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Book Review: Legal Reasoning and Legal Theory, by Neil MacCormick

Stephen Kloepfer

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LEGAL REASONING AND LEGAL THEORY. NEIL MACCORMICK. Oxford: Clarendon Press. 1978. Pp. xi, 298.

There sometimes emerges a legal text whose objects are so successfully achieved, and whose usefulness to the reader's understanding of the judicial process is so remarkable, that the unaccustomed reviewer's natural trepidation is overcome by a desire to acquaint others with the source of his enlightenment. Professor Neil MacCormick's *Legal Reasoning and Legal Theory*[1] is such a book, and its importance justifies an extensive review.

As the title implies, MacCormick sets himself an ambitious task. Any inquiry into the realm of legal theory must necessarily expose the reader to broad expanses of law, philosophy, and formal logic, and the uninitiated reader may soon find himself on shaky ground. Commendably, the author states at the outset the purposes he intends the book to achieve, and pursues them throughout. The book's stated purposes are twofold: to develop and to defend a thesis concerning the "limits of practical reason" in evaluative arguments of whatever kind, including especially legal argument, and "to advance an explanation of the nature of legal argumentation as manifested in the public process of litigation and adjudication upon disputed matters of law."[2]

MacCormick views legal argumentation as a highly intricate process of *justification*, and this forms the focal point of *Legal Reasoning and Legal Theory*. That judges must dispense not only justice, but justice according to law, requires that legal decisions be justified by means of relevant criteria, and implies a certain minimum standard of judicial performance. The kinds of reasons that conduce to a legally justified decision in any given case are dictated largely by the clarity with which the applicable legal rules are perceived and interpreted by the judge or appellate court. Similarly, the complexity of those reasons will depend on the degree to which the pertinent legal rules, once identified and construed, can be said to compel a decision one way or the other. The book's format takes account of this, and the reader is constantly exposed to legal decisions that call for progressively more sophisticated arguments of justification.

Professor MacCormick begins by showing, with the aid of reported legal decisions taken from Scots and English law, that purely deductive logic can provide a means of justifying legal conclusions in at least some cases, and that evidentiary rules complement this process by establishing what factual propositions will be taken to be true for the purposes of the litigation.[3] The

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[1] Clarendon Law Series (Oxford: Clarendon Press, 1978). MacCormick is Regius Professor of Public Law, and former Dean of Law, in the University of Edinburgh.

[2] *Id.* at 7.

[3] *Id.* at 19-52.

author cautions, however, that deductive reasoning is only of limited usefulness, in that it presupposes certain premises whose soundness cannot be demostrated by deduction alone.[4] Some of these premises are established by resolving certain problems that inevitably emerge when statutory or case-law rules are applied to specific fact situations. MacCormick calls these problems the "problem of interpretation,"[5] the "problem of relevancy,"[6] and the "problem of classification,"[7] and argues that their resolution necessarily involves "making a choice between two rival norms as acceptable propositions of law."[8]

After setting forth the limits of deductive justification in legal argument, and thereby laying a groundwork for the balance of his thesis, MacCormick proceeds to consider one of the most hotly contested issues in contemporary jurisprudence: How can judges arrive at legally justified decisions when no existing legal rule provides unequivocal guidance?[9] It is difficult to improve on the author's assessment of that controversy:

> It is sometimes possible to justify legal decisions by deductive arguments whose premisses are valid rules of law and propositions of 'proven' fact. Given certain presuppositions about the nature of legal systems and the obligations of legal officials such justifications are conclusive. But we can run out of rules without running out of the need for legal decisions—because rules are unclear, or because the proper classification of relevant facts is disputable, or even because there is dispute whether there is or is not any legal ground at all for some claim or decision at law. The really interesting question about legal argumentation is: how can it proceed when in this sense we do 'run out of rules'?[10]

What is needed, of course, is a theory of legal reasoning capable of leading to sound legal conclusions in situations where the practical utility of logic is spent. MacCormick develops such a theory, and calls the particular type of argument embraced by it an argument of "second-order justification."[11]

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[4] MacCormick argues that two of the fundamental assumptions of positivistic legal theory are (1) that it is possible for a judge to identify all rules that have the status of law, and (2) that "every judge has in virtue of his office a duty to apply each and every one of those rules which are 'rules of law' whenever it is relevant and applicable to any case brought before him." *Id.* at 54.

