

Dissent from Llewellyn on Dissent—Irving Dilliard*

It is doubtful enough whether this layman's patently untrained reaction to one aspect of Karl N. Llewellyn's magnum opus, *The Common Law Tradition: Deciding Appeals*, will be accepted for publication by the editors of the special issue of the Washington University Law Quarterly. Certainly if these observations are somehow approved for publication they will appear so far down in the Table of Contents that the "why and what" of Professor Llewellyn's book will have been digested adequately, perhaps several times, by preceding writers within the bar.

As I view the launching pad from which the University of Chicago law scholar fires his long-in-the-making missile into legal space, his belief (stated as a fact) is that "the bar is bothered about our appellate courts—not the much discussed Supreme Court alone, but our appellate courts in general."¹ Indeed, it is much worse than this in Professor Llewellyn's eyes. For he says in his very next sentence: "The bar is so much bothered about these courts that we face a crisis in confidence which packs danger."²

Because of the size, scale and complexity of the Llewellyn study, this layman, as indeed almost any layman might be well-advised to do in the circumstances, has selected something relatively simple to inquire into. It is: The role and value of dissent in the deciding of appeals. Professor Llewellyn's references to dissenting opinions, if we may rely in part at least on the index, are not too numerous in 500 plus pages. Moreover, the author's remarks about dissents may be extracted readily for examination.

In Part II, "The Style of Reason at Work," there is a chapter on dissent in which Professor Llewellyn puts at the outset the question: "Will the Style of Reason Destroy Court Teamwork?"³ So that the chance of misinterpreting the author will be minimized, let us set down two pages of his text, just as they appear in the book. They are as follows:

The first of the "current" samplings for this volume was that from Ohio. It became most uncomfortably plain that dissenting opinions had been increasing, as the Style of Reason had also been increasing, not only from 1939 to 1953, but again from 1953 to 1958. This was to me a troubling idea. Roughly, out of fifty Ohio decisions on the merits in 1939, recorded dissenting votes occurred in about one tenth, and there were only three dissenting

* Former editor, editorial page, *St. Louis Post-Dispatch*.

1. LLEWELLYN, *THE COMMON LAW TRADITION: DECIDING APPEALS* 3 (1960) [hereinafter cited only by reference to page].

2. *Ibid.*

3. P. 462.

opinions. But a comparable count in 1959 showed dissent in one quarter of the cases, with nine dissenting and three specially concurring opinions. So: Does regrowth of the Style of Reason threaten the court? More specifically: is it the regrowth of that style which kills court teamwork?

Let me answer these questions first, and come to analysis later:

Is it the regrowth of the Style of Reason which threatens court unity? No. North Carolina is a persuasive exhibit. In our 1940 sample, with the Style of Reason at work, but so to speak still downy-yellow from the egg, we had out of fifty cases nine dissenting opinions and three special concurrences. The Style of Reason has flourished, since, in North Carolina. But the dissents have amazingly decreased. And the nasty tone of the 1940 dissents has entirely disappeared.

Second question: Does regrowth of the Style of Reason kill court teamwork? No.

I note first that the current Ohio dissents have none of the edge and rancor which characterized North Carolina in 1940. This suggests that differences of opinion within a court can rest on other things than difference of judicial method or style.

As a second point, I turn to the other jurisdictions we have sampled in sequence. In neither Washington nor Massachusetts has twenty years of patent regrowth of the Style of Reason meant any increase in dissenting opinions. In Pennsylvania (after fifteen years) the increase in dissenting opinions remains minor. Nor, in the other jurisdictions in which our current sampling has found the Style of Reason at work, have we found the court plagued greatly by dissent.

New York appears at first glance to be an exception. Out of thirty-five fully opinioned cases in 5 N.Y. 2d (1959) I turn up seventeen with dissenting opinions, and (as I read my notes) twenty-six nonmajority opinions. This would make one out of four (as in current Ohio or 1940 North Carolina) look pretty sickly. But one must remember that in the New York Court of Appeals, five sevenths of the decisions on the merits go off without full opinion; one has therefore about one developed dissent not out of two cases, but out of seven.

