Learning Legal Reasoning

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Reviewed by Ali Khan*

I. INTRODUCTION

Reviewing John Delaney’s book Learning Legal Reasoning might be easy for some; it is not for me. John Delaney is my mentor, an intellectual and spiritual teacher who took me under his wing when I was a student at the New York University School of Law. Among many other things, he has taught me legal reasoning.1 Over the years, I have imparted to hundreds of students the core analytical skills and jurisprudential insights that I learned from him. For me, therefore, reviewing his book is an act of retrospective anxiety, an existentialist probe into the assumptions that I have come to share with him in understanding the analytical superstructure of law. This apprehension is further compounded by a reluctance rooted in the Asian tradition to which I belong. According to this tradition, any criticism or review of the works of a guide may signify nothing but arrogant self-assertion. Most book reviews are written by experts in the relevant area; this one is written by a student who may or may not have fully understood the work.

Learning Legal Reasoning is a book written primarily for first-year law students. It teaches them how to brief cases, pointing out that “[t]he cosmos of legal reasoning is in the technique of briefing.” 2 From a practical viewpoint, the book (following the format of a manual) sets out, in a systematic and progressive manner, the necessary steps for a student to deconstruct the constituent parts of an appellate case, and to comprehend its mechanical structure as well as its organic meaning. From a scholarly viewpoint, the book is based upon distinctive philosophical assumptions imparting a theoretical vision to what appears to be a simple, practical strategy for briefing cases. In this short article, I will examine a few fundamental assumptions underlying Professor Delaney’s theory of legal reasoning.

II. THE ART OF LEGAL REASONING

Legal reasoning is an art; it is not a science. This is perhaps the most critical assumption on which Delaney builds his analytical frame-

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1. In 1982, I had the opportunity to read the initial drafts of this book.

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work. Many students come to law school with preconceived notions about law and legal reasoning. Some students presume that law is the embodiment of justice. Others believe that law provides correct solutions to intricate human predicaments. If legal reasoning is presented as a mechanical science, these erroneous beliefs are reinforced. If, however, cases are discussed without any meaningful analytical structure, students may conclude that there is no method to legal reasoning. Certainly, the challenge lies in designing a strategy that incorporates technique and imagination, skills and substance, control and flexibility. But to pursue such a strategy, students need an analytical model or at least a metaphor to understand the enterprise of legal reasoning.

To explain his analytical strategy and briefing techniques, Professor Delaney employs the metaphor of "art." Based on years of legal activity, Professor Delaney is "convinced . . . of the truth" that legal reasoning is an art. Art, which incorporates both discipline and creativity, provides useful insights into the methods of legal reasoning. These methods are further illuminated when the metaphor of art is contrasted with that of science. Science purports to represent the objective truth, stashed in verifiable data, waiting to be discovered; art signifies an intersubjective reality, a human artifact, which may be brought into existence only after creative human impulses have interacted with technical skills that have been honed over the years with exacting practice and patience.

Since legal reasoning is an art, legal officials have a moral responsibility to explain and justify the legal universe without seeking refuge in scientific conceptualization. Such a view of legal reasoning takes the trump card from the hand of legal officials who may want to justify an unacceptable social reality in the name of legal science. Furthermore, the process of legal reasoning takes place in a constant cultural flux. Legal arguments and their justifications reflect the social, economic and political attitudes of judges, lawyers and legislators. The truths in law, if any, may not be confused with those in

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3. Id. at xiii
4. Id. at vii
5. Id. "I meant to convey the thought that sophistication in the art and craft of legal reasoning is a lifelong task." Id.
6. Id. at xiii. Professor Delaney’s 23 years of legal activities include over 1,000 trials and 150 appeals, extensive legal reform and full-time teaching. Id.
7. When I was Professor Delaney’s research assistant, we had several conversations in which he emphasized the distinction between art and science.
8. J. Delaney, supra note 2, at 168.
9. G. KICHER, PAPER THEORY OF LAW (M. Knudt trans. 1967). Professor Hans Kiefer, for example, presented the theory of legal science under which legal rules are either true or false, but only valid or invalid, just as fairs and invalid rules are true or false, but only existent or nonexistent. Id. at 73. Thus, legal science does not question the justice or injustice of legal rules, but only their validity or invalidity. Law and art report such an ahistorical view towards legal rules; it imposes an affirmative obligation on legal officials to justify the creation and application of legal rules. Those who engage in legal reasoning assume a moral responsibility to explain and justify both the process and the desired outcome.
10. Id. at 70-77

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11. J. DELANEY, supra note 2, at xiii
12. Id. "Legal reasoning in cases is a gestalt; the parts are only intelligible in light of each other and of the whole." Id. at xiii.
13. Many opinions of Justice Cardozo and Holmes present the aesthetics of legal reasoning. See, e.g., Missouri v. Holland, 252 U.S. 416 (1920). Justice Holmes states that "we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its creators." Id. at 423; Hayes v. New York Const. R.R. 231 N.Y. 229, 230, 11 N.E. 896, 899 (1915).Cardozo’s creative use of metaphor effectively transforms facts into images, for example, “fuzzy” becomes “springboard”.
14. J. DELANEY, supra note 2, at 41-110. By briefing a few cases, he provides examples to demonstrate how the analytical steps for briefing an appellate case may be used in a nonmechanical method.
message that mere identification of applicable law is insufficient to write a
good exam or to persuade a court. Professor Delaney teaches that pro-
fessional competence requires students to master the analytical skills to
distinguish key facts, frame relevant issues, and choose appropriate legal
materials to make effective arguments bearing directly upon the story of
the case. Mere recitation of applicable rules does not constitute legal
reasoning.

