

1982

## Book Review

Bruce S. Ledewitz

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Bruce S. Ledewitz, *Book Review*, 20 Duq. L. Rev. 555 (1982).

Available at: <https://dsc.duq.edu/dlr/vol20/iss3/10>

This Book Review is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

# Book Review

## The Moral Decision; Right and Wrong in the Light of American Law

By *Edmond N. Cahn*

Bloomington, Indiana University Press, 1955. Pp. 342. Hardback: \$17.50; Paperback: \$6.95.

Edmond Cahn seems to set out his purpose in the first sentence of *The Moral Decision*: "What moral guides can be found in American law?"<sup>1</sup> But in fact Cahn tells us very little about American law as such. He discusses twenty-one cases at some length, but they are not presented as representative of American law nor are they. Sometimes Cahn begins his discussion openly where law ends. At the end of this book, one is not prepared to judge whether American law on the whole is good, bad or indifferent. Nor can one say what moral guides are to be found generally in American law. While the reader is not told much about law, the reader is told about Cahn's moral theory, in substance and perhaps more importantly to Cahn, in method. Cahn does not so much describe moral decision-making as practice it. The reader observes Cahn entering into reasoned moral discourse about these twenty-one cases: not right and wrong in the light of American law, but rather, right and wrong in the light of Edmond Cahn.

There is no mystery about why Cahn wants the reader to learn his approach to moral discourse. He wants readers to become better able to make moral choices in their lives. There is, however, a more subtle and controversial aspect to Cahn's suggestions about making moral decisions. Cahn assumes that judges will often base decisions on moral principles. Cahn would

---

1. E.N. CAHN, THE MORAL DECISION; RIGHT AND WRONG IN THE LIGHT OF AMERICAN LAW 3 (1955).

like to improve their moral reasoning as well. But Cahn never specifies the conditions under which moral values should control or affect a judicial decision. Cahn's views on the proper relationship between law and morality are not developed, but hinted at, in *The Moral Decision*.

## I. CAHN'S VIEWS ON MORALITY

### A. *Cahn's Moral Methodology*

Cahn's contribution to moral theory in *The Moral Decision* is his suggestion that there are specific methods by which reasoning about moral issues can be improved. Cahn refers to the "moral constitution" as the way that people make moral judgments, and suggests methods, many of which Cahn claims are present in legal decision-making, by which the performance of the moral constitution can be improved.

The moral constitution, by which we are to understand "conscience doing its work,"<sup>2</sup> involves three human characteristics. First, we "dramatize ourselves."<sup>3</sup> Second, we project ourselves into the lives and roles of others.<sup>4</sup> Third, we have a "'sense of wrong,'" by which Cahn means a biological reaction to an act we consider to be wrong.<sup>5</sup> We are walking lie detectors, incapable of acting in ways we consider to be wrong without registering physical changes. These three characteristics enable us to engage in moral reasoning.

Cahn believes that legal methods can be of aid in developing better moral decision-making, in improving the moral constitution. He identifies four attributes of law and legal process that can teach us about the "process by which moral decisions are arrived at."<sup>6</sup> These four attributes are the mode of trial, law's professional discipline, law's social function, and control of official force. Presumably, we are to practice these attributes in our moral decisions, and Cahn proceeds to do so in the substantive moral discussions in the book.

Of these four attributes, the mode of trial seems to be the

---

2. *Id.* at 16.

3. *Id.* at 17.

4. *Id.*

5. *Id.* at 18.

