

Catholic University Law Review

Volume 12 | Issue 1

Article 6

1963

THE FEDERAL ADMINISTRATIVE AGENCIES: THE NEED FOR BETTER DEFINITION OF STANDARDS. Henry J. Friendly, Judge, United States Court of Appeals for the Second Circuit. – CIVIL LIBERTIES AND THE CONSTITUTION. Paul G. Kauper. – JURISPRUDENCE: Realism in Theory and Practice. Karl N. Llewellyn.

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Recommended Citation

Arthur J. Keeffe, Daniel A. Rezneck & Arthur S. Miller, *THE FEDERAL ADMINISTRATIVE AGENCIES: THE NEED FOR BETTER DEFINITION OF STANDARDS. Henry J. Friendly, Judge, United States Court of Appeals for the Second Circuit. – CIVIL LIBERTIES AND THE CONSTITUTION. Paul G. Kauper. – JURISPRUDENCE: Realism in Theory and Practice. Karl N. Llewellyn.*, 12 Cath. U. L. Rev. 68 (1963).

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Book Reviews

THE FEDERAL ADMINISTRATIVE AGENCIES: THE NEED FOR BETTER DEFINITION OF STANDARDS. Henry J. Friendly, Judge, United States Court of Appeals for the Second Circuit. Cambridge: Harvard University Press. 1962. Pp. x, 175. \$4.25.

A half dozen years ago Judge Henry J. Friendly told Mr. Justice Frankfurter of certain of his professional experiences that indicated the federal administrative agencies "did not combine the celerity of Mercury, the wisdom of Minerva, and the purity of Diana" to quite the extent Professor Frankfurter had taught him. The Justice suggested that Friendly put his ideas into print. Judge Friendly, in doing so, has produced a volume that is indispensable to anyone practicing Administrative Law in 1963 America.

The introductory chapter is divided into three parts. In Part One, "The Task of Administrative Adjudication," the author discusses the obscurity and confusion in the opinions of so many Administrators, and recalls a priceless remark of the late Professor Manley Hudson who used to say to his discomfiture: "I get it all—but the 'therefore'" (p. 9).

Part Two is entitled: "The Feasibility of Adjudicative Standards." Here the judge points out that it is asking too much "of an Agency to make policy when Congress could make none." As Professor Bernard Schwartz of New York University Law School remarked, the author believes that an ideal statute will "steer a middle course between the Scylla of attempting to include every possible detail and the Charybdis of embodying no standard at all" (p.14).

Part Three speaks of "The Need for Better Definition." Judge Friendly sets forth five compelling reasons why the standards of administrative adjudication should be better defined.

Having said this much, Judge Friendly felt the time had come "to forsake the heady mountain air of generalities and descend to the pastures where the work of the Agencies is done." He felt the descent the more necessary, "toilsome though it be, because laborers in this vineyard have so generally declined to make it" (p. 25). Chapters II through VI are devoted to this descent. The judge underlines the criteria developed by Judge Cooley, the first chairman of the Interstate Commerce Commission; he lauds the National Labor Relations Board for its example in developing "specification"; he criticizes the Federal Communication Commission's bad record of adjudication and its manner of slipping into an opinion "without articulation of reasons, and with prior authorities not overruled, so that the opinion writers remain free to pull them out of the drawer whenever the Agency wishes to reach a result

supportable by the old rule but not the new" (p. 63); the judge then presents a case in mitigation of the *ad hoc* adjudicatory record of the Civil Aeronautics Board and then concludes his "descent to the pastures" with a difficult examination of the minimum-rate power of the Interstate Commerce Commission.

The Lectures end with Chapter VII "The Road to Improvement" and this is great—the finest part of the Lectures. It is subdivided as follows: A—"The Role of the Agency"; B—"The Role of the Executive"; and C—"The Role of Congress."

In discussing the role of the Agency, Judge Friendly declares that "the best Agency to improve Agency performance is the Agency itself" (p. 142). He recognizes that "many proposals now current" can contribute to better standards but dismisses these as "canvassed so thoroughly" and "so generally agreed," that "no further discussion of them here is needed" (p. 143).