At least in New York, it seems to me that we can trace this practice of dissent directly to the Style of Reason. In 1913, before Cardozo joined the Court of Appeals, dissenting votes were not infrequent (maybe once out of five or six), but dissenting opinions were freakish. By 1916 (Cardozo on for two years) one finds things stirring. By 1927, there is a dissenting opinion about one time out of seven. I do not see how one can doubt the impact of that great man and great exponent of the Style of Reason: Benjamin Nathan Cardozo.

But I note that now, thirty-two years later, and twenty-seven after his baleful influence departed, dissents are still running only at about this one out of seven rate.

This seems to me what is to be expected. Not only our examination but the careful studies of Mentschikoff and Haggard make clear that men seeking right and justice both perceive the facts and turn for standards to the body of met and organized experi-

ence with which they are equipped. These "experience-spectacles" must of necessity yield differing results both of intake and of applicable standard, must yield results which differ increasingly as our modern variegated world dilutes community of experience among the individual members of the bench and multiplies and differentiates the situations out of which conflicts emerge to be adjudicated.

So that the Style of Reason which once could be hoped—even despite the conflict of Federalist and Republican, or of the Jacksonian and the Solid Citizen—to yield some relatively single way of seeing, and then of judging, for addition to the brew of "the authorities and justice"—that style, today, must give a wider range of result. Queer, and lovely, I should argue, that after the years it yields dissenting opinions only one time in seven, or at most in four.⁴

So far as I have been able to discover, that is Professor Llewellyn's most extended passage with reference to dissenting votes and opinions. He does, early in his treatise, also speak of them in the chapter on "Major Steadying Factors in Our Appellate Courts." There he writes:

In another fashion the dissent and its possibility press towards reckonability of result. Mention has been made of "the law of leeways"; but it is a law without immediate sanction for breach. In real measure, if breach threatens, the dissent, by forcing or suggesting full publicity, rides herd on the majority, and helps to keep constant the due observance of that law.⁵

Now I do not know how these comments on dissenting opinions will add up to all readers, but I do know how they impress me. Their net, as I read them, is that Karl Nickerson Llewellyn is generally disturbed by dissent in our appellate courts, both state and federal.

It is true that in the last-quoted passage he finds dissent riding herd on the majority and, through forcing or suggesting widespread public attention, helping to keep a measure of constancy in law. But this one admitted benefit does not bulk very large when it is weighed with Professor Llewellyn's overall characterization of dissenting opinions as a plague on our courts. Speaking generally, it seems clear to me that he sees dissent as doing harm to our appellate system and conversely unanimity serving as a boon.

Now if this reading of the quoted passages is correct, then the Chicago legal scholar has a different set of values—and doubtless he should have—from that of many laymen who have tried to develop a somewhat informed interest in the law and courts. The present reader, for one, looks on judicial dissent as wholly necessary. Dissent is no less a requirement in our legal system than it is in our political system. Historically, dissent is the way the voice of prophecy is first

4. Pp. 462-63.

5. P. 26.

heard. Because the dissenter may well be taking the longer view, his opinion, though representing a minority opinion today, frequently is preview of what the majority will be holding to in the not too distant future. And so except for immediate application in the passing moment, the dissent—its character and its extent—may be far and away the most significant part of appellate decision. It may be the vehicle of judicial statesmanship.

Between his two periods of service on the Supreme Court, first as associate justice (1910-1916) and then as chief justice (1930-1941), Charles Evans Hughes delivered in 1927 his notable series of lectures at Columbia University on the Supreme Court in action.⁶ To many students of these lectures, no passage was of greater interest than that in which the distinguished jurist expressed his views on dissenting opinions. Pointing out that there was dissent in the first Supreme Court case in which opinions were reported, *Georgia v. Brailsford*,⁷ Mr. Hughes noted that some scholars of constitutional law and practice regard Chief Justice John Marshall's dissent in *Ogden v. Saunders*,⁸ a case which dealt with the validity of state insolvency laws, as the masterpiece among the many Marshall opinions over his long service on the highest bench. After further references to the place of dissent in our constitutional history, Charles Evans Hughes said:

There are some who think it desirable that dissents should not be disclosed as they detract from the force of the judgment. Undoubtedly, they do. When unanimity can be obtained without sacrifice of conviction, it strongly commends the decision to public confidence. But unanimity which is merely formal, which is recorded at the expense of strong, conflicting views, is not desirable in a court of last resort, whatever may be the effect upon public opinion at the time. This is so because what must ultimately sustain the court in public confidence is the character and independence of the judges. They are not there simply to decide cases, but to decide them as they think they should be decided, and while it may be regrettable that they cannot always agree, it is better that their independence should be maintained and recognized than that unanimity should be secured through its sacrifice. This does not mean that a judge should be swift to dissent, or that he should dissent for the sake of self-exploitation or because of a lack of that capacity for cooperation which is of the essence of any group action, whether judicial or otherwise. Independence does not mean cantankerousness and a judge may be a strong judge without being an impossible person. Nothing is more distressing on any bench than the exhibition of a captious, impatient, querulous spirit. We are fortunately free from this in our highest courts in Nation and State, much freer than in some

6. HUGHES, *THE SUPREME COURT OF THE UNITED STATES* (1928).

7. 2 U.S. (2 Dall.) 402 (1792).

8. 25 U.S. (12 Wheat.) 213 (1827).

of the days gone by. Dissenting opinions enable a judge to express his individuality. He is not under the compulsion of speaking for the court and thus of securing the concurrence of a majority. In dissenting, he is a free lance. A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed.

Nor is this appeal always in vain. In a number of cases dissenting opinions have in time become the law.⁹

Hughes's predecessor in the chief justiceship, William Howard Taft, disliked dissenting opinions and did not hesitate to allow this dislike to become widely known. When Judge Cuthbert W. Pound of the New York Court of Appeals was suggested as a possible successor to Justice Mahlon Pitney, Chief Justice Taft expressed his concern because of reports that Judge Pound "is rather an off-horse and dissents a good deal."¹⁰ And he added that it would "be too bad if we had another on the bench who would herd with Brandeis."¹¹

But opposed as he was to dissent, Chief Justice Taft himself wrote one of the most celebrated of all the Supreme Court's dissenting opinions. It came in the famous District of Columbia minimum-wage case, *Adkins v. Children's Hospital*.¹² Justice Sutherland's verbose majority opinion commanded the support of only four other Justices—McKenna, Van Devanter, McReynolds and Butler. Chief Justice Taft did not attempt to hide his complete dissatisfaction with what the majority was doing. At more than one point, he said he could not understand the Court's decision. Was *Lochner v. New York*¹³ still in effect or not? "I have always supposed," wrote the Chief Justice, "that the *Lochner* case was . . . overruled *sub silentio*."¹⁴

In a particularly important passage, he said:

Legislatures in limiting freedom of contract between employee and employer by a minimum wage proceed on the assumption that employees, in the class receiving least pay, are not upon a full level of equality of choice with their employer and in their necessitous circumstances are prone to accept pretty much anything that is offered. They are peculiarly subject to the overreaching of the harsh and greedy employer. The evils of the sweating system and of the long hours and low wages which are characteristic of it are well known.¹⁵

9. HUGHES, *op. cit. supra* note 6, at 67-68.

10. 2 PRINGLE, *THE LIFE AND TIMES OF WILLIAM HOWARD TAFT* 1049 (1939).

11. *Ibid.*

12. 261 U.S. 525 (1923).

13. 198 U.S. 45 (1905).

14. 2 PRINGLE, *op. cit. supra* note 10, at 1051.

15. *Adkins v. Children's Hospital*, 261 U.S. 525, 562 (1923) (dissent).

Chief Justice Taft's biographer, Henry F. Pringle, summarizing the role of the *Adkins* dissenter in that case, wrote:

It was a fine dissent. Chief Justice Taft might, had he chosen, have made of himself a fine, dissenting member of the court and might have swung the court along the path of his own, inner convictions on major issues—when certain five-to-four decisions came up—in subsequent years. Thereafter, in important cases, he suppressed his own disagreements, however. *Adkins v. Children's Hospital* gravely damaged the prestige of the Supreme Court. It was called a "slaughtering of social legislation on the altar of the dogma of 'liberty of contract.'" Gompers said that "in practically every case of importance involving employment relations and the protection of humanity, the court ranges itself on the side of property and against humanity. . . ."¹⁶