[5] *Id.* at 68ff.

[6] *Id.* at 70ff.

[7] *Id.* at 95ff.

[8] *Id.* at 81. The author devotes ch. 4 to an elucidation of these concepts in the context of what he calls "the constraint of formal justice". *Op. cit.*, at 73-99.

[9] See, *e.g.*, Allen, *Law in the Making*, (7th ed. Oxford: Clarendon Press, 1964); Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961) at 121-50; Wasserstron, *The Judicial Decision* (Stanford: Stanford U. Press, 1961); Hodgson, *Consequences of Utilitarianism* (Oxford: Clarendon Press, 1967); Stone, *The Province and Function of Law* (London: Stevens, 1947); Stone, *Legal System and Lawyers' Reasonings* (Stanford: Stanford U. Press, 1964); Raz, *The Concept of a Legal System* (Oxford: Clarendon Press, 1970); Fuller, *The Morality of Law* (rev. ed., New Haven: Yale U. Press, 1969); Dworkin, *Taking Rights Seriously* (rev. ed., Cambridge: Harvard U. Press, 1979); Frank, *Law and the Modern Mind* (New York: Coward-McCann, 1936); Llewellyn, *The Common Law Tradition* (Boston: Little Brown, 1960); Kelsen, *The Pure Theory of Law*, trans. Knight (Berkeley: U. Cal. Press, 1967); Cross, *Precedent in English Law* (3d ed. Oxford: Clarendon Press, 1977); Jaffe, *English and American Judges as Lawmakers* (Oxford: Clarendon Press, 1969); Smith, *Legal Obligation* (Toronto: U. of T. Press, 1976).

[10] *Supra* note 1, at 100.

[11] *Id.* at 101.

Arguments of second-order justification presuppose that judges adhere to a concept of "formal justice"[12] that requires them to justify decisions born of *particular* legal controversies by making *generic* rulings on the points of law involved, while at the same time recognizing an obligation to keep their judicial pronouncements "interstitial."[13] Once granted this assumption, second-order justification amounts to the making of rational choices between rival possible rulings,[14] and it is at this stage that MacCormick introduces an elaborate "mechanism" by which these choices can reasonably be made.

MacCormick's concept of second-order justification can be outlined only briefly here. Essentially, it requires that possible rival rulings be "tested" for their compatibility with the underlying principles of the legal system of which they will form a part. The over-all acceptability of a novel legal ruling, and therefore the extent to which a decision based on it will be legally justified, will depend on how the proposed ruling fares under the critical scrutiny of different kinds of evaluative arguments. First, a novel ruling whose acceptance is advocated must be supported by sound "consequentialist" arguments, based on perceived notions of common sense, justice, expediency, and public policy,[15] which demonstrate the acceptability of the ruling's probable consequences for the legal system. But sound consequentialist reasons, although necessary to the justifying process, are not sufficient in themselves, and must be supplemented by two other kinds of tests: the test for "consistency" and the test for "coherence." The test for "consistency" requires that "however desirable on consequentialist grounds a given ruling might be, it may not be adopted if it is contradictory of some valid and binding rule of the system";[16] the test for "coherence" requires that, even if a possible ruling satisfies the test

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[12] See generally, *id.* at 73-103.

[13] *Id.* at 122.

[14] *Id.* at 101.

[15] *Id.* at 151. By providing the term "consequentialist" to denote these kinds of arguments, MacCormick fills a gap in the terminology that was noticed much earlier by Cross. In the first edition of *Precedent in English Law* (Oxford: Clarendon Press, 1961) at 220, 222, Cross states:

> When a judge does consider the pros and cons of each party's case, there is no recognized name for the reasoning, but it has characteristics of its own which distinguish it from deduction and induction. It has been well described by Profesor Wisdom as:
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> > a matter of weighing the cumulative effects of one group of severally inconclusive items against the cumulative effects of another group of severally inconclusive items.
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> It is not the same as reasoning about questions of fact. The judge sometimes has to consider the probable social consequences of his decision, but he is also concerned with such matters as the manner in which his decision can be justified in the light of existing legal principles, the kinds of legal argument which it may be used to support in the future and the force of conflicting analogies.
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> ....
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> The important thing is that it is of the essence of the judicial process that the pros and cons should first be weighed.