6. *Id.* at 111.

most important to Cahn because a trial makes values concrete that might otherwise exist only in the realm of the abstract. In order to understand our relationship to moral values (dramatization), view sympathetically the dilemma of others (projection) and confront wrong (the sense of wrong), we must consider actual, human behavior. Thus trials, which involve evaluation of specific human conduct in a particular context, aid the operation of the moral constitution.<sup>7</sup>

Attributes of law other than the trial mode do not make as clear a contribution to Cahn's moral methodology. The professional discipline of lawyers is said to impart precision to decision-making, which helps develop the sense of wrong.<sup>8</sup> The social function of law, by which Cahn refers to the obligation of a legal decision maker to render decisions with reasonable swiftness, forces the moral decision maker to confront difficult choices. Finally, law's control over official force serves as an example to moral decision-making because responsibility for actual results tempers law's judgment.<sup>9</sup> Cahn criticizes irresponsible utopianism in moral judgment. He feels that to reach fair moral judgment we must presume that our decisions will have repercussions. The weight of this responsibility develops sympathy for human weakness.

### B. *The Substance of Cahn's Moral Philosophy*

Cahn's moral method is highly subjective, and thus his content is extremely idiosyncratic. The roles of men and women and of rich and poor are filtered through a lens of sympathetic but very traditional assumptions. The book was written in 1955. While it is not embarrassing to reach Cahn today, time has rendered his blind spots more apparent to us than are our own.

---

7. Cahn might mean here "a case" rather than the mode of trial itself because he does not refer to any of the attributes of "trial". In a later section, though, Cahn suggests also that criminal trial procedures, the specific protections given to the accused, such as the adversary system, hostility to presumptions, testing of evidence, and the reasonable doubt standard of proof, can aid in moral decision-making by illustrating a "due process of moral decision." *Id.* at 252.

8. CAHN, *supra* note 1, at 53. This precision changes the vague sense of wrong into "the firmer and more precise *sense of injustice*." *Id.* (emphasis in original).

9. *Id.* at 55.

Some of Cahn's views are attributable, presumably, to peculiarities in his experience. For example, Cahn has a fixed idea about the personality of artists:

One of the reasons why an artist's business methods are so often the despair of merchants and bankers (not to mention the artist's wife) is his responsiveness to a higher plane of integrity, which sometimes makes him feel sincerely indifferent to the lower one.<sup>10</sup>

.....

No male artist, whatever his age or eminence, fails to respond throughout his being to an apt compliment, preferably one from a pretty girl (but then any girl who gives a compliment is very likely to seem pretty at the time).<sup>11</sup>

.....

[W]hat the artist sees in himself as sacred personality he usually sees in his fellow-artists as mere pretense and vanity

.....<sup>12</sup>

I refer to the peculiar image Cahn has of artists not as a serious criticism, of course. The role of the artist is not central to this book and Cahn is often more whimsical than serious. Nevertheless, moral judgments of the type Cahn endorses—case-bound discussion of specific human relationships—are bound to bring prejudices to the surface if the writer is candid. The extreme subjectivity of Cahn's method should be remembered, particularly because, in general, Cahn's judgments seem so fair and reasonable as to appear somehow natural and unchallengeable.

The essence of Cahn's moral substance can be summarized best by the words generosity and honor. The generosity flows from Cahn's basic humaneness, his sympathy for the human condition. For long-term human relationships to remain healthy, what is needed is not righteousness, but "administrative" morality.<sup>13</sup> This kind of morality is flexible and adaptive; it does not call for a decision about who is right and who is wrong, but, rather, tries to accommodate differences.<sup>14</sup> Cahn's description of

---

10. *Id.* at 126.

11. *Id.* at 205.

12. *Id.* at 206.

13. *Id.* at 115.

14. *Id.* at 15.

marriage captures his general unwillingness to judge people harshly:

For a sense, every lasting marriage comprises an endless series of reconciliations, most of them picayune and unspoken, a series of occasions through which tears, mostly unwept, may gradually solder the real bond of matrimony, which will thus become the end-product of the relation. And though forgiveness is indispensable to this process, let no one assume that a man must be adjudged guilty before he can be forgiven. He may need forgiveness most of all because, without his being consulted, a dream was dreamed about him once and now he does not seem to incarnate that dream. . . . It is a wise policy to start with the assumption that both spouses, having the usual traits of human beings, are sufficiently guilty in one or more of a thousand possible respects that neither has the right to sit in judgment on the other.<sup>15</sup>

