that the "man of the future" has turned out to be the lawyer still, and that this is the way it ought to be. Economics and statistics, along with other sciences, have become more useful to the law than they were; they are oftener used, and with more telling effect, but they remain the domain of the specialist, and the law, in its bulk, is still made by counsellors, advocates, and judges. The sciences may guide the situation-sense, and help the searcher find it for his case, but it is still legal technique and legal technicians that control the growth of the law. One of the author's most telling passages, I think, is his strong defense of the unspecialized supreme court, which, in the end, reduces all the experts to guides, and arrives at its own conclusions about ends and means.[188] The negative merits of the non-expert court of last resort appear in its refusals to turn over its functions automatically to green and untried scientific instruments. The book under review is the best example of its positive merits.

But these are only a few of the paths which open out from this book. The end of it all is, that it will stand reading, frequent rereading, and a lifetime of browsing, and repay all the study with interest.

Comment—Harvey M. Johnsen*

My interest in Llewellyn's book is naturally from the judicial side. He has done a notable job, I think, in his reminders, urgings and challenges to the appellate bench as to the approaches and processes of its opinion work.

In the book's concreteness and comprehensiveness, along with its currency, it will have a value and an impact over the previous general materials in the field. Also, Llewellyn's passion and provocativeness give it something of a searing flame, as against the embering glow of the writings, both lofty and unlofty, which have gone before.

His gathering and labeling of the many tools of the judicial workshop is a service that of itself is most worthwhile. These are things which judges for the most part know that their tool chests contain, but of which they do not often enough, perhaps, make a conscious inventory in the routine performance of their work. Certainly, room exists for some of these tools to be made to have a more objective "feel," and so a smoother use, in many judges' hands.

I should hope that every judge of an appellate court will take the time to read the book leisurely, and that the members of the court will

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188. Quoted in text accompanying note 146, *supra*.

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then see fit to get together and discuss it. Out of this, there will not come, nor should there, any "hook-line-and-sinker" acceptance and results. But the book can and is worthy to be made the occasion for the judges of a court to take a look at and discuss among themselves the general craftsmanship of their work—something a court does not often collectively have or take the time to do.

Whether Llewellyn is right in characterizing present appellate court work as a "stubborn but still purblind groping toward full recapture of our [earlier] classic Grand Style"[1] does not too much concern me. History and tradition are, of course, always strong and easy means for making appeal in any area of the law and its institutions. And if calling for a recapture of historic "Grand Style" or a return to the manner of "our classic period" can effectively exhort to improvement in judicial opinion, I am all for the device.

I should think it, however, a somewhat oversimplified premise for the accomplishment of that result to assert that what happened and what is at fault is that:

> the appellate judges [all over the country] *sought* to do their deciding without reference to much except the rules, *sought* to eliminate the impact of sense, as an intrusion, and *sought* to write their opinions as if wisdom (in contrast to logic) were hardly a decent attribute of a responsible appellate court.[2]

On this basis, of course, the pathway is obvious and simple—repentance, renunciation and shaking the evangelist's hand.

If, as a class, however, judicial opinions of this era are characteristically of the pattern Llewellyn sees in them, this can hardly be explained on the easy basis that it is because the judges of the various appellate tribunals have somehow all joined or reacted together and perversely *sought* to bring about that result.

Whenever a pattern in the functioning of democratic institutions comes to exist, which is deep and widespread enough to give rise to an era, it is generally necessary to look for more behind it than an artificiality. It will ordinarily be found to be a product resulting from the play of a variety of elements and forces.

This is not the place, however, in merely making comments on Llewellyn's book, to digress into a discussion of the factors which have prompted and underlie present-day opinion work and style. Nor would I desire to engage in an apologia of that work and style—although I do not entirely see it in the same light as Llewellyn. All I take occasion to point out is that there are elements involved to which Llewellyn's premise does not reach, and in relation to which that premise does not afford the basis for any full result.