On the role of the executive, Judge Friendly agrees with President Kennedy that it is the President's obligation in staffing the Agencies "to form opinions, as to the capability" of his predecessors appointees and appoint men competent and "dedicated" to the goals of the legislation they are to implement (p. 148). But the judge still finds "difficulty in the proposal that the President should not merely see to it that the Agencies function but should tell them how" (p. 149). Presidential communications must be limited to "... issues of such little interest that no case presenting them is pending; that, if I may say so, scarcely accords with the realities of government" (pp. 151-52). This explains why so "many advocates of Presidential pronouncements on Agency 'policy' have been so chary of examples" (p. 152).

A serious problem today is Agency planning, which seems to be nobody's business. The Agencies are too busy "with specific tasks." The Executive and the Congressional Committees lack expert staff and Agency information. Actually both the President and the Congress "assume, ostrichlike, that the Agencies are doing the job" (p. 161). Until "the contending forces have had their struggle on Capitol Hill" (p. 159) neither the Executive nor the Congress can be expected to act. Furthermore, if policy-planning is to mean anything, it must originate with the Agencies themselves, not be imposed upon them from above. This is the suggestion of James M. Landis and Judge Friendly agrees "such an answer may well be the best, Utopian as it may seem today; there scarcely is a perfect one" (p. 162).

Turning to the role of the Congress, Judge Friendly points out that "recommendations repeatedly made by the Agencies have all too often remained dead letters, even—or perhaps particularly—when these are relatively uncontroversial" (p. 163).

With an understanding of Capitol Hill which is refreshing, Judge Friendly explains the failure of the Congress to legislate administrative standards by "Congressmen's having to work too much than to their working too little" (p. 167). As His Honor so rightly says "few men put in as many hours of work each day as most members of the Senate and the House of Representatives and the knowledgeability of Committee Chairmen is astonishing" (p. 167).

However, having said this, Judge Friendly makes a second Gallic and cynical explanation. Quoting Dean Ripert in writing of the *Palais Bourbon*, the judge suggests that perhaps the Congress prefers not to legislate because "... the benefit accorded to some will bring less in gratitude than the loss suffered by others will in resent-

ment" (p. 167). Benefits given one set of constituents are frequently matched by burdens imposed on others.

The failure of the Congress "to give better directives to its creatures" has caused "much ersatz" to come into being. Congressmen have been found to attempt to influence Agencies "by off-the-record pressure" or by "questioning Agency members in committee hearings as to their intentions in pending cases." These activities have a "shoddy character" (pp. 168-169).

Just as there is danger in placing Agency policy in the hands of the White House, so also there is even greater danger in putting it in the hands of the best Congressional Committee. Committees are a cross-section but not a true one. A Committee can be "... a fraction which may be a faction" (pp. 169-170). Congress has given policy to the Agencies and neither to the White House nor the Committees. Work pressures are such that Agency Policy would find its way to the Chairman of the Full Committee or Subcommittee and thence to Staff with the same passion for anonymity as young Bureaucrats at the White House. To date, "most committee 'investigations' of the Agencies have been decidedly superficial" (p. 171). Agency members testify to laudatory accounts of their own performance ghost written by their Staffs. Critics testify to what they dislike about the Agency. It all usually ends up with a large amount of work for the public printer but little else. The well prepared Barrow Report of 1958 on Broadcasting, and the Doyle Report of 1961 on Transportation are the rare exceptions.

The sad truth is that in the entire legal field there is a great need for informed legislation. Whether it be Admiralty, the Judicial Code, the Federal Rules or the Copyright Act, the need is there.

Judge Friendly's potion for Congress is to amend the Legislative Reorganization Act to compel

... a comprehensive report each ten or fifteen years on each major piece of legislation subject to its jurisdiction ... preceded by a true investigation ... conducted with the aid of private research organizations (p. 172).

In what amounts to a fragmentary footnote to these papers, Judge Friendly concludes by pleading with the law schools to take a better and different interest in Administrative Law.

