

BOOK REVIEW

JUDICIAL METHODS OF INTERPRETATION OF THE LAW, By Julio C. Cueto-Rua.¹ The Publications Institute, Paul M. Hebert Law Center, Louisiana State University, Baton Rouge, Louisiana (1981). Pp. xix, 508.

Professor Cueto-Rua's *Judicial Methods of Interpretation of the Law* is many things: a compendium of comparative judicial methodology, a review of the theories of judicial interpretation (including some of the most influential theories of justice), and a compilation of illustrative texts of judicial decisions followed by questions and suggestions for discussion. This book resulted from a series of judicial methodology seminars for Louisiana appellate judges conducted by Professor Cueto-Rua in New Orleans and Baton Rouge during 1976 and 1977. Professor Cueto-Rua is singularly well qualified for the undertaking. He was a distinguished law professor and practitioner in his native Argentina, and held the position of Secretary of Commerce during the Aramburu administration approximately twenty years ago. In between Argentine assignments, he was trained in the common law and is at present one of the most respected teachers and scholars at the Louisiana State University School of Law. His rich legal, political, and pedagogic background is put to good use in this book. The reader is exposed not only to civil and common law perspectives on the structure of a typical case, including fact finding and logical tools, but also to historical and cultural factors, with particular emphasis upon axiology. Interestingly enough, however, the various methods of judicial interpretation are not discussed side by side, in a traditional comparative fashion, but in an integrated manner. This is a result of Professor Cueto-Rua's belief that "essentially, civil law judges and common law judges follow the same dialectical process of evaluating and understanding the law as evidenced by the judges' grounding their decisions in similar logical and axiological considerations." (p. 3)

This similarity of process is a fundamental point in Professor Cueto-Rua's analysis of the judicial method and as such deserves reflection. Professor Cueto-Rua maintains that civil and common law judges rely upon logical, historical, and teleological methods of interpretation and that both the civil and common law systems allow for a free choice of normative premises, axiological factors being determinative of the choice in both. (p. 4) Cast in such broad terms it is often difficult to take issue with Cueto-Rua's assertion, however troubled one might be by the use of the term "similar" in the above

¹Biographical information on author not available.

quoted paragraph. For "similar" would only refer to the civil and common law judge's reliance upon findings of fact and interpretation of law based upon logical, historical or cultural, and teleological considerations. It does not refer to what civil and common law judges understand as facts, or as law, or to the weight given to factual findings or legal interpretation in either system.

Common law judges' preoccupation with what actually happened between or among the parties, or with what brought about the dispute, as well as the civil law judges' prevailing concern with the conceptual labels of facts, could still be regarded as part of the same "dialectical" tradition that juxtaposes facts and law. In this light, *Judicial Methods of Interpretation of the Law* is more a philosophical than an anthropological venture. Thus, Cueto-Rua attempts to teach what a good judge, functioning within the western social and legal system, ought to do when deciding cases.

Professor Cueto-Rua's philosophy of judicial interpretation is a product of the best elements of both major western legal systems. From the common law he derives a skeptical vision of facts, almost Humeian in its questioning of causality. In the words of Karl Llewelyn: "[R]arely indeed do the raw facts of even a commercial transaction fit cleanly into any legal pattern; still less so the trial facts as they emerge from conflicting testimony. . . ." (p. 28, n. 5) Moreover, Cueto-Rua seems to share with Karl Wurzel an anthropomorphic view of facts: "We are likely to draw consequences of the most opposite kind from the same facts, without becoming conscious that at the very moment of applying one significant term or the other we were determined in part by a certain arbitrariness, a function of the direction of our will, and not simply by our power of cognition." (p. 29, n. 6)

In addition, from the civil law Cueto-Rua derives a reverence for vigorous conceptualization. The concepts must be consistent and coherent; they should permit full coverage of a field of human experience: "Any human act whatever its content, is either a licit act or an illicit act. . . . Rights may be classified as personal or real depending upon the type of relationship. . . ." (p. 117) In the final analysis, however, "[i]t is not the force of logic that controls the case. It is the force of order, security, and justice and the need to promote and preserve social understanding rooted in accepted patterns of social behavior. . . ." (p. 144)

Such a view of the judicial decision making process places the axiological factors in a key position, thereby lending unusual importance to Chapter IX, whose aim is to aid the judge in his search for what Justice Cardozo referred to as "the 'justest' and 'rightest' decision among all the possible ones." (p. 205, n. 3) In this process Justice Cardozo himself indicated that the choice of values depends largely "upon the comparative importance or value of the social interests that will be thereby promoted or impaired. One of the most fundamental social interests is that the law should be uniform and impartial. . . . Therefore in the main there shall be adherence to prece-

dent But symmetrical development may be bought at too high price. Uniformity ceases to be good when it becomes uniformity of oppression. The social interest served by symmetry or certainty must then be balanced against the social interest served by equity and fairness and other elements of social welfare." (p. 209, n. 9)

Professor Cueto-Rua is clear that rules of law are nothing but conceptual bearers of judicial values (p. 213), but the reader's discernment of the substance of those values and the method of choice may be impaired by the method of presentation. This is regrettable, because there is considerable wisdom among the numerous classifications, dichotomies, and polarities. Following N. Hartmann, values are given "weight," "strength" and "polarity"—each positive value has its counterpart in a negative value. Failure to realize a positive value either by excess or defect brings about the realization of a negative. (p. 215, n. 25) Seven positive values are listed—justice, peace, power, solidarity, cooperation, security and order. Thus, the failure by excess of a value (for example, cooperation) leads to the negative value which Professor Cueto-Rua calls "massification," a term that implies loss of individuality or of other qualities that enhance an individual's dignity. Anyone who has read Ortega y Gasset's *The Revolt of the Masses* must agree with the insight in Cueto-Rua's juxtaposition of cooperation and massification. The reader may come away, however, with the impression that the listing of positive values is a *numerus clausus*. Yet, given the many connotations of terms such as justice or cooperation, this would be definitionally unattainable. In the alternative, one might think that regardless of the meaning attributed to any of the positive values the effects of excess or defect listed will automatically follow. Such is not the case—take, for example, cooperation. If understood in the manner in which Adam Smith understood individual bargains between members of society, an excess of cooperation would not bring about a massification of all persons involved, but rather the maximization of the individuality of one party at the expense of the other.

It is this reviewer's suggestion that Chapter IX of Cueto-Rua's book should be read not as a manual for the dispensation of justice, but as a guidebook to explore the meaning of justice. The perspective of the decisionmaker can only be broadened when aided by such guidelines, for the decisionmaker is bound to conclude with Professor Cueto-Rua and Carlos Cossio (his Argentine mentor) that his decision has far more phenomenological implications than are readily apparent: He must be concerned with his own behavior in judging events and applying the law, but he must also be concerned with the parties' behavior and with the meaning of the respective behaviors in terms of the past, the present, and the future. (p. 271) The more the judge realizes the axiological complexities of such an "existential synthesis" the higher the quality of his justice.

Two final suggestions for future editions. This book should be translated into Spanish and Portuguese so that the benefits of the integrated method of comparison would be available to professors who teach introduction to law or legal method, jurisprudence, comparative law, and judicial techniques in areas of the world in need of the author's wisdom. Second, the questions and suggestions following each transcribed judicial decision should be considerably amplified, bearing in mind the use of the book in workshops where the discussion leaders may be unfamiliar with a problem-oriented methodology.

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