Law, the Life of the Law, and Society: A Posthumous Book by Karl Llewellyn

During the fall semester of 1928, Karl Llewellyn served as a visiting professor at one of the (then) most distinguished German law schools, that of the University of Leipzig. His lectures on precedents and courts in the United States were given in German, which Llewellyn spoke and wrote fluently. They were subsequently published with the financial assistance of the Leipzig law faculty: K. N. Llewellyn, *Präjudizienrecht und Rechtsprechung in Amerika, Eine Spruchauswahl mit Besprechung*, Leipzig: Verlag von Theodor Weicher, 360 p. (1933).

In the fall semester of 1931 Llewellyn paid a return visit to Leipzig, this time to lecture on the sociology of law. Once again, his lecture notes were prepared for publication. By 1932, the financial situation of German law publishers and German universities had deteriorated so badly that no publisher could be found who was prepared to risk the investment without a substantial subsidy. No subsidy could be found.

The German language manuscript on "Law, the Life of the Law, and Society" remained effectively hidden among the Llewellyn Papers until Manfred Rehbinder of the University of Zürich found a reference to it in William Twining's careful and perceptive study on *Llewellyn and the Realist Movement*, published in 1973. As he did not know German, Professor Twining could do no more than mention the existence of the manuscript. His curiosity awakened, Professor Rehbinder contacted me, the manuscript was located (of all places, at the Max-Planck-Institute in Hamburg, Germany, where it had been sent on loan from the University of Chicago Law Library), and Dean Mentschikoff's permission for posthumous publication was secured. Edited by Professor Rehbinder, the book has now appeared in print: Karl N. Llewellyn, *Recht, Rechtsleben und Gesellschaft*, Berlin: Duncker & Humblot, 198 p. (1977).

The book, while disclaiming to be systematic, is perhaps the most comprehensive statement of the early Llewellyn's sociological approach (the lectures were written one year after publication of *The Bramble Bush*). In it, Llewellyn carefully defines his own position by comparison and in contrast with Eugen Ehrlich and, in particular, Max Weber, whom he identifies...
as the “master.” Never shy about the creative use of language, Llewellyn invented a new German word to employ as his central concept. His interest, he wrote, was in the behavior of officials as they decide and channel disputes arising out of the acts of laymen, not primarily in the normative aspects of law. To express this focus, Llewellyn coined the term Trecht, a neologism composed of the German words Tat (act, action, deed) and Recht (law).

In addition to methodological questions, Llewellyn discusses the general relationship between order and society, leeways and norms, the whole and its parts, and illustrates many of his thoughts by a marvelously lively, rich, and learned discussion of marriage as an institution in the modern world. Overall, Llewellyn’s approach in this book is perhaps most accurately characterized as “institutional”. In his English language writings, this emphasis was most fully developed in his 1934 Columbia Law Review article entitled “The Constitution as an Institution.”

Llewellyn’s second German book, addressed to an audience unfamiliar with and, most likely, uninterested in the partisan passions of the then ongoing American debate over legal realism, may strike the reader as a more detached contribution to the sociology of law than some of the realist literature appearing in the United States during the early thirties. Responding, as it were, to listeners with different preoccupations and different canons of legal scholarship, Llewellyn succeeds in combining the best of two worlds, that is, American disrespect for stifling conceptualism with German preferences for systematic exposition.

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