He says:

... if our machine age has invented any counters for detecting the fallacious and the equivocal as sensitive as the professors and students of the great law schools, I have not seen them (p. 173).

In the case of the teaching of Administrative Law, however, it is His Honor's impression that the law schools concentrate "on procedure at the expense of substance." In this, I could not agree with him more.

... Another way of stating this would be that instruction has been too much concerned with what the Courts do with the Agencies rather than with what the Agencies do with themselves. Yet the procedural battle has been largely won ... it is in the substance of administrative adjudication where improvement is sorely needed (pp. 173-74).

Let the law schools recognize the substantive law the Agencies are creating and subject it to the same critical analysis they give court decisions.

The day when commissioners become concerned how their work in defining the general standards laid down by the legislature will be dissected by professors and students, as judges' decisions applying statutes regularly are, will be a good day for administrative adjudication (p. 175).

Amen, I say to these great papers by a very able and knowledgeable lawyer, turned judge.

ARTHUR JOHN KEEFFE*

CIVIL LIBERTIES AND THE CONSTITUTION. Paul G. Kauper. Ann Arbor: University of Michigan Press. 1962. Pp. 237. \$6.00.

Professor Paul G. Kauper of the University of Michigan Law School has written what his publishers call "a practical primer of freedom," an account and analysis of the development of the law of civil liberties in recent years by the Supreme Court. His work does not purport to be a definitive or exhaustive treatment of the selected subjects with which it deals. But that is a virtue, not a defect, because it acknowledges the inescapable fact that the relationship of individual rights to governmental power is an inexhaustible theme on which there is no final determination. The 1960 term of the Supreme Court, which furnishes many of the cases for Professor Kauper's discussion, produced more pages in the United States Reports on these questions than any other term in the Court's recent history. The judicial debate has been strenuous, even for an institution in which outspoken opinion and vehement dissent have been traditional. Nor is an end in sight, in view of the ever-increasing number of points at which the actions of government and the lives of individuals intersect. Professor Kauper's book is a welcome addition to the already voluminous literature on civil liberties precisely because it forswears omniscience. Moreover, it concentrates on what the Supreme Court has done, rather than on the author's own convictions as to what the Court should do or has failed to do. When Professor Kauper does suggest means of resolving some of the issues he treats, he contributes a calm and measured judgment to problems which put reason to the sternest test.

He has chosen to consider four general areas of constitutional development—church-state relations, obscenity and censorship, freedom of association, and the concept of state action in relation to rights guaranteed by the Fourteenth and Fifteenth Amendments. All are subjects of public controversy and concern, in which today's judicial decision gives rise to tomorrow's newspaper headline and *vice versa*. Perhaps even more important for a work of this character, these topics illustrate the way in which the Supreme Court develops constitutional principle through the interplay of doctrine and factual situation and the clash of conflicting views; drawing on the resources inherent in the Justices' varying approaches to language and semantics, their interpretations of history and tradition, their knowledge of practical politics, and their philosophical and moral commitments.

Particularly interesting is the chapter on establishment and freedom of religion. No one who reflects on the course of decision regarding church-state relations described by Professor Kauper can feel content with the prevalent characterizations of

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the Justices. The conventional breakdown of the Court into "liberal" and "conservative" blocs has no relation to the alignment of various Justices on the different church-state issues in recent years. The more sophisticated division of the Justices into believers in judicial "activism" and adherents to judicial "self-restraint" is equally unhelpful as a description of what the Court has done or as a guide to what it may do. The three major opinions upholding governmental action against claims based on the establishment or free-exercise clauses were written respectively by Justice Black,¹ Justice Douglas,² and Chief Justice Warren,³ all frequently alleged to be judicial "activists" who elevate individual rights over legitimate governmental interests. When one further considers that the two most eloquent recent exponents of judicial "self-restraint," Justices Jackson and Frankfurter, dissented in the *Everson* and *Zorach* cases, it becomes apparent that such labeling provides little insight into significant constitutional developments. And as Professor Kauper emphasizes, facile formulas of any kind are no aid to the solution of problems of church-state relationships, which are among the most difficult before the country and are likely to confront the Supreme Court for many years to come. Justices have said one thing on one occasion and later voted in apparent inconsistency with their implied previous views. Broad doctrines have been promulgated, but some of their applications bear slight resemblance to the original formulations. These problems vary widely in their character, and distinctive considerations govern their decision. Both for the judges themselves and those who would judge their performance, there is no substitute for a discriminating and individualized approach to these questions.