But thanks to his vigorous dissent, Chief Justice Taft could not be so charged in the momentous minimum-wage case of 1923. And in the light of history, he was entirely right and pointed the way that the Supreme Court would eventually take. He had appealed to what Charles Evans Hughes called "the brooding spirit of the law."¹⁷

Quoting Chief Justice Taft's comment on the misguided *Lochner* decision reminds us that Justice Benjamin Nathan Cardozo, then judge of the New York Court of Appeals, cited the same case as showing the great value of the dissenting opinion. In his Storrs Lectures before the Law School of Yale University, subsequently published as *The Nature of the Judicial Process* and long since become a classic of legal philosophical expression, Justice Cardozo said:

If the new epoch had then dawned [in 1883 when *Hurtado v. California*¹⁸ was argued], it was still obscured by fog and cloud. Scattered rays of light may have heralded the coming day. They were not enough to blaze the path. Even as late as 1905, the decision in *Lochner v. N.Y.*, 198 U.S. 45, still spoke in terms untouched by the light of the new spirit. It is the dissenting opinion of Justice Holmes, which men will turn to in the future as the beginning of an era. In the instance, it was the voice of a minority. In principle, it has become the voice of a new dispensation, which has written itself into law. "The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics." "A constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state, or of *laissez faire*." "The word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that

16. 2 PRINGLE, *op. cit. supra* note 10, at 1052.

17. 1 PRINGLE, *op. cit. supra* note 10, at 68.

18. 110 U.S. 516 (1884).

the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law."¹⁹

"That," said Benjamin Nathan Cardozo, "is the conception of liberty which is dominant today."²⁰

Later Justice Cardozo paid high tribute to the dissenter in the title essay of his collected addresses and papers, *Law and Literature*. Here he wrote:

Cato had a fine soul, but history does not record that he feared to speak his mind, and judges when in the minority are tempted to imitate his candor. We need not be surprised, therefore, to find in dissent a certain looseness of texture and depth of color rarely found in the *per curiam*. Sometimes, as I have said, there is just a suspicion of acerbity, but this, after all, is rare. More truly characteristic of dissent is a dignity, an elevation, of mood and thought and phrase. Deep conviction and warm feeling are saying their last say with knowledge that the cause is lost. The voice of the majority may be that of force triumphant, content with the plaudits of the hour, and recking little of the morrow. The dissenter speaks to the future, and his voice is pitched to a key that will carry through the years. Read some of the great dissents, the opinion, for example, of Judge Curtis in *Dred Scott vs. Sandford*, and feel after the cooling time of the better part of a century the glow and fire of a faith that was content to bide its hour. The prophet and the martyr do not see the hooting throng. Their eyes are fixed on the eternities.²¹

Justice William O. Douglas spoke of the indispensability of dissent in his Walter E. Edge Lectures at Princeton University, now published as *America Challenged*. In the second set of lectures in memory of the onetime governor of New Jersey, the Supreme Court Justice said:

The first reported decision of the Supreme Court was rendered by a divided Court. Georgia had asked for an injunction against distribution of funds in a lower federal court, claiming a right to them. While the court granted the injunction, Justices Johnson and Cushing dissented. And that tradition of the dissent is a vital one to this day.

The right to dissent is the only thing that makes life tolerable for the judge of an appellate court. It is essential to the operations of a free press. The affairs of government could not be conducted by democratic standards without it. It is a healthy influence in every classroom, on every board of education, at every council meeting. It is the right of dissent, not the right or duty to conform, which gives dignity, worth and individuality to man. As Carl Sandburg recently said, "There always ought

19. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 79-80 (1921).

20. *Id.* at 80.

21. CARDOZO, *LAW AND LITERATURE* 35-36 (1931).

to be beatniks in a culture, hollering about the respectables.”

The right of revolution is, of course, deep in our traditions. Though we have mostly forgotten it, one State, New Hampshire, has it embedded in her Constitution. Article 10 of New Hampshire's charter not only emphasizes the right to affirmative action but goes on to denounce submission to tyranny. “The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.”

