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Levi: AN INTRODUCTION TO LEGAL REASONING

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RECENT BOOKS

This department undertakes to note or review briefly current books on law and materials closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

AN INTRODUCTION TO LEGAL REASONING. By *Edward H. Levi.* Chicago: University of Chicago Press. 1949. Pp. 74. $2.

The author, in beginning his study of the process of legal reasoning, casts aside what he denominates its pretense, that is, that the law is a system of known rules applied by a judge. The impossibility of practical operation of such a system is, he points out, occasioned by two factors. The first is the absence of sufficient knowledge to determine all-encompassing a priori rules for providing workable solutions to as yet uncontemplated problems, and the second is the gradual shifting of the premises of social needs and desires upon which such rules would have to be based. Assuming the impossibility of determining a rule initially, and of later applying it to diverse factual situations, the author continues by contending that the process is carried on as reasoning by example. In the field of case law, given cases *A* and *B*, a court when confronted by case *C*, will proceed to its solution by deciding whether such case is more analogous to the former or to the latter. In this resolution, the court will not shape the law solely with respect to analyses of the decided facts, but will also inquire as to whether there have been societal changes since the prior decisions sufficient to require that the touchstone of similarity or difference be applied in a particular way so as to achieve a desirable result. In the process of determining similarity or difference and hence that of the resolution of the ambiguities of cases *A* and *B*, the courts are aided by the presentation of competing examples in the law forum, thus more nearly insuring proper reflection of the then existent popular attitudes. The process as initially applied to statutory law is generally similar in that difference or similarity is sought to be determined between the facts under consideration and those factual situations which the legislature is deemed to have been desirous of covering in its enactment. Once such a comparison has been made and particular words of the statute have been given meaning, an additional factor comes into play in that, unless this meaning is kept constant, legislatures may be induced to refrain from acting on controversial questions in the hope that judicial interpretation of existing legislation may solve the newly-arisen problems. As applied to a written Constitution, the process differs only in that such a document effectively confers the power to overlook scores of previously determined interpretive examples and to give new emphasis and meaning to the terms of the instrument in an attempt to preserve its vitality. After extensive illustration of his several theses, the author concludes by saying, "Legal reasoning has a logic of its own. Its structure fits it to give meaning to ambiguity and to test constantly whether the society has come to see new differences or simi-

larities. Social theories and other changes in society will be relevant when the ambiguity has to be resolved for a particular case. Nor can it be said that the result of such a method is too uncertain to compel. The compulsion of the law is clear; the explanation is that the area of doubt is constantly set forth."