The identical passages occur in the second edition (Oxford: Clarendon Press, 1968) at 192-93, 195 and in the third edition (Oxford: Clarendon Press, 1977) at 194, 197.

[16] *Supra* note 1, at 106.

for consistency, it may be adopted only if the principle of which the novel ruling is an instance "can be brought within the ambit of the existing body of general legal principle."[17] The aforementioned[18] problems of "interpretation," "relevancy," and "classification," which constantly give rise to the propounding of innovative legal rulings as potential legal doctrine, must be resolved by the successive application of these tests, if our system of law is to comprise "a consistent and coherent body of norms whose observance secures certain valued goals which can intelligently be pursued all together."[19] Second-order justification of legal decisions therefore involves "*consequentialist* arguments which are essentially *evaluative* and therefore in some degree *subjective*."[20] It requires lawyers and judges to transcend the limits of practical reason, by arguing for, and ultimately by making, rational choices which no amount of logic will be capable of defending conclusively.

Admittedly, all this has a certain elegance and plausibility. Still, it requires a great deal of explanation and corroboration, and Professor MacCormick provides these in abundance. With the aid of numerous examples, taken primarily from reported Scots and English cases on public and private law and interspersed throughout some one hundred and fifty pages of explanatory text, the author provides persuasive arguments for the validity of both the normative and the descriptive aspects of his theory. He argues that, in difficult litigation, legal principles and arguments from analogy tend to support legal conclusions without compelling them, and that the requirements of strong consequentialist arguments and of consistency must be met even where a persuasive analogical argument is put forth. The requirements of coherence and consistency thus limit the field within which judicial creativity may legitimately operate.[21]

MacCormick then explains, in the context of his theory, the processes of case-law[22] and statutory interpretation, and argues that both of these interpretative processes require recourse to consequentialist arguments and to arguments of principle, in addition to the more obvious appeal to consistency. To this extent, the differences between the interpretation of case-law rules and the interpretation of statutes have, in the author's view, been exaggerated. So too has been the difference between "clear" and "hard" cases, and the author

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[17] *Id.* at 107.

[18] *Supra* notes 5, 6, 7.

[19] *Supra* note 1, at 106.

[20] *Id.*

[21] *Id.* at 153ff.

[22] MacCormick provides (*Id.* at 82-86, 116-19, 212-28) a very useful commentary on the *ratio decidendi* of a case and defines it in the context of the "justificatory" function of the judge or appellate court:

> The *ratio decidendi* is the ruling expressly or impliedly given by a judge which is sufficient to settle a point of law put in issue by the parties' arguments in a case, being a point on which a ruling was necessary to his justification (or one of his alternate justifications) of the decision in the case. (The caveat must be repeated here that, on this view, by no means all cases—even "leading" cases—have a single *ratio decidendi*).

Op. cit., at 215.

dispels the notion advanced by some theorists[23] that legal positivism necessarily comprehends a wide discretion for judges in so-called "hard cases." As I hope to have made clear, Professor MacCormick's entire elaborate theory argues convincingly to the contrary.[24]

MacCormick's views as to what constitutes a good or a bad, an acceptable or an unacceptable, legal argument are inextricably bound up with his contention[25] that ultimate normative premises cannot be derived from the application of reason alone. Granted certain premises, we can determine what conclusions should follow from them, but no manner of logic can tell us what fundamental assumptions we should act upon in the first place. But even though our ultimate moral premises can never be demonstrated to be correct, that is not to say that "our adherence to such principles is other than a manifestation of our rational nature,"[26] and this crucial distinction informs all aspects of his theory. He seeks to steer a middle course[27] between the undiluted irrationalism of legal writers like Ross,[28] who view the concept of justice as being a mere expression of conflicting emotions; and the ultra-rationalism[29] of Dworkin, who contends that all legal controversies have a single "right" answer which, in principle, is capable of being rationally demonstrated.[30]

MacCormick's theory incorporates an important philosophical dichotomy.[31] On the one hand, reasoning enables us not only to deduce consequences from accepted legal norms, but enables us also to determine whether the norms from which we reason belong to a coherent and self-consistent order; on the other hand, however, our conviction that order and rationality are themselves desirable is one which cannot be conclusively proven correct by an appeal to reason.[32] We must make

> a choice, to be rational or not, and it is an ever-present choice in relation to all aspects of our life, whether as theorists or scientists working on explanations of the nature of things, or as practical agents going about the business of life interacting with other animate beings with some set of legal, moral, and social relationships.[33]

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[23] Notably, Dworkin. See *Taking Rights Seriously, supra* note 9, chs. 4, 13.