Cahn finds human behavior rarely to be evil as such. In Cahn's view human life is often, perhaps usually, not a series of choices between good and evil, but a series of choices between good or evil on the one hand, and mere "pettiness, smallness of spirit, [and] parvanimity"<sup>16</sup> on the other. Cahn does not expect people to be good all the time; in fact he says we need an occasional "healthy respite" even from trying to be good.<sup>17</sup> What kindles Cahn's indignation as much or more than greed, selfishness and other vices is small-minded righteousness of the type that would, for example, point flashlights into the room of an unmarried couple engaged in innocent lovemaking.<sup>18</sup>

Cahn's spirit of generosity is welcome instruction in the skills of living together. Cahn does not deny, however, that some behavior is evil and that compromise is not always to be sought. Cahn is at his most specific in castigating evil in his treatment of the defendant's actions in *Tuttle v. Buck*.<sup>19</sup> In this case, a local barber "somehow incurred the emnity of Cassius [Buck], a rich

---

15. *Id.* at 115.

16. *Id.* at 208.

17. *Id.* at 193.

18. *Id.* at 88-89.

19. 197 Minn. 145, 119 N.W. 946 (1909).

local banker."<sup>20</sup> The banker set out to drive Tuttle out of business by setting up a rival barber shop.

Cahn does not trust rich people as a group. His general conclusion about the rich is that wealth creates power and that the use of power always raises a moral issue. But wealth and private property are not evil as such. Cahn concludes, however, that the banker's viciousness in this instance is immoral.

But such clear condemnation is rare in Cahn. There is always in Cahn a tension between his desire for peace, his belief that people are not inherently evil (his generosity) on the one hand, and his absolute hostility to oppression in any form, as in *Tuttle*, on the other. One example of this tension is Cahn's defense of *Brown v. Board of Education*,<sup>21</sup> and specifically the decision's gradualism.<sup>22</sup> Cahn hoped the spirit of compromise that he identified in *Brown* would lead to conciliation between opposing social interests. The ensuing history of massive resistance suggests to Professor Charles Black that compromise created problems rather than solving them.<sup>23</sup> Cahn's hopes for us turned out, perhaps, to surpass our capabilities.

The reference point that gives standards to Cahn's moral thinking is honor. By honor Cahn seems to mean a code of civic virtue. Cahn refers often to attributes such as "good taste,"<sup>24</sup> a "good name,"<sup>25</sup> and "good character"<sup>26</sup> as worth having and seeking. These attributes do not tell us what honorable behavior is in a particular situation. Cahn would suggest that if we have a doubt, we probably are not acting honorably. He returns often to the considered judgment of others whom we respect as a test of honor.<sup>27</sup> Dishonorable behavior is also associated with public

---

20. CAHN, *supra* note 1, at 135.

21. 347 U.S. 483 (1954).

22. Cahn refers to the "effective gradual adjustment" language in the Court's call for reargument on the issue of a proper remedy. 347 U.S. at 495-96. Cahn was aware of *Brown II*, *Brown v. Board of Educ.*, 349 U.S. 294 (1955), and its "with all deliberate speed" formula, *id.* at 301, but he felt that this merely rendered the suggestion of gradualism contained in *Brown I* "explicit". CAHN, *supra* note 1, at 326 n.5.

23. Black, *Law and an Art*, Yale Law Report, 12, 14-15 (1979) (Reprint of University of Tennessee, Alumni Distinguished Lecture in Jurisprudence (1978)).

24. CAHN, *supra* note 1, at 10.

25. *Id.* at 204.

26. *Id.* at 25.