IV. POSITIVIST LEGAL CONSCIOUSNESS

It appears that Professor Delaney prefers to familiarize first-year
students to positivist legal consciousness by having them "read, think,
talk and write like a lawyer, not like a philosopher, ethicist, economist,
sociologist, researcher or politician." Legal reasoning is distinguishable
from other modes of reasoning employed in disciplines such as sociology,
economics, politics, philosophy and science. Legal reasoning often is
required to filter through generally approved legal methods such as stare
decisis and rules of statutory interpretation. These systemic constraints
on forms of legal reasoning are considered indispensable even if the out-
come is suspect under the established norms of another discipline. Thus,
a precedent may be upheld in a subsequent case even if adherence to the
precedent results in an economically inefficient, philosophically incoher-
ent or politically unwise decision. Likewise, cases that appear to be simi-
lar may be distinguished in the domain of law, thereby frustrating lay
expectations of justice. The briefing techniques that Professor Delaney
proposes present law as a unique body of knowledge. Understanding this
knowledge requires that first-year students distance themselves, at least
in the first few months, from other bodies of knowledge. This approach
directs students to study internal dynamics of the case and concentrate
on legal methods by which disputes are resolved, rather than inject extra-
neous notions of morality, justice or fairness into the analytical equation.

However, one need not assume that Professor Delaney is a self-
righteous legal positivist who believes in "a single, true, monolithic per-
spective on the meaning and role of law in our society." His briefing
techniques do not misrepresent or undermine the complexity of judicial
decision making; nor does he see or present judges as technicians without
imagination beyond legal methods of deciding cases. He recognizes the
existence of pluralistic perspectives and jurisprudential choices inherent
in law. The cases he briefs are complex and raise important questions of
principles and policies. His commentary on State v. Shack\textsuperscript{20}
explains

\textsuperscript{15} Id. at 34.
\textsuperscript{16} Id. at 15.
\textsuperscript{17} Id. Delaney points out that the typical first-year blunder is the obsession with holdings to
the detriment of key facts and issues which led to the holdings and without which the holdings are
legally meaningless. Id. at 76.

\textsuperscript{18} Id. at 2.
\textsuperscript{19} Id. at 172.
\textsuperscript{20} State v. Shack, 56 N.J. 297, 277 A.2d 369 (1971)(landmark property case that began as
minor criminal trespass violation).
how historical, sociological and constitutional arguments may intersect and constitute a web of braided reasoning. Furthermore, the last chapter of his book provides a dramatic and rich dialogue on the nature of legal reasoning. He shows how arguments may be made and justified from divergent jurisprudential perspectives.

There appears to be a thoughtful structure underlying the organization of the book and the sequence of cases. The book begins with an exclusive positivist orientation, advising students to shun other "frequencies" of knowledge. But as we study the subsequent chapters, new dimensions of legal reasoning gradually are introduced in a systematic and progressive manner. When we reach the final chapter, the jurisprudential panorama is fully exposed. This building block approach is an excellent design to condition students to the realm of law. Once they have begun to appreciate the technical character of law, it is then equally important to challenge their positivist orientation by confronting them with other forms of legal reasoning such as natural law or legal realism. Under the intellectual pressure of conflicting notions, the jurisprudential synthesis that students eventually work out will give them a comprehensive view of legal reasoning.

Law teachers might disagree with this approach to legal reasoning. Some might argue that Professor Delaney's proposed briefing techniques are the discarded instruments of legal positivism. Others might accuse him of legal reductionism in that he oversimplifies the complex reality of judicial decision-making. The law and economics school of jurisprudence, for example, will have little sympathy for legal reasoning that ignores the impact of economic principles. The critical legal studies school also might dismiss Delaney's briefing techniques as tools of the status quo that impose class, gender and racial oppression through the fancy medium of legal arguments. Even legal positivists might insist that legal reasoning as an art misrepresents and exaggerates the discretion of judges in deciding cases. These criticisms, however, do not diminish the value of the book for first-year law students who must learn the basics before entering the thicket of jurisprudence.

21 J. DELANEY, supra note 2, at 129-48
22 Id. at 148-72. Chapter 7 explains the ideological and jurisprudential debate in the realm of judicial decision-making
23 Id. at 2