[24] *Supra* note 1, at 250-58.

[25] MacCormick acknowledges (*Id.* at 1-8) his reliance on aspects of the philosophies of Hume, Reid and Kant in setting forth his argument concerning the limits of practical reason.

[26] *Supra* note 1, at 6.

[27] See generally, *id.* at 265-74.

[28] Ross's views on the fundamental irrationality of the concept of justice are expressed in *Towards a Realistic Jurisprudence* (Denmark: Munksgaard, 1946); *On Law and Justice* (London: Stevens, 1958); and *Directives and Norms* (London: Routledge & K. Paul, 1968).

[29] This is MacCormick's designation.

[30] See Dworkin, *Taking Rights Seriously, supra* note 9, chs. 1-4, 12, 13; and *Dworkin*, "No Right Answer?", in Hacker and Raz, eds., *Law, Morality and Society* (Oxford: Clarendon Press, 1977) at 58.

[31] *Supra* note 1, at 267ff.

[32] See generally, *id.* at 265-74.

[33] *Id.* at 269.

It is in the context of his argument concerning the limits of practical reason that MacCormick provides a series of legitimate criticisms of Dworkin's so-called "Rights Thesis."[34] Dworkin's notion of the "strong discretion" which legal positivism supposes judges to exercise in hard cases[35] is repudiated by MacCormick's wealth of examples of how deductive and second-order justification operate on a solid foundation of "formal justice."[36] The author provides other, more specific, criticisms. He argues that the manner in which Dworkin defines "principles," "policies," and "goals" in elaborating the "Rights Thesis" is seriously confusing. The confusion arises from Dworkin's ascription of special and somewhat narrow meanings to these words, which effectively defines out of existence[37] powerful philosophical arguments that are contrary to Dworkin's general thesis, but that quite legitimately use the concepts of "principles," "policies," and "goals" in their more usual senses.[38]

In reference to Dworkin's assertion that in all legal controversies that take the form of litigation there is a single right answer capable of being rationally discovered,[39] MacCormick contends that this argument fails to take into account a subtle ambiguity in the idea of "disagreement."[40] The author proposes that disagreement can be either "speculative" or "practical." Speculative disagreement implies the application of different evaluative criteria to a seemingly clear problem, thereby resulting in disagreement about the correct answer. Practical disagreement necessitates, even when there is no longer any speculative disagreement, an often difficult choice as to what course of action, to the exclusion of other possible options, should be taken.[41] MacCormick contends that the most basic disagreements in law are inevitably practical in nature, and that

> [g]enuine practical disagreement, about which the parties [to the litigation] really care, arises not because of irrationality, not because there is a truly right answer which someone has failed to see, but because—or when—the decision one way or the other cannot be avoided and must be taken by people who cannot 'each go his own way' but who must decide together one way or the other and live with the decision.[42]

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[34] *Supra* note 30. Other illuminating criticisms can be found in Raz, *Professor Dworkin's Theory of Rights* (1978), 26 Political Studies 123; and in Greenawalt, *Discretion and Judicial Decision: The Elusive Quest for the Fetters that Bind Judges* (1975), 75 Col. L. Rev. 359; and *Policy, Rights, and Judicial Decision* (1977), 11 Ga. L. Rev. 991.

[35] *Supra* note 23.

[36] *Supra* notes 12, 13.

[37] *Supra* note 1, at 261, 264.

[38] *Supra* note 9, at 90. Dworkin asserts that "[a]rguments of principle are arguments intended to establish an individual right; arguments of policy are arguments intended to establish a collective goal. Principles are propositions that describe rights; policies are propositions that describe goals." For MacCormick's reasons as to why these designations are inappropriate, see *id.* at 259-74.

[39] *Supra* note 30.

[40] *Supra* note 1, at 247ff.

[41] *Id.* at 246-55. MacCormick's distinction between "speculative" and "practical" disagreement corresponds very closely to the distinction in normative ethics between what Stevenson called "disagreement in belief" and "disagreement in attitude." Stevenson, *Ethics and Language* (New Haven: Yale U. Press, 1944) ch. 1; Copi, *Introduction to Logic* (New York: MacMillan, 1978) at 73-77.