One such problem of great current interest is the issue of religious practices in the public schools. Professor Kauper's analysis indicates the soundness of the Court's much-discussed decision of the 1961 term invalidating the New York State Regents prayer in the schools.⁴ It is clear that the purpose and effect of the Regents prayer was to use the public school classroom as an instrument for the inculcation of school children in religious belief. The right to be free from such action by state officials would seem to be within the inner core of the First Amendment. If the Supreme Court is to be criticized for its decision in the prayer case, the criticism should properly be directed to the Court's omission to identify and clarify the factors that made the particular practice objectionable—that it was an exercise imposed upon children whose minds might be assumed to be particularly susceptible to indoctrination and unable to assert an independent judgment; that it was led by the person in authority in the classroom, the teacher; that it was a daily exercise and thus steady and repetitive in effect; that it was a required exercise from which a child might be free only by requesting to be excused and thus openly declaring his nonconformity to the views of the majority. These factors combined to produce a substantial infringement on the freedom of religious choice of a dissenting child and his parents. Indeed, the invalidity of the practice might well have been placed on the free-exercise clause of the First Amendment alone, rather than on the establishment clause. Or the Court

¹ *Everson v. Board of Education*, 330 U.S. 1 (1947)

² *Zorach v. Clauson*, 343 U.S. 306 (1952)

³ *McGowan v. Maryland*, 366 U.S. 420 (1961)

⁴ *Engel v. Vitale*, 370 U.S. 421 (1962)

should have made it clear that if the practice constituted a prohibited establishment of religion, it was because it had the effect of coercing dissenters to conform to the religious beliefs of the majority.

Professor Kauper's analysis sharply distinguishes the question of state aid to parochial schools from the permissibility of religious practices in the public schools. He believes that financial assistance to parochial schools may be constitutional if designed to further valid public interests of a nonreligious nature and limited so as not to constitute a direct subsidy for religious teaching. He suggests that even if such aid *prima facie* conflicts with the establishment principle, it nonetheless may be justifiable as an implementation of the principle of free exercise of religion by strengthening these institutions. It is, of course, possible to quarrel with this rationale. To say that a grant to religious schools is permissible if so limited as not to constitute a "direct" subsidy to religious teaching calls to mind the old distinction between "direct" and "indirect" effects on interstate commerce, which proved such an artificial and unworkable test for determining the scope of the federal commerce power. It is questionable whether limiting aid to avoid a "direct" subsidy to religious teaching is any more than a matter of accounting, since aid in one form, for example, for school construction, may free other funds for explicitly religious purposes. Furthermore, the theory of implementing the right to free exercise of religion by aiding these institutions would also appear to justify state aid for building churches or state salaries for ministers and teachers of religion. Professor Kauper surely would not go so far. Nevertheless, whatever the force of his conclusions, his discussion of the factors involved in state aid to parochial schools is illuminating. Such considerations of the problem will make the Supreme Court's task easier if the Justices face it.