27. *Id.* at 204.

judgment. Cahn is disdainful, for example, of men (seeking honor, seemingly a male characteristic) who sue for money damages in alienation of affections suits. Such a suit is based on a "philistine" perception that the loss of a customer and the loss of a wife are equivalent. One cannot salve one's honor with money: "He may have to hire a housekeeper as a substitute for his wife's domestic services; but if he accepts dollars as a substitute for her sexual fidelity, what do we call him?"<sup>28</sup>

Sometimes honor is not based upon the opinion of others, but, in an analogous way, our own best judgment of ourselves. In reply to the question "why men ought to practice honesty in paying taxes," but which could serve as easily to explain why we should engage generally in right conduct, Cahn answers, "[T]here is the voice of individual honor, which needs no cue from political democracy or social solidarity to speak its part. It appeals to a man's personal pride and self-esteem, regarding them as quite sufficient in themselves to prevent his sliding down the declivity of fraud."<sup>29</sup>

Cahn's unwillingness to specify any standards of right and wrong is consistent with his moral case method in which moral insight arises from ad hoc reflection upon specific situations and relationships. But notwithstanding Cahn's powerful intuition, the reader can hardly avoid looking for patterns of right and wrong. When, for instance, Cahn celebrates the "ideal level of economic conduct" law imposes upon fiduciaries,<sup>30</sup> the reader is left to wonder whether it should not then be considered immoral for anyone to take advantage of others, in the marketplace or otherwise.

But Cahn does not attack the market, nor any other existing social institution. In discussing conduct that is wrong, which is Cahn's stated focus,<sup>31</sup> Cahn is preoccupied with the unusual, the unusually evil mental state, or the case of market breakdown, the monopoly. In the case of the mere day-to-day routine in which people actually work and live, in which there are not usually evil bankers or oppressive monopolists, but just people trying to make their own way and who nevertheless hurt other

---

28. *Id.* at 106.

29. *Id.* at 174.

30. *Id.* at 149.

31. *Id.* at 11.

people quite badly, Cahn has little to say about moral judgment. In this world, our world, Cahn's generosity obscures moral reasoning.<sup>32</sup>

To see this problem in bolder relief consider again Cahn's condemnation of the banker in *Tuttle v. Buck*. The banker is condemned because of his desire to cause harm to Tuttle. But the banker is, as Cahn admits, a simple case for everyone.<sup>33</sup> The more difficult, and more usual, case is presented by one who takes advantage of opportunities without any spiteful motive, but who knows that harm is likely to result.

One day a new barber will move into town. He may be more attractive, a better dresser, a better advertiser, or perhaps even a better barber. It may just be that he will be willing to charge less. Tuttle will lose customers. Or perhaps one day a banker who bears Tuttle no ill-will will decide that Tuttle is a bad risk and will shut off credit. The result of these actions will be the same as the consequence of an evil person's oppression: Tuttle's business will be ruined. When are we free to better ourselves at the expense of others?

Cahn has no answer to this question beyond the obvious observation that it is not always immoral to seek self-advancement.

---

32. For the insights of an economist on the issue of evil conduct in the market, see Demsetz, *Barriers to Entry*, 72 AMERICAN ECON. REV. 47, 54-56 (1982). Professor Demsetz uses *Tuttle v. Buck* to illustrate a distinction between consumption activity, where malice should not be tolerated, and monopolization, where, at least on economic grounds, motive should be discounted.

Cahn's implicit view that immorality is often or usually a matter of the state of mind with which a person acts, rather than a matter of an action undertaken, has its parallel in present-day jurisprudence. The search for motivation has led the United States Supreme Court to create the concept of intent to segregate or discriminate in many civil rights cases. See, e.g., *Keyes v. School Dist.*, 413 U.S. 189 (1973) and *Washington v. Davis*, 426 U.S. 229 (1976). The search for motivation is not limited to the civil rights area. See *Oregon v. Kennedy*, 50 U.S.L.W. 4544 (1982) (intent to cause mistrial). The search for intent is applied as well in the statutory area. See *American Tobacco Co. v. Patterson*, 50 U.S.L.W. 4464 (1982).