[42] *Id.* at 248.

The author concludes the book with an appendix, in which he provides a useful and entertaining account of how H.L.A. Hart's important formulation of the "internal aspect" of normative behavior[43] needs to be supplemented by taking into account the "volitional" as well as the "cognitive" aspects of it.[44]

Notwithstanding MacCormick's evident scholarship, *Legal Reasoning and Legal Theory* is more than a mere continuation of (in MacCormick's words) the "often hot but always arid"[45] jurisprudential debate. The book is eminently readable, and exhibits none of the "pompo-verbosity"[46] which has sometimes pervaded discursive academic writing[47] and which, regrettably, still has its unwitting exponents.[48] When the author repeats himself, the repetitions serve to help the reader follow the argument as it develops.

Professor MacCormick writes lucidly, and with a droll wit that has become something of a hallmark among the best-known legal theorists. Readers familiar with the recent literature cannot fail to have noticed the series of genteel barbs exchanged between Dworkin and his principal non-adherents, notably H.L.A. Hart. It is as if each seeks to proclaim the ascendancy of his own theory, while at the same time emphasizing the superior panache with which he is able to disparage the views of his rivals. For example, in his well-known essay, *Hard Cases*,[49] Dworkin introduces into his commentary, for

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[43] See Hart, *supra* note 9, chs. 5, 6. Of the numerous reviews of Hart's book, one of the most incisive is that by Sartorius, "Hart's Concept of Law," in Summers, ed., *More Essays in Legal Philosophy* (Los Angeles: U. Cal. Press, 1971) at 131.

[44] *Supra* note 1, at 240-41, 275-92.

[45] *Id.* at 188. For a summary of recent jurisprudential literature with a Canadian perspective, see Lewis, *Annual Survey of Canadian Law: Jurisprudence* (1979), 11 Ottawa L. Rev. 733.

[46] Gowers, *The Complete Plain Words*, rev. B. Fraser (rev. ed., London: H. M. Stationery Off., 1979) at 64-65.

[47] In his *Problems of Jurisprudence* (Brooklyn: Foundation Press, 1949) Fuller prefaced his comments on Austin's *Lectures on Jurisprudence* (4th ed. London: J. Murray, 1879) with these remarks:

> The reader now has awaiting him about two hundred pages of what may well be the dreariest prose ever penned by man. In fact, so elaborate and tortuous are Austin's distinctions that they achieve at times the relief of humor, though a humor, it should be added, that is at once unintended and somewhat grim.
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> Austin's style is seldom mentioned without some reference to a letter written in 1817 to his future bride when he was a young apprentice at the bar. He was then working in the chambers of an equity draftsman, and he wrote:
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> "I apprehend that the habit of drawing [bills in equity] will in no short time give me so exclusive and intolerant a taste (as far, I mean, as relates to my own productions) for perspicuity and precision, that I shall hardly venture on sending a letter of much purpose, even to you, unless it be laboured with the accuracy and circumspection which are requisite in a deed of conveyance."

Op. cit., at 103.

[48] One of Orwell's most important essays concerned this very subject. See Orwell, "Politics and the English Language," in Bell and Encel, eds., *Inside the Whale and Other Essays* (Australia: Pergamon Press, 1978) at 142. Orwell was particularly irritated by the familiar "not-un-" usage, and suggested that writers rid themselves of this vulgarity by memorizing the following sentence: "A not unblack dog was chasing a not unsmall rabbit across a not ungreen field." *Op. cit.*, at 155.

[49] *Supra* note 9, ch. 4.

purposes of illustration, a judge "of superhuman skill, learning, patience and acumen"[50] whom he calls Hercules. Later in the same essay,[51] Dworkin introduces, again for illustrative purposes, another fictional judge, but one whose analytical abilities are decidedly more modest. Dworkin calls this judge Herbert, which happens to be H.L.A. Hart's Christian name. In *American Jurisprudence Through English Eyes: The Nightmare and the Noble Dream*,[52] H.L.A. Hart in turn proposes that Dworkin's theory, as expounded in *Hard Cases* and elaborated upon elsewhere,[53] is a noble, but nonetheless an untenable, dream, and that perhaps the sensible theorist should steer a middle course and settle for a mere "good night's sleep."[54] To these criticisms, Dworkin is alternately gracious[55] and disapproving, and concludes his rejoinder by stating that the "dream" imputed to his theory by Hart and other critics is "more silly than noble."[56] These observations might seem digressive in a review of MacCormick's *Legal Reasoning and Legal Theory*, but they are necessary in order to appreciate the humour of MacCormick's contribution to the fray. Near the end of the book, the author devotes a chapter[57] to a comparison of his own theory vis-à-vis aspects of those of Dworkin and Hart and, although he acknowledges their respective contributions at several points,[58] he does not fail to get his own innings in:

> Dworkin postulates a Hercules who can construct a best-possible theory of a given legal system. But Hercules can construct that only at the far end of an infinite regress of theories. Dworkin has landed his Hercules in Augean stables in which the dung cannot run out, because it is in infinite supply.[59]

The above digression serves also to affirm a more general point: that it is possible for a book on legal theory to entertain as well as to instruct.

Professor MacCormick's book stands firmly as a distinctive contribution to the literature, and has been readily acknowledged as such.[60] More extensive critical scrutiny is sure to be forthcoming. Legal theorists have traditionally been anything but reluctant to appraise the contributions of their

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[50] *Id.* at 105ff.

[51] *Id.* at 125ff.

[52] (1977), 11 Ga. L. Rev. 969.

[53] *Supra* note 30.

[54] Dworkin, "Reply to Critics," in Dworkin, *supra* note 9, at 292-93.

[55] Dworkin states that Hart "offered only predictions of the faults others might find, and did even this so gently, and with such generosity, as to make me realize once again that criticism at his hands always gives pleasure as well as instruction." *Id.* at 292.

[56] *Id.* at 293.

[57] *Supra* note 1, at 229-64.

[58] *E.g., id.* at 229, 231, 241, 256, 258.

[59] *Id.* at 255. To appreciate the wittiness of this remark, one must first remember that Dworkin called his "Rights Thesis" judge "Hercules" (*Supra* note 9, at 105ff.), and then harken back to Greek mythology. The cleansing of the Augean stables, which contained three thousand stalls for oxen, was one of the twelve "labours" Hercules was required to perform in order to gain his freedom from Eurystheus. Hercules accomplished this particular task by diverting the rivers Alpheus and Peneus, so that they flowed through the Augean stables during the whole of one night.

[60] See Caplan (1980), 93 Harv. L. Rev. 817; Ferguson (1979), 6 Brit. J.L. and Soc. 272; Clark (1979), 12 Vand. J. Trans. L. 1037.

colleagues, and our understanding of law has been a beneficiary of that tradition.

The book has functional, as well as theoretical, importance. Its usefulness to practitioners lies in the soundness of the principles of legal justification that MacCormick sets forth, in their appropriateness to virtually all spheres of legal activity, and in their consequent usefulness to any person for whom legal concepts are important. The essential premise of the British judicial system is, of course, that judges must impart not only justice, but justice according to law, and MacCormick uses this same basic premise as his point of departure in generating an elaborate theory as to what "justice according to law" necessarily implies for judicial performance. What special types of legal argument will, so far as possible, ensure a legally justified decision in any given context? It is just this question that MacCormick's book is concerned to answer and, in this reviewer's opinion, convincingly does so. The author makes more explicit and exact, principles of legal justification which were hitherto largely implicit and obscure. *Legal Reasoning and Legal Theory* should be considered required reading for the student or teacher who seeks a more sophisticated understanding of the judicial process, for the lawyer who seeks to construct a persuasive legal argument in order to promote a client's arguable legal rights, and for the judge upon whom falls the onerous responsibility of dispensing justice according to law.[61]

By STEPHEN KLOEPFER*

[61] MacCormick has written important articles on a number of jurisprudential topics, including *Can Stares Decisis be Abolished?* (1966), Jur. Rev. 197; *Justice According to Rawls* (1973), 89 L.Q. Rev. 393; *Justice – An Un-Original Position* (1976), 3 Dal. L.J. 367; *Law as Institutional Fact* (1974), 90 L.Q. Rev. 102; "Rights in Legislation," in Hacker and Raz, eds., *supra* note 30, and "Legal Obligation and the Imperative Fallacy," in Simpson, ed., *Oxford Essays in Jurisprudence Second Series* (Oxford: Clarendon Press, 1973).

* Mr. Kloepfer is an LL.M. candidate at Osgoode Hall Law School.