The selection on obscenity and censorship is especially appropriate. The recent cases in this area illustrate a number of aspects of the Supreme Court's role in the development of civil liberties. The Court is steadfastly committed to a case-by-case, trial-and-error course in dealing with this problem. Justice Brennan's opinion in the *Roth*⁵ case, defining a standard for the determination of obscenity, did not purport to be the last word on the subject or to lay down fixed and inflexible rules of decision. The Court has been acutely aware of the changing character of public attitudes toward the treatment of sex in literature and other media of expression. By incorporating the concept of "contemporary community standards," it sought to assure that the law of obscenity will not lose contact with these public attitudes. It has thus attempted to achieve the maximum protection for genuine artistic and literary expression while preserving the community's power to deal with the commercial exploitation of sex through pornography. Furthermore, the recent obscenity cases demonstrate that there is an underlying area of basic agreement on the Court which is often obscured by doctrinal differences. Since the *Roth* case, it does not appear that the Court has upheld a censorship order in any case in which the disputed matter was actually in the record before it. The grounds for reversal of such orders have varied; sometimes no grounds have been given, and sometimes no single ground has commanded a majority of the Court. But the results have been uniform. Thus, the unmistakable trend of the Court, in which all its members have participated, has been in favor of enhanced

⁵ *Roth v. United States*, 354 U.S. 476 (1957)

freedom of expression. It is noteworthy that in the *Times Film* decision,⁶ which Professor Kauper considers at length, the disputed film was not actually in the record. While the Court divided sharply, it was evident that a majority of the Court believed that counsel were forcing on it an issue not absolutely necessary to the proper decision of the case. *Times Film* does not mark a new departure from the trend of decisions, but may be regarded as a momentary aberration from a course that is consistent in direction though not steady in speed. Finally, as Professor Kauper notes, the Court has concerned itself with fashioning procedural safeguards to ensure that obscenity laws will not unduly inhibit the dissemination of non-obscene material. How these statutes are administered and enforced is crucial. The Court has indicated that it will require high standards of procedure and proof in the application of obscenity laws. Booksellers cannot be held absolutely liable for the contents of what they sell, irrespective of their knowledge,⁷ and mass seizures of publications by administrative officials prior to an adversary proceeding on the merits of the obscenity issue will not be countenanced.⁸ The reason is the same—the danger is too great in such cases that the legitimate expression and dissemination of ideas will be deterred. The Court has placed itself on guard against such excesses at the same time that it has affirmed the basic power of government to act.

Professor Kauper evidently believes that similar vigilance by the Supreme Court is necessary when governmental action inhibits freedom of association. In the great debate of recent years between Justices Black and Frankfurter over whether the First Amendment freedoms are “absolutes,” he comes down squarely on the Frankfurter side. But he concedes that the majority of the Court in applying the so-called “balancing of interests” test has not always made exact accounting of the real governmental interests at stake or the interests asserted by affected individuals. It is a fair conclusion that the majority Justices in such cases as *Barenblatt v. United States*⁹ and *Wilkinson v. United States*¹⁰ placed their hands on one side of the scales when they balanced the competing claims. If the governmental interest asserted is nothing less than Government’s responsibility for the national security and survival, it is difficult for any individual interest to appear to outweigh it. But it is still essential to inquire whether the governmental interest may be protected in any less drastic way. Can the Supreme Court properly say that the choice of methods by other agencies of government to vindicate their interests is beyond its control as a reviewing court? The Court has not done so in an analogous area, involving the power of the states to tax and regulate interstate commerce as limited by the commerce clause of the Federal Constitution. Here the Court has also purported to balance conflicting interests in determining the validity of such laws. And it has laid down the doctrine that the states must apply their laws so as to achieve their legitimate objectives with the minimum disturbance of the countervailing federal interests. The Court scrutinizes the choice of means and will invalidate the application of a statute which is over-

⁶ *Times Film Corp. v. City of Chicago*, 365 U.S. 43 (1961)

⁷ *Smith v. California*, 361 U.S. 147 (1960)

⁸ *Marcus v. Search Warrants*, 367 U.S. 717 (1961); cf. *Manual Enterprises v. Day*, 370 U.S. 478 (1962)

⁹ 360 U.S. 109 (1959)

¹⁰ 365 U.S. 399 (1961)

broad in its effects, where reasonable alternatives are available.¹¹ The First Amendment expresses interests of equal importance, which should be protected as fully by the courts. Admittedly, the analogy to the commerce clause is imperfect, since it arises in the context of a federal system in which federal power is supreme within its sphere. The First Amendment questions on the other hand often involve the powers of coordinate branches of the federal government deriving their authority from the same Constitution which contains the First Amendment limitations. Nonetheless, the language and history of the First Amendment demonstrate the magnitude of the freedoms of speech and association. At the very least, the Amendment creates a presumption against the validity of governmental power inhibiting their free exercise. Even if that presumption is rebuttable, it can be rebutted only before the courts, which under our system are the ultimate declarant of individual liberties. The courts are entitled to require that government exercise its power with the lightest hand possible upon protected freedoms.