1. LLEWELLYN, THE COMMON LAW TRADITION: DECIDING APPEALS 59 (1960).
2. *Id.* at 5-6. (Author's emphasis.)

Of course, judicial opinions can be better. Judges are the first to so admit. I don't believe that any judge has at any time written an opinion with which he has ever been wholly satisfied. This goes to craftsmanship as well as substantiveness.

Within Llewellyn's principal criticism, as it impresses me, the appellate courts are claimed to have held themselves in too much restraint—too much restraint in not translating each case into a type situation or a class sense; in not clearly expressing that sense and channeling it into doctrine; in not keeping the doctrinal path unclouded by reconciling or overruling any previous cases of possible impingement; and similarly in not allowing statutes to have the fullest remedial play of which they are capable.

I suppose that the academic field of the profession will always have some impatience at judicial restraint. Here, I merely note that, through the last quarter century, the courts have continuously had to feel their way through vast new social and economic areas of both statutory and decisional law. On common law basis, most of the courts, both state and federal, have chosen to move forward primarily in a step by step progression (often even in statutory application), until they could be certain that the full horizon and its implications had been seen. A court that has done otherwise is apt to have yielded to the personal philosophy of its members, whether this be in one or the other direction. It may be that this general judicial attitude of caution through this period has had its effect also in some restraints upon the court's other work, where this was unnecessary.

But regardless of any of this, the fact nonetheless remains, as I have stated, that judicial opinions can be improved, and that they are subject to betterment in most of the respects which Llewellyn points out. This, however, will not be on the basis of a revolution, for opinions will not universally, nor even individual opinions fully, ever embody all of these academic standards. A judge will write an opinion in which some of the standards will be present and others lacking. In another of his opinions, some of those which were lacking will appear, and some of those which were present will be absent. And these differences will not be capable of being explained by asserting that they rest solely on an arbitrary basis. There are reasons beyond this, which, of course, the opinion does not explain. Even in Cardozo, Llewellyn must profess to some disappointment, because there are times when he cannot find his complete symphony.

I am glad that Llewellyn has written his book, and at this particular time. As I have suggested, it is something that every appellate judge should read. It is a work that it is worthwhile for the members of an appellate court to discuss together. Out of this, as I have suggested,

will not come any revolution, but there can come a helpful contribution to improvement in judicial opinions, both individual and general.

Were I to add a few formal words, I should say that the book is too long. It makes too many repeated servings of the same food. Also, it makes the mistake of trying to serve its readers as separate classes. The value of the book is in the general meat course which it provides, for over-all professional consumption, and not in the side appetites which it seeks to create by adding small doses of special-group seasoning. I think it weakens the force of the book to try to pass out something different or special in every possible direction—to judges, to practicing lawyers, to house counsel, to "law school skeptic" (and even to Dietrich ["They *are* wonderful legs"]).

For example, as to practicing lawyers, reckonability is hardly likely, in our American legal system, to become such a professional cult or pursuit as to have any noticeable effect on the dockets of our appellate courts. And as a concluding illustration, one cannot help wondering to what purpose and for what special audience the author has chosen to engage in a personal attack on members of the Supreme Court.

Within the book's general channel, however, to which it ought to have been limited, Llewellyn is entitled to credit for a thorough, thoughtful and provocative job, from which some measure of good in judicial opinion writing should come.

Comment—Laurance M. Hyde*

This book should be helpful to lawyers, particularly to lawyers who practice in appellate courts, as well as to appellate judges. Lawyers will better understand how appellate courts operate. Judges will better understand their functions and controlling factors in making decisions.

Professor Llewellyn finds a loss of confidence in appellate courts by the bar and the public which he demonstrates is unjustified and is due to misunderstanding of the judicial process. He finds that too many people have the impression that appellate courts decide cases unpredictably, according to their own feelings and desires, and not in accordance with definite legal principles. He shows that while certainty of results is impossible, because of the difference in factual situations, reckonability of results in appellate courts is high. He states this reckonability is partly due to many major steadying factors. Some of these are: judges law conditioned by training, legal doctrine guiding decisions, known doctrinal techniques, responsibility for

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