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Review of “An Introduction to Legal Reasoning,” By Edward Levi

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BOOK REVIEWS

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

Professor Levi's book is both short and practical. Its general thesis is that since language is necessarily ambiguous, and since law is expressed in language, the function of legal reasoning is to resolve ambiguity. The type of reasoning developed for this purpose, "reasoning by example," does not meet the standards which we expect deductive and inductive logic to meet. Imperfect for scientific or philosophical use, it is better suited than the more nearly perfect logics to deal with its own peculiar problem, i.e., the adjustment of law to a changing society in the act of applying it to actual disputes. "Reasoning by example" is not criticized, nor is its modification advocated. Its imperfections are traps for those who do not know them; but they are advantages to those who wish to keep the law, without constant verbal amendment or physical revolution, somewhere near the changing society that lives under it.

After statement of the principal thesis, Professor Levi applies it to the three situations in which Anglo-American courts operate: case-law, statutory construction, and constitutional interpretation. The first he illustrates with the cases developing the liability of vendors to remote purchasers, the second with the judicial construction of the Mann White Slave Act, and the third with the interpretation of the commerce clause. The discussion brings out the use of "reasoning by example" in all three situations, and reaches important conclusions about the different degrees of judicial control of society which inhere in each one. It is implicit, but not developed, that these differences should be a vital part of any decision whether to leave a problem to case-law, to regulate it by statute, or to handle it by constitutional revision. So far as I know, it is a new and promising approach to this question.

Some will probably feel that the thesis depends upon a too emphatic and too inclusive statement of the ambiguity of legal rules. The reaction would be natural to one who works with routine and, especially, with non-litigated matters. But adequate analysis must take care of the hard cases; the routine ones will not give trouble anyway. A lawyer who has worked under a state court's development of proximate cause or last clear chance for example, will probably agree that the statement of ambiguity is not too strong. Again, one may feel that the acceptance of ambiguity in statutes as our permanent fate, is too pessimistic. But, assuming competent drafting, the ambiguities, as Professor Levi suggests, often result from the impossibility of getting a majority to agree on anything more precise, and this difficulty, which arises from common human failings, is not likely to be corrected soon enough to outmode his suggestions. Moreover, legislation that, through some happy chance, offers no problems worth litigation, will almost certainly generate some as society develops under it, and the more important the legislation is, the more certain it is to do so.

One of Professor Levi's ideas invites further comment. It is a fact that

in statutory construction the courts are less free than in case-law, because, while they can alter the meaning of the prescribed words, they cannot alter the words themselves, and because their own decisions establish a tendency or direction for the statute. In constitutional interpretation on the other hand, they are more free than in dealing with statutes because, from the nature of the case, they can more easily desert their own decisions, return to the document, and even declare frankly that the words cannot be limited to the conditions known to the draftsmen. It seems that the description of our actual position under statutes is accurate, but it is not a necessary condition. There is no inherent reason why a court should not possess the freedom in dealing with statutes that it has in dealing with constitutions. Perhaps only the fact that so much of our law is case-law has prevented courts from claiming this freedom. As current trends toward legislative remedies continue, and as our case-law, from its very mass, increases the pressure for total codification, we may witness a change in statutory construction toward the methods now current in constitutional interpretation and it may be helpful to have the latter method at hand to imitate. All this, however, is not inconsistent with Professor Levi's thesis; it is only one of the numerous dark places in which it sheds useful light.

To conclude, books of general jurisprudence and of logical analysis are of value to the teaching and research functions in law, but they are hardly ever concrete enough to repay a practicing lawyer, otherwise than intellectually, for the time consumed in their study. This concise book is an exception to the rule. Its values to the teacher and student are obvious; but the practicing lawyer will find it far more valuable to him than others of its kind. He will find its description of his methods accurate in his own field, while the generalized statement and application will help him work in unfamiliar areas, by carrying over much of his experience whose applicability he might not easily recognize. The book may displease those on the other hand, who believe that the law is, or can be made, a logical and coherent system. But that is a battle which we can hope is already won.

A. C. Becht.*

MATERIALS ON ACCOUNTING. By Robert Amory. Brooklyn: The Foundations Press, Inc., 1949. Pp. xxiii, 781. Price \$7.00.

The day is definitely past when a lawyer can boast of his ignorance of accounting. Almost unheralded, a new profession has arisen, "accounting-based law." Mr. Amory has written a valuable book to acquaint readers, particularly law students, with accounting. He makes it plain that he does not purport to treat "Legal Accounting." In fact, he seems to doubt whether there is any such thing; instead he regards accounting as a *universal* language.

Students and practicing lawyers alike should prepare themselves to practice the new profession, else they may find themselves excluded more and

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