The final chapters of Professor Kauper's work might be termed a dissertation on the limitations of judicial power as a means of enlarging the scope of individual liberty. They deal primarily with the denial of rights by governmental and private authority to citizens because of their race. Here the law has been at its most dynamic. Compulsory segregation by state-initiated public policy has been struck down on all fronts.¹² Through the elaboration of the concept of governmental action the Supreme Court has also curtailed the enforcement of racially restrictive covenants between private persons and has tried to counteract the exclusion of Negroes from the internal processes of the dominant political party in the South.¹³ It has subjected persons in certain property relationships to the state to duties similar to those imposed on the state itself in administering that property.¹⁴ It has prevented the Southern states from enforcing policies of racial discrimination by private persons through the medium of breach-of-the-peace statutes, where no evidence of the likelihood of breach of the peace appeared in the record.¹⁵ However, Professor Kauper suggests that there are limits to how far the Supreme Court can and should go in enforcing equality as against the prejudices and discriminations of individuals not acting under state law. The problem has arisen most recently and acutely with respect to the constitutionality of state trespass statutes as applied against sit-in demonstrators. But it is potentially present in every transaction in which an individual makes a decision to discriminate on the ground of race, which would not be available to the state in the first instance as a basis for fashioning its public policy. In such cases, equality is not the only value involved. There are civil liberty values competing with it, such as the individual interest in free association and in free choice as to the use of property. At a certain point they may outweigh the interest in equality. Or at least, in Professor

¹¹ *Dean Milk Co. v. City of Madison*, 340 U.S. 349 (1951); cf. *Schneider v. State*, 308 U.S. 147 (1939)

¹² *E.g.*, *Brown v. Board of Education*, 347 U.S. 483 (1954); *Mayor of Baltimore v. Dawson*, 350 U.S. 877 (1955); *Holmes v. City of Atlanta*, 350 U.S. 879 (1955); *Gayle v. Browder*, 352 U.S. 903 (1956)

¹³ *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Smith v. Allwright*, 321 U.S. 649 (1944); *Terry v. Adams*, 345 U.S. 461 (1953)

¹⁴ *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961)

¹⁵ *Garner v. Louisiana*, 368 U.S. 157 (1961)

Kauper's view, the judiciary must stop and ask whether it is the proper body to make the determination as to which values and interests should prevail. In any event, as elsewhere in the law, there are no easy answers, only hard questions, in the job of judging. Professor Kauper has stated many of the questions. The answers will have to await the processes of time and judgment.

DANIEL A. REZNECK*

JURISPRUDENCE: Realism in Theory and Practice. Karl N. Llewellyn. Chicago: The University of Chicago Press. 1962. Pp. viii, 531. \$8.95.

By almost any criterion, the late Karl Llewellyn was one of the giants of American legal education. His books, his dozens of articles, his work on the Uniform Commercial Code, his many activities within the profession—these place him high on the list of the relative handful of law professors who have made significant contributions to law and to education. This last volume bearing his name was published a few weeks after his death in early 1962; it is a collection of his papers, mostly from the law journals but also from less accessible places, on legal realism. Since Llewellyn was a leading exponent in the legal-realist drive which began in the 1920s, this is a valuable compilation.

