

cases, or the principle, stand this extension?" or "Is a new or reframed principle a necessity?" The question was "Does not this novel case fall within the principle?" "

It is good to know that pursuit of the main inquiry results in the conclusion that there is a comfortable degree of "reckonability"—a reasonable regularity about the work of the common law courts. But that conclusion is really not too important, for the value of the book does not depend upon either the inquiry or its answer. Indeed, a simple comparison of the number of trial court dispositions with the number of reviewing court dispositions would itself go far toward proving that lawyers generally feel that the end result is predictable in the great bulk of cases.

What makes the book a great one is its realistic grasp of the day-to-day operation of the judicial process. No one else has captured so accurately the process by which reviewing courts decide cases and the factors that move them to the results that they reach. As he reads this book, the working judge feels that here is no outsider—that this is a man who sat at his shoulder as he fought that last batch of cases through to decision. He senses, too, a stirring call for improved craftsmanship. The techniques of analysis, illustration and example all add up to an insistent exhortation. The criticism is kindly. But this too may be only the technique of the critic. For in the large this book is a subtle and masterful piece of advocacy—for better advocacy and for higher and more self-conscious standards of judging.

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### A PRACTITIONER'S VIEW

One who reviews this book from the point of view of the practitioner speaks with a special accent—for it is for him and his fellows at the Bar that the book is avowedly written. There is much in it that must assuredly be useful to conscientious appellate judges seeking to understand the nature of their tasks; and much valuable instruction—and admonition—for those whose work in the law is to communicate its mysteries to successive generations of students. But Professor Llewellyn explicitly disclaims at the outset any primary purpose to write for judge or teacher. His concern is for the legal craftsmanship of the practicing lawyer. His goal is to recreate confidence in the lawyer that the process of appellate decision is responsive to craftsmanship. His method is to build solid foundations for that confidence upon a close scrutiny of what our state appellate courts are doing in selected, but complete, series of decisions handed down by a representative number of those courts.

Any book written for the working profession as a whole must be judged by the impact it will have on the ordinary lawyer. The author of this book

repeatedly recognizes this by noting that the great names of appellate advocacy—the Roots, the Davises, the Hugheses—are not the objects of his labors. In them the extra something that is genius has made for a craftsmanship fully abreast of the functioning of the tribunals to whom they spoke. It is, rather, the mine-run lawyers who need to know more about how the appellate courts are going about deciding the mine-run cases. It is for them that Professor Llewellyn conceives his message to be both urgent and important, and it is to them that it is directed.

It is always a fair question as to how far the illuminations of great talent lift the shadows and let in the light to the less gifted. John W. Davis wrote helpfully on the subject of appellate advocacy, but how much was he really able to transmit to others the secrets of his own consummate craftsmanship? Professor Llewellyn's book of necessity must first run the gantlet of this same doubt, since it is a book aimed at ordinary men by an extraordinary one. In the shrewdness and quickness of his perceptions, his range of interest and information, his industry, his feel for the constant self-correction of policy by fact, his exuberantly unconventional literary style—in these and many other things Professor Llewellyn falls outside the orbit of the ordinary, and this book reflects them all in exciting degree. But can its signals reach the earth-bound to whom they are beamed? Will its messages be clear to those for whom they are meant, and thus realize their purpose to lift the level of appellate advocacy closer to the accomplishments of appellate decision?

It is a fair question, but one which, in my opinion, is fairly to be answered in the affirmative. And the reason for this answer is not far to seek. It lies in the fact that, beneath all of the closely-packed agglomerates of academic learning and commercial custom, the soaring and unfettered flights of language, and the other mannerisms and ellipses likely to put off the ordinary reader, there are the hard, tough, practical analyses of specific cases, the relating of their holdings to significant factual circumstances, and the fitting of them together in intelligible lines of development—these things which any lawyer worth his salt readily recognizes as the essentials of the working lawyer's craft. They carry across great voids of disparities in learning, temperament, and natural endowment, and they speak clearly, appealingly, and persuasively because they are in the common tongue of workaday professional effort.

An analogy from the field of painting seems apt. A reader of this book who comes to Llewellyn for the first time may have an initial reaction that it is painting on a large canvas in a highly impressionist style. But closer and more careful examination shows firm lines of structure and design, a simple and continuous theme, and, both in text and appendix, the detailed case studies which, like the preliminary sketches of the artist, evidence the hard technical work on which the greatness of the final product ultimately rests.

As the practicing profession is the object of the book, so is it, according to

the author, the cause of it. Professor Llewellyn states his motivation as arising from a breakdown among working lawyers of their confidence in the steadiness of appellate decision—a widely lamented lack of ability to predict the outcome of today's case in the light of yesterday's. This is frequently formulated by way of complaint that the appellate courts do not follow the rules of law as they have been laid down in the past, thereby snuffing out the beacons which could and should point the way to the right result in the current litigation. With visibility so reduced, the tendency is for the helmsman to feel that he has no true function, that his mastery of the navigator's lore is meaningless, and that he is without significant powers of control over the keeping on course. When lawyers come to feel this way, the traditional pride in the exertion of professional skill is dimmed, and the skill itself declines through distrust of its efficacy.

There is little point in debating whether there is in fact a crisis of the depth and seriousness posited by Professor Llewellyn. My own judgment would be that its dimensions are a function of the caliber of individual lawyers. There are many good lawyers at work each day who do not rail at the uncertainties of the law or the waywardness of upper courts, but who have a reasonable grasp of what is going on and who shape briefs and oral arguments to the realities of the appellate process. It may be, however, that they are a distinct numerical minority, and that their voices are lost (or, as is sadly more often the case, not even raised) amid the clamor at the courts for not following the established rules with predictable precision. Thus, it follows that a book intended for lawyers in the mass is justified in its premise that it is precisely they who stand in need of the prescription it provides.

