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## Law and Lawyers

Harry Pratter  
*Indiana University School of Law*

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# LAW AND LAWYERS

# Law

**'Gregarious, clubable' folks help to define life a la Shakespeare**

By HARRY PRATTER

I have lived a life in the law for over half a century and now I welcome the opportunity to share my thoughts about the nature of law and legal reasoning.

Court decisions draw on precedents, shared principles and policies to interpret and apply the abstractions and generalities inherently characteristic of the legislative enactments and constitutional provisions we call laws.

Flesh and blood people who come into conflict with these laws appear before a court. Their lawyers present the court with telling facts, with vivid particularities, and with dramatic details of their clients' activities and experiences.

Through these, the inert language of statute and Constitution is energized. Through these cases, general provisions take on a specific point and thrust that make their meaning understandable and clear — or, at least, clearer.

Because case law is incremental, constantly growing on established precedent, the structure of law builds

with each addition. Case law protects stability but permits change; it respects tradition and yet it encourages innovation. And when conditions are appropriate, cases may even have an altering effect.

I seem to be describing a rather technical legal procedure but there is much more to case law than I have so far indicated. If we conceive of cases as a parade of instances and examples, we can appreciate how varied are the discourses that rely on such particulars.

I paraphrase a philosopher who wrote that the final testing of the merits of ideas and concepts lies always in applying them to instances. Certain features of life's experiences and activities can seldom be vividly brought to mind by the use of general terms.

German philosopher Immanuel Kant said in the 18th century that "cases (examples) are the go-cart of human understanding."

Another philosopher wrote: "but examples are the final food of thought. Principles and laws may serve us well. They can help us to bring to bear on what is not now in question and help us to connect one thing with another and another. But at the bar of reason always the final appeal is to cases."

Reason by way of cases is a humanistic activity closely related to the practices of novelists and playwrights.

Shakespeare shows us through *Macbeth* what ambition means.

*Othello* is a study in jealousy. Prince Hal, Falstaff, and Hotspur show us the different faces of honor.

Lady Macbeth, Portia, and Kate are examples of certain feminine characteristics.

Molly Flanders, Hester Prynne, and Madame Bovary show us the status of women in their respective times.

*Death of a Salesman* is a profound study of family and character.

*Huckleberry Finn* dramatizes the meaning of love and loyalty.

Process, equal protection, good faith, negligence, reasonable man and premeditation — instances, examples, cases are moving forces of the law.

And so it is in everyday life.

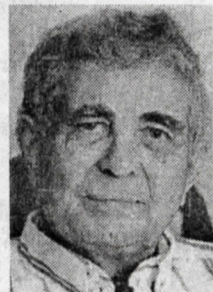
We argue and explain our values and social and political commitments by resorting to instances and examples. We teach our children what is good and what is true in the same way.

Judges and lawyers are the architects of case law. In this era of lawyer jokes, feeble and crude though they may be, some people doubt that the current legal profession is capable of exploiting the rich vein of case law. Such doubts must not be new. Consider this somewhat defensive description of the legal profession at its very beginnings in England:

“Because case law is incremental, constantly growing on established precedent, the structure of law builds with each addition. Case law protects stability but permits change; it respects tradition and yet it encourages innovation. And when conditions are appropriate, cases may even have an altering effect.”

“Still we see at Westminster a cluster of men which deserves more attention than it receives from our unsympathetic, because legally uneducated, historians. No, the clergy were not the only learned men in England, the only cultivated men, the only men of ideas. Vigorous intellectual effort was to be found outside the monasteries and the universities. These lawyers are worldly men, not men of the sterile caste; they marry and found families, some of which become as noble as any in the land; but they are in their way learned, cultivated men, linguists, logicians, tenacious disputants, true lovers of the nice case and the moot point. They are gregarious, clubable men, grouping themselves in hospices, which become schools of law, multiplying manuscripts, arguing, learning and teaching, the great mediators between life and logic, a reasoning, reasonable element in the English nation.”

I leave it to you, the reader, to decide if this description fits the current legal profession.



Indiana University law professor emeritus **Harry Pratter** "has been part of the heart and soul of this law school for the past 50 years," dean Alfred C. Aman said in announcing creation of a faculty chair in Pratter's name. Pratter received his undergraduate degree at the University of Buffalo and his law degree from the University of Chicago in 1950, the year he began teaching at the IU School of Law. He served one year (1975-76) as acting dean of the law school. In 1993, the Bloomington *Herald-Times* surveyed campus answers to the question: "Who is the most important person at IU?" Pratter was prominent on the list. "It is difficult to describe fully the impact that Harry has had on generations of students and faculty at this school," Aman said. "No matter what the talk or topic, Harry Pratter can be counted on for always asking the most interesting question in the room."