One cannot hope, within the brief compass of a review, to do justice to the richness of insight displayed in these papers or to the challenges they presented—and still present—to the apostles of legal orthodoxy. Many of them are, of course, familiar to anyone who has kept up with the course of scholarly legal thought during the past three decades; but it is well to reread some of the older ones and once more to come against the abrasive thoughts of one who could and did see beyond the surface of the legal process. The one essay I should like to single out for special mention is "The Study of Law as a Liberal Art" (pp. 375-394), an address Llewellyn gave in 1960 at the dedication of the new building of the University of Chicago Law School. Here, in brief, is what appears to be the synthesis of more than three decades of thought on the teaching of law; here is counsel which should have much wider dissemination and which should have the careful attention of the legal profession.

What is Llewellyn's message? In his own words it is this: "the best *practical* training a University can give to any lawyer who is not by choice or by unendowment doomed to be a hack or shyster—the best *practical* training, along with the best human training, is the study of law, within the professional school itself, as a liberal art" (p. 376; emphasis original). The question he deals with—he calls it the "misposed issue"—is this: "How far 'must' the University Law School sacrifice its University Mission to the sad practical fact that its graduates must earn a practical living in the practical practice of practical law?" (p. 375). There are three ingredients to the professional study of law as a liberal art: "(1) neat, clean, effective technical proficiency, which we may think of as the mechanical or physical underpinning of the practice of any liberal art. (2) The second necessary thing, which I like to think of as the intellectual aspect, is making clear the meaning of the art for neighbor, for nation, for the practitioner, the artist, as a man, and finally for mankind at large. (3) The third

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thing, which I see as spiritual, is the drive and quest of the art, and within the art, for beauty or for service or, best, for both together" (p. 380).

Of course, Llewellyn was neither the first nor the only person to make such suggestions. But that does not minimize the merit of the message. It is one as yet unheeded, even in those law schools which consider themselves to be "leading" or "better." All too much of what passes for education in the law schools is technical training for legal mechanics, good enough, perhaps, for the trade schools among the law schools but scarcely good enough for any law school that is part of a university—and not good enough for any group that calls itself a profession. The time is here—indeed it is long past—when legal educators (as well as the legal profession generally, including that pillar of baroque orthodoxy, the American Bar Association) must face up to the facts of social life and begin to prepare law students for the practicalities of life in a society dominated by the "new science" and the "new technology." Resting smugly on what is assumed to be the teaching method of Christopher Columbus Langdell will not suffice. Systematically boring students with three years' exercise in doctrinal exegeses on the texts provided by a few appellate court judges will no longer do—if in fact it ever was satisfactory. As Llewellyn says, "Case-teaching in the upper years is . . . a vicious instrument for producing unplanned concentration of good teachers' minds on propagating, at all costs, tiny, mostly unimportant, intricacies of narrow positive doctrine in case-class and by the case-method . . ." (p. 384). It is the wildest sort of impracticality to concentrate so excessively on doctrine *qua* doctrine. More than a half-century ago Holmes said that the man of the future would be the master of economics and statistics. Legal educators have not accepted that message—even now when it is all too obvious that the *practical* lawyer must also have more than a nodding acquaintance with more than even the economics and statistics mentioned by Holmes. What the content of a modernized legal education should be Llewellyn wisely does not set forth in the brief compass of his paper. What he does is pose the proper question about legal education, without the asking of which decent answers will scarcely be forthcoming. He presents the issues in terse and unmistakable terms—in a challenge which cannot much longer be avoided by the legal profession.

The book under review does not exhaust the many products of Llewellyn's provocative mind. The collection of papers reprinted revolve around the theme of legal realism, an approach to law and jurisprudence which, as he states in his preface, is "as fresh and needed today as it was in the twenties and thirties, and as it had been in the hands of Aristotle, Machiavelli, Montaigne, or Montesquieu." Those who want to savor the full sweep of his thinking will have to go to his *Bramble Bush* and his *Common Law Tradition*, as well as to the many essays on commercial law and other subjects. But enough is here to make at least this reviewer feel that the book should be required reading for all law students. Not necessarily in a "course"—for why need we be bound by the chains of the 50-minute hour?—but as a part of the necessary, even indispensable process of self-education which should be developed in every law student.

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