We have drifted away from that attitude. During the last two decades mass opinion has been shaped to fit narrowing molds; orthodoxy and conformity have had less and less respect for our ancient liberties; the climate has been less favorable to revolt.²²

That we have paid dearly for this decline in freedom of utterance is hardly open to question. Justice Hugo L. Black had this in mind when he closed his dissent to the decision that upheld the conviction of the original Communist leaders under the Smith Act. Distinguishing between current opinion in 1951 and that of a future day, Justice Black wrote in his *Dennis* dissent:

Public opinion being what it now is, few will protest the conviction of these Communist petitioners. There is hope, however, that in calmer times, when present pressures, passions and fears subside, this or some later Court will restore the First Amendment liberties to the high preferred place where they belong in a free society.²³

The “calmer times” to which Justice Black looked came just six years later when Justice John Marshall Harlan spoke for the Supreme Court majority in *Yates v. United States*,²⁴ which many observers found reversing the *Dennis* decision in large part, if not entirely. In the intervening decade, Justice Black has dissented time and again, and there are those who believe sincerely that these dissents constitute the outstanding as well as most constructive work on the Supreme Court in the most important field of all, human rights, in the years since World War II.

These citations to dissent and its fundamental value could be long extended. Because Professor Llewellyn refers especially to dissent in state courts of appeal, let us turn in closing to an Illinois case, namely, *In re Anastaplo*.²⁵ Back in 1950 the Illinois Bar's Committee on Character and Fitness refused to sign a favorable certificate for admission to the practice of law for George Anastaplo, an honor law graduate of the University of Chicago. The long controversy had its start in oral questions put to Anastaplo by subcommittee members

22. DOUGLAS, *AMERICA CHALLENGED* 4-5 (1960).

23. *Dennis v. United States*, 341 U.S. 494, 581 (1951).

24. 354 U.S. 298 (1957).

25. 18 Ill. 2d. 182, 163 N.E.2d 429 (1959).

because of his reference to the right and duty of revolution against tyrannical rule. This appeared in a required statement on his understanding of the basic principles of our government. The case was in committees and courts, state and federal, for more than a decade. In the Illinois Supreme Court, where the bar committee was upheld four to three, the late Justice George W. Bristow, staunch downstate Republican, wrote one of the strongest dissents in Illinois legal history. Had Justice Bristow not dissented, had he joined in the *per curiam*, the reader of the case would have an altogether one-sided view of not only the law but the facts in the case of this native, as it happens, of St. Louis. Consider, for example, the illumination that comes with these paragraphs from the Bristow dissenting opinion :

I must dissent from the majority opinion on the ground that it deprives the applicant of due process of law under the Federal constitution by denying him admission to the bar in the absence of a scintilla of derogatory evidence to mar the substantial record of his good moral character. . . .

The constitutional issue in this cause is not, as the *per curiam* opinion implies, whether the committee's questions on political or subversive affiliation were constitutional. The issue is rather, even if Anastaplo were wrong about the impropriety of such questions, whether his good-faith refusal to answer them, on the ground that the first and fourteenth amendments of the Federal constitution barred such inquiry, is a sufficient basis for denying him admission to the bar for failure to establish good moral character. . . .

I must point out that while I am no less sensitive to the very real danger of Communist infiltration in the bar than is the *per curiam* opinion, I do not believe, as the majority opinion does, that an indictment of the Communist Party, however justified, or a reiteration of the lawyer's obligation to his country, or a warning that the nation must have power to protect itself, however appropriate, is any substitute for evidence against George Anastaplo's moral character. Moreover, I am constrained to call attention to the distorted picture of applicant, which the *per curiam* opinion endeavors to create.

The opinion at the outset tries to create the taint that applicant believes in a subversive political philosophy by quoting isolated statements out of context from the 1951 record—which is not even before this court—and by completely omitting applicant's statements respecting the right to revolution in the present record. The opinion omits applicant's statement that his views on the right to revolution are, and have been, the same as those embodied in the Declaration of Independence and advanced by Lincoln and Daniel Webster in writings set forth in the present record. Nor does the opinion refer to applicant's unequivocal statement in the record: "But as I said when I first appeared before the full committee on January 5, 1951, I do not think anyone would be justified at a time such as this, when the normal processes of government permit reasonable and peaceful change,

to participate in action leading to the overthrow of the government. The Committee must realize that I would be no less reluctant than they to see the right of revolution exercised, except in most extreme circumstances. I trust that my position and what I have contributed to its defense indicates an abiding commitment to constitutional government."

