoning is reasoning by example from case to case. Although the pretense is that legal reasoning consists of the application of a system of known rules to particular sets of facts, the reality is that legal reasoning consists of a process of determining differences and similarities between the case at hand and previous cases. This is a process of classification in which rules arise but constantly change as new cases are presented. New determinations of differences and similarities result in new or changed rules. This process is all to the good since law can thereby follow accepted ideas in the community and erroneous ideas can be weeded out.

This central theme is illustrated in case law by the line of cases culminating in *MacPherson v. Buick Motor Co.*, in the field of statutory interpretation by the series of cases interpreting the Mann Act, and in the field of Constitutional law by the cases outlining the federal power over interstate commerce. In each field, the author asserts, the process works out somewhat differently.

In case law it is said legal reasoning results in three general states of legal concepts (Professor Levi apparently has an aversion to the term "rule"). As cases are compared a legal concept emerges. Similarity and difference are seen in the terms of a rule or of rules. In the second stage the concept or rule is more or less fixed, and reasoning by example places cases inside or outside the concept. Finally, in the third stage, reasoning by example results in the breakdown of the rule or concept and perhaps the emergence of a broader rule or a number of narrower rules. The rules, then, are not what is usually pretended. They are not fixed major premises for application by deduction to particular sets of facts.

Certainly the cases culminating in the *MacPherson v. Buick Motor Co.* case furnish an apt, if familiar, illustration of the idea. From 1816 to 1851, a series of cases outlining liability in certain circumstances led to the concept of liability with respect to things dangerous in themselves. Then followed a series of cases which by analogy to previous cases placed newly presented facts within or without this concept. From this series of cases a new concept finally emerged and swallowed up the old. The concept of

1. For example, Austin says in his laborious fashion, "In truth, when it is said that a litigated case is analogous to another case, one of the following meanings is commonly imported by the phrase. It is meant that the litigated case bears to the other case, a specific and proximate resemblance; and that the former ought to be decided, on account of the alleged resemblance, by a given statute or rule in which the latter is included. Or else it is meant that the litigated bears to the other case a generic and remoter resemblance; and that the former should be brought or forced, on account of the alleged resemblance within a statute or rule by which the latter is comprised: that is to say, that a new rule of judiciary law, resembling a statute or rule by which the latter is comprised, ought to be made by the Court, and applied to the case in controversy." JOHN AUSTIN, *Lectures on Jurisprudence*, 1039, 1040.

liability for things probably dangerous makes the former concept obsolete.

That is the proof offered with respect to case law. But the emphasis is on the *method* of reasoning (if this is a description of reasoning at all). In the attempt to describe this method generally with illustration by one line of cases in a particular field of tort liability, there is, however, no recognition of the importance of the substance of cases in determining the reasoning used on appeals. The result is an unrealistic description of the handling of past cases. It is like a general description of the process of statutory interpretation. The techniques and methods of interpretation may be generally analyzed and described; but after all is said, it is still true that the subject matter and word content of the statute, all the circumstances surrounding its enactment and enforcement, the facts of the case before the court, and other substantive elements will dictate the method of interpretation in a particular case. Likewise, the substance of the case will influence, if not determine, the method of reasoning and the handling of previous cases in a particular case governed by case law.

Partly for this reason, it may be that the author's description of legal reasoning is not entirely adequate to describe the handling of past cases on appeal. There are other indications that it is not complete. If the quotation of popular summaries of case law is any clue, overworked justices may still indulge in some old fashioned deductive reasoning, particularly in routine cases. After all, many appeals should never have been taken. In many well-considered opinions there is an enunciation of a principle which is said to control the case, but there is no indication in previous cases or in the opinions that the principle was arrived at by a process of reasoning by analogy. On the other hand, there must still be cases where legal reasoning amounts to a search for some authority to justify a conclusion arrived at by some process other than reasoning by analogy. Analysis of various series of cases other than the group chosen by the author would lead to somewhat different conclusions.

Nor is there any proof that the general description is accurate or complete at the trial court level, or for that matter, at the level of the practicing attorney engaged merely in dispensing advice.

Then too, lurking behind the author's analysis are certain broad, general ideas about our legal system. A thorough critique would require that these be brought to light.

Apparently the process of legal reasoning in case law is too diverse for a single explanation, but nevertheless, Professor Levi has done an excellent job in explaining one of the important facets of that subject.

The next section deals with statutory interpretation. It is stated that here reasoning by example proceeds from the kind of examples the statutory words call to mind. A court can escape from prior cases by a new reference

to legislative intent; but the author believes that once a decisive interpretation of legislative intent has been made, a court should subsequently follow the direction indicated by that interpretation. The *Caminetti* case is termed such a case in the application of the Mann Act. Apparently the statement is that the courts also actually follow such a direction although judges frequently rebel. The Mann Act cases are used for illustrative purposes, but there is some question whether they may be taken as typical. Certainly a great many series of cases in the state courts do not on their face indicate a process of reasoning by example from a beacon-light case. They may merely state the clear meaning rule. In problems of statutory interpretation, as in case law, the results are often predictable; but the process of legal reasoning many times remains obscure. Even where it does not, there are series of cases where an apparently decisive interpretation is repudiated. It might also be noted that the references to legislative "intent" in the analysis are not clear. For the most part the comments concerning the case law section apply here, as well as to the following section on constitutional law.

In the next section our author illustrates the idea that reasoning by example in constitutional law cases is modified by the development of conflicting satellite concepts which always compete for recognition in any case, and by the technique of appeal back to the Constitution itself as against results in prior cases. Here again it is not clear that the illustration by cases interpreting the commerce clause is entirely typical, particularly when cases in state supreme courts are considered.

This volume is entitled an introduction and to this extent does not purport to be completely descriptive or absolutely definitive. It is a clearer analysis and more specific than many that have been published. That it is only a partial description, and that the central theme is neither new nor different, should not detract from its value. Some persons may be misled by the "pretense that law is a system of known rules applied by a judge." For those who are not, here is a well reasoned and interesting though one-sided reminder that the pretense is often just that.

ROBERT MEISENHOLDER
PROFESSOR OF LAW
UNIVERSITY OF MIAMI