This purpose- or motive-centered jurisprudence has received a great deal of criticism both because identifying one purpose seems an incoherent task, see Brest, *Palmer v. Thompson: An Approach to the Problem of Unconstitutional Motive*, 1971 SUP. CT. REV. 95; Dworkin, *The Forum of Principle*, 56 N.Y.U. L. REV. 469, 477-88 (1981), and because a purpose is difficult to prove. See Karst, *The Costs of Motive-Centered Inquiry*, 15 SAN DIEGO L. REV. 1163 (1978). Essentially under the motive test, liability for an action turns on the glee with which one anticipated a result.

33. CAHN, *supra* note 1, at 140.

For Cahn, the "market", where self-advancement is sought usually at the expense of others, generally enforces a minimally acceptable level of behavior. But in a world in which an "ordinary" decision by a steel manufacturer to close a steel mill in order to produce more cheaply in a right-to-work state can ruin the lives of thousands. It is not evident that the "normal market" is ever, let alone usually, a guide to right and wrong conduct. The problem of defining right and wrong conduct in the world is surely as difficult as Cahn says. Perhaps selfishness is not only inevitable in people, but so valuable to the community that the market, as an institution, is morally justified. But this is an argument to be made, not assumed. It is in the evaluation of powerful social institutions that moral theory is most valuable. Cahn fails to pose any challenge because cases and statutes, the context from which Cahn's discussions proceed, rarely question the legitimacy of the powerful.

## II. CAHN'S VIEW ON LAW AND MORALITY

Because Cahn reserves condemnation for a narrow set of circumstances, one would expect the relationship between law and morality to be set out clearly; law should condemn immoral conduct. In fact, *The Moral Decision*, a book that purports to be about the relationship between law<sup>34</sup> and morality, does not clarify the relationship between the two.

Cahn discusses the difference between law and morality in Part I of the book.<sup>35</sup> He begins by rejecting two popular distinctions between the two: that law enforces minimum standards of behavior as opposed to morality's standard of an ideal human being, and that law is preoccupied with external conduct whereas morality is concerned with subjective intent. Cahn argues in response to the first position that both law and morals enforce codes of behavior relative to a particular time. In both, standards of acceptable behavior change. In rejecting the second distinction, Cahn points out that law often is concerned with subjective

---

34. I am never sure what Cahn means by "law", and it is beyond my scope to attempt clarification here. I will assume that Cahn intends to include a wide range of sources of formally defined norms, including statutes, case decisions, regulations, and so forth. At times, however, Cahn appears to be referring simply to decisions by judges.

35. CAHN, *supra* note 1, at 140.

intent, and that preoccupation with states of mind would tend "to indict the whole of mankind."<sup>36</sup>

In the end Cahn does not attempt to explain the difference between law and morality. Cahn concludes that there are moral values within law and outside law. "The only practical difference between them is the respective methods by which they are enforced."<sup>37</sup> Whatever the merits of this observation, it does not explain what the content of law either is or ought to be. To what extent should law reflect moral judgment?

There is no doubt that Cahn thinks there is a necessary role for moral values in law. Furthermore, Cahn also clearly believes that there is a great deal of valid moral insight already expressed in legal principles. Nevertheless, one is hard-pressed to say when moral principles should be embodied in legal norms in Cahn's view. For instance, from Cahn's discussion of *Post v. Jones*,<sup>38</sup> one might conclude that at the least, law should not condone truly oppressive behavior. In *Post*, the crew and cargo of a grounded and stranded ship, the *Richmond*, were rescued. The rescuers bought the *Richmond's* whale oil at a bargain price. After all were returned safely to land, the *Richmond's* owners repudiated the sale and were upheld by the United States Supreme Court. Cahn describes this case as representing the moral obligation law places upon a monopolist who alone can supply what others need. When circumstances create a condition in which one party is at the mercy of another party, the monopolist is "not permitted to follow the ways of the market place and squeeze the final drop of profit out of my necessity; (he) is required, on the contrary, to exercise restraint, honor and self discipline."<sup>39</sup>

