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Cleveland State Law Review

Volume 11
Issue 1 *Symposium on Intoxication*

Article 18

1962

Book Review

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Recommended Citation
Rudolf H. Heimanson, Book Review, 11 Clev.-Marshall L. Rev. 192 (1962)

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Book Reviews

Reviewed by Rudolf H. Heimanson*

THE JUDICIAL DECISION; TOWARD A THEORY OF LEGAL JUSTIFICATION, by Richard A. Wasserstrom. Published by Stanford University Press. 197 pp. (1961).

Professor Wasserstrom tries to determine the ground rules which guide judicial law making. In the case law system, where the court decision is not merely a function but a source of the law, such search is indeed vital. There is probably less paucity of pertinent writings than the author presumes. He fails, for instance, to acknowledge Pound's latest text on *Law Finding through Experience and Reason* (Univ. of Georgia, 1960), and Wambaugh's classic, yet modern, *Study of Cases,* but he contributes some worthwhile and original thoughts. He notes, as major factors in law finding, the principles of *precedent* and *equity,* and examines them individually and in their relationship to logic and ethics. Feeling that neither abstract reasoning nor moral sentiments alone can guarantee full justice, he recommends a "two-level" procedure which, in an eclectic way, combines the positive points of precedence and equity. It is at this juncture that, understandably, his discussion takes the high road into philosophy—after all, jurisprudence is the philosophy of law —but the author takes great care to harness his deliberations to practical necessities. Intellect and ethics, in their final consummation, promote human welfare, and Professor Wasserstrom's survey of extreme and restricted utilitarianism is an interesting variation on this theme. His study of practice-related philosophy, and his analysis of deductive and equitable law finding are penetrating and profound.

In the over-all presentation, one may have wished for some greater poignancy. He marshals such a plethora of points and counter points—in itself a laudable performance—that occasionally his own view gets blurred. He does not clearly dissect the court decision into its elements: *judgment* and *opinion,* and uses the term "holding" loosely and indiscriminately. He mentions the controversy on the role of the "opinion," and while he rightly states that it may contain the law of the case, he does

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not go to the core of the issue. According to many authorities, the opinion is not the essence but the indicator of the law; the actual rule lies in the *ratio decidendi* which differs from, and transcends, the text of the opinion. Here, the author leaves a whole field of vistas unexplored; the concept of the ratio decidendi points to the Blackstonian theory of "pre-existing law," which may not be entirely extinct.

In fairness to the author it shall be stressed that he did not attempt a definitive work but merely a contribution to the problem. In spite of some imperfections, he has succeeded in many respects. He brings out the fact that law is actually reborn daily in our courts and that judges and all functionaries of the law serve not only the present case, but the ends of future justice too. The language of the book conforms to its general scholarly make-up. While not geared to students' needs, it provides a helpful teaching aid, and much inspiration and information to everyone who is seriously interested in jurisprudence and the significance of judge made law.

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*Reviewed by Jack F. Smith**

LEGAL ESSAYS OF THE PLAINTIFF'S ADVOCATE. Edited by Robert Klonsky. Published by Central Book Company (Brooklyn, N. Y.) 1961. 485 pages.

Legal Essays of the Plaintiff's Advocate is a compilation of articles which have appeared in the "Plaintiff's Advocate" a journal published by the New York State Association of Plaintiff's Trial Lawyers.

After a preface by the editor, Robert Klonsky, which likens plaintiff's attorney to a knight in shining armour, a modern day Robin Hood, follows a series of articles which have been broken down into various categories such as; The Jury System, Torts, Maritime Law and Aviation, Trial Tactics and Techniques, Medicine and the Law, Products Liability and Workmen's Compensation, and the general catch-all, Miscellaneous.

In view of the general subject material, it is difficult to understand why the first four articles or essays testifying to the

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