The prescription itself is essentially a simple one. It is: Read the cases. Not just the cases in your field of specialization or peculiar interest; not just every third case; not just the cases written for the court by your favorite judge; but every case turned out by the court on which your livelihood depends, and in the order they appear. If this is done, it is Professor Llewellyn's submission that any lawyer—no matter how average in his abilities—will acquire an understanding of how the court is going about its work and can predict with reasonable certainty what it will do in the case with which he is presently wrestling. He can form a rational judgment as to when it is worthwhile to invite the expense and labor of an appeal; and, in writing his brief and making his oral argument on appeal, he can bring to bear a craftsmanship worthy of the name and one capable of restoring and renewing periodically his sense of professional self-respect.

The virtue of this book is that it is not merely an exhortation to others to read the cases. Professor Llewellyn has been doing it himself for many years, and the results are impressive, both in terms of what they suggest about appellate performance and also in the examples they provide of how a really first-class legal mind goes about reading cases. Llewellyn's practice has been

to take consecutive periods in the life of many of our state supreme courts, and to examine *all* of the decisions in those periods. No lawyer should deny himself the opportunity of following closely at least a few of these sequential reviews by a man who knows how to read cases. It is not easy reading, but it is most rewarding; and it is worth doing irrespective of whether one reaches the same generalizations as Llewellyn, or, indeed, any generalizations at all.

The picture painted by Professor Llewellyn with the help of these superb detail sketches is one with a bright foreground and cloudless horizons. He concludes that the appellate courts are now, and have been for several years, back in the Grand Style of decision which held sway throughout the first three quarters of the Nineteenth Century, and that they have renounced the errant course of the Formal Style which took over in the years just before and after the advent of the Twentieth. It was in this latter tradition that the courts considered that they were simply applying existing rules to the case at hand, and that the processes of appellate judging were neither more nor less than just that.

It may strike some as paradoxical in the extreme that Professor Llewellyn finds certainty and predictability heightened only as the Formal Style is abandoned in favor of an approach which he has to characterize in terms of the application of Situation-Sense, Wisdom, and Reason, and of courts consciously handling precedents under Laws of Leeways, of Lawful Discretion, and of Fitness and Flavor. These abstractions have the look of personalized jurisprudence operating at its maximum, with each case being decided as it comes along on the basis of some indefinable instinct for justice as between the immediate parties to it.

It is, however, the triumph of this book that quite a different conviction emerges from a close attention to what Llewellyn conceives of as the Grand Style. He has compiled a list of Fourteen Steadying Factors which make for stability and restraint and continuity in appellate judging, and these are as hard-headed a recognition of what make lawyers tick as is likely to be found anywhere. His discussion of the techniques by which precedents are handled by the courts is an invaluable compendium on this puzzling subject, and it is a bristling armory for lawyers struggling hereafter to devise arguments which show the courts the paths to be pricked out through the thorns of prior cases. Similarly, the appendix on statutory interpretation is something no lawyer handling an appeal involving the reading of statutes should be without if he is to be at his most resourceful.

Throughout there are many items of interest to the legal craftsman, such as the perceptive discussions of appellate argument and how the result can be influenced by wisdom in presentation. These are the hints which perhaps the natural advocate senses without effort, but which the average lawyer learns the hard way or never learns at all without outside help. And help here is provided in plenty.

This is, indeed, the seeming true measure of the book's contribution. One might hesitate to say what it means for jurisprudence in the sense of legal philosophy and the speculations of that branch of knowledge about the ultimate nature and sources of law. If a book is to be judged, as it should be, by its explicit intentions as to accomplishment, there is no occasion to appraise its significance for purposes it expressly disclaims. It did not set out to do more than to reassure the average lawyer about the importance of craftsmanship in the little case as well as the big, to reaffirm the average lawyer's belief in his own professionalism. That, it goes without saying, is no inconsiderable objective; indeed, it is hard to envisage a more exalted one.

No lawyer can work effectively without pride, without conviction that means do shape ends, and that intelligence and imagination and industry do affect results. To restore that pride and conviction where they have been lost, to reinvigorate them where they have lagged, to identify and to articulate them where they flourish in a natural state—all these surely make Professor Llewellyn's work a professional landmark of major importance, a structure of those Gothic proportions which are so much to Professor Llewellyn's own taste.

This is a book of great sophistication and no cynicism. Of such are the true craftsmen of this world in all trades. Those of the law will read and return to it with recognition and profit for a long time to come.

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#### A TEACHER'S VIEW

*Let us now peruse our ancient authors, for  
out of the old fields must come the new corn.*

—SIR EDWARD COKE

This book is pure, unadulterated Llewellyn. No more need be said. Indeed, no more would be said except that the demands of a law review editor are not so easily satisfied: the lily must be gilded and the refined gold must be painted, so that insight may be obscured and truth perverted.

How then to describe this valedictory effort of The Great Llewellyn? It is youthful in its exuberance. It explodes with ideas: some good, some bad, some new, some old. It is fascinating in its juxtaposition of words which, on occasion, appeal more to the ear than to the mind. It is egocentric in its emphasis on the first person singular. The reader is admonished in the language of Cromwell: "My brethren, by the bowels of Christ I beseech you, bethink you that you may be mistaken." But, as with Cromwell, the command is always outward never inward. Finally, there is a mystique, impossible