Instead, the opinion dismisses such testimony summarily with the statement that applicant's views do not now require narration because the committee did not find them objectionable, after leaving the taint from the isolated statements in the prior record. . . .

Applicant courageously and properly refused to answer the unconstitutional religious inquiries—*i.e.*, whether he believed in a Deity, or eternal punishment as a sanction for his oath. He stated that he would respect his duties as an attorney, with or without the oath, but did not care to speak about whether there were any religious sanctions, such as the fear of eternal punishment, back of his oath, or whether he believed in a Deity, on the grounds that the constitution barred such inquiries. This line of inquiry, persisted in since the very first session, and apparently based upon an 1856 decision, was later admitted by the committee to be improper and unconstitutional since 1870.

The *per curiam* opinion completely overlooked this portion of the record. I cannot follow that course, particularly since the record shows that applicant's refusal to answer these religious questions had so prejudiced the committee that one member stated that the refusal to answer had a "substantial bearing on his [applicant's] fitness to practice law." Such prejudice could hardly be wiped out by the statement of the chairman that these improper questions would not be taken into consideration. . . .

In addition to these significant omissions in the *per curiam* opinion, which give a completely misleading impression of the applicant and the hearings, I must also take issue with the scant attention paid by the *per curiam* opinion to the character affidavits and letters of reference submitted to the committee. In my opinion the court should have given considerable weight to these affidavits, as did the United States Supreme Court in the *Schware* and *Konigsberg* cases,²⁶ . . . particularly since they were submitted at the committee's request, on their forms, and were presented by persons of stature in legal profession and other fields, who do not bandy about tributes such as were paid to applicant's honesty, integrity, general conduct and character traits qualifying him for the practice of law. . . .

Anyone reading this record, whether or not he agrees with George Anastaplo's interpretation of his constitutional rights, cannot come away without being impressed by his adherence to truth and what he regards as basic principles of good citizenship. His refusal to answer certain questions is not in fear of truth,

26. *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232 (1957); *Konigsberg v. State Bar of California*, 353 U.S. 252 (1957); see also *Konigsberg v. State Bar of California*, 366 U.S. 36 (1961). (Footnote added.)

but rather in defense of what he believes to be the truth—that a citizen, particularly a lawyer, has a duty to defend constitutional principles, “even at the risk of incurring official displeasure.” His restrained and well mannered testimony and conduct at the hearing corroborate fully the glowing evaluations of his character and reputation in the affidavits submitted to the committee.

On the basis of this entire record, it is my opinion that there was substantial evidence of George Anastaplo’s good moral character, which was in no way marred by a single item of evidence from which the committee could reasonably conclude that there were doubts about applicant’s honesty, fairness and respect for the rights of others or for the laws of the nation. Under these circumstances, the committee’s action denying applicant admission to the Illinois bar on the basis of its finding that he failed to establish good moral character, constituted a denial of due process of law under the decisions of the United States Supreme Court, and should properly have been rejected by this court.²⁷

These extracts from a state appellate court dissent are submitted as evidence of how much a dissenting opinion may be required, in a state court jurisdiction, to provide a balanced view of a case and even the means for approaching an understanding of it. Had Justice Bristow put so-called “team play” and unity ahead of what he believed to be fair dealing in bar committees and courts of law, we would know not only far less about the integrity of George Anastaplo, but also far less about the integrity of George W. Bristow.

It might be added that when the case was decided in the United States Supreme Court,²⁸ also by the narrowest possible margin and also against George Anastaplo, Justice Black prepared a similarly strong dissent. The Supreme Court’s senior member addressed himself particularly to the effect of the *Anastaplo* case on the character and quality of the American bar. Perhaps a layman may be allowed to suggest that the opinions in the *Anastaplo* case, both majority and minority in the state and federal appellate courts, ought to be required reading for all members of the bar, present and prospective. They have their direct bearing on the passages from the book under review. Also they have their meaning for the kind of bar and hence the kind of government this country is going to have.

And so this non-professional reader, assuming that he has interpreted correctly, dissents from Llewellyn on dissent.

27. *In re Anastaplo*, 18 Ill. 2d 182, at 201-24, 163 N.E.2d 429, at 439-51 (1959).

28. *In re Anastaplo*, 366 U.S. 82 (1961).