But juxtaposed to *Post*, in the same chapter, Cahn is content that law does not penalize the "good samaritan" who smokes a cigarette calmly while a few feet away someone drowns.<sup>40</sup> Cahn clearly views such inaction as morally reprehensible. He simply considers it not "socially expedient to annex a legal sanction."<sup>41</sup>

---

36. *Id.* at 46. Cahn obliquely criticizes preoccupation with subjective mental states in moral theory as well in this section; but, as discussed above, he does not seem to take this criticism to heart.

37. *Id.* at 47.

38. 60 U.S. (19 How.) 618 (1856).

39. CAHN, *supra* note 1, at 24-42.

40. *Id.* at 190-92.

41. *Id.* at 191.

Cahn is well aware that law serves goals other than rendering moral judgment upon the behavior of a litigant, and cannot always condemn the wrong. In fact, Cahn seems to approve of law's other goals. The best example of Cahn's broad views on what law should seek to accomplish is his treatment of *Railway Co. v. Stout*.<sup>42</sup> In this case, at least as Cahn presents the facts, a "typical boy" was permitted to recover damages for an injury sustained while visiting a railroad depot. The fact that the boy was trespassing did not bar recovery. Cahn considers this to be an admirable decision because it recognizes the need of young people to be young—to explore with intensity and irresponsibility.<sup>43</sup> He criticizes the later case of *United Zinc and Chemical v. Britt*,<sup>44</sup> because in that case Justice Holmes failed to appreciate the "universal habits" of children to search, wander and venture on.<sup>45</sup>

The discussion is inconsistent with any insistence that law should serve always to advance the community's sense of moral behavior. In *Stout*, both parties appear to be morally blameless. The railroad must pay damages not because it acted in an immoral way, but because the boy was innocent and was injured. It is important to note that Cahn's analysis does not presuppose negligence by the railroad. It is based wholly upon the boy's innocent behavior. It would not be immoral, in Cahn's view, for society to hold the railroad free of liability and to pay for the boy's injuries in some other way.

The same ambivalence about the proper relationship between law and moral values afflicts Cahn's discussion about how judges should decide cases. *The Moral Decision* is not so much a book about law as it is a book about the decisions and insights of American judges. Cahn sees law, and by law he seems to mean legal opinions in specific cases, as a device to teach about the good.<sup>46</sup> His own discussions are "prism[s]" that reveal "an entire spectrum of moral forces."<sup>47</sup> His discussions seem to be examples for judges of how to reason morally so as to teach society.

But Cahn does not resolve an ambiguity in the role of the

---

42. 84 U.S. (17 Wall.) 745 (1873).

43. CAHN, *supra* note 1, at 74.

44. 258 U.S. 268 (1922).

45. CAHN, *supra* note 1, at 75-76.

46. *Id.* at 3-5.

47. *Id.* at 4.

judge that echoes the issue of the role of morality in law. It is clear that in Cahn's view the judge is not free, and should not be free, always to follow a personal sense of morality. Thus, moral reasons for a legal outcome might be "far in the background"<sup>48</sup> compared to legal reasons. In *Rachel v. State*,<sup>49</sup> city detectives peered into, and ultimately broke into, an unmarried man's apartment and arrested the man and his unmarried girlfriend who were in bed together. Oklahoma did not have a statute outlawing fornication itself. The Criminal Court of Appeals of Oklahoma reversed convictions for injuring public morals because "whatever they had done had been done in private."<sup>50</sup> Cahn considers the method of prosecution rather than the act of lovemaking to be immoral, but states that if Oklahoma had had a statute making fornication a crime, the convictions would have been upheld, a limitation upon the judges he does not condemn.<sup>51</sup> Cahn would not abandon us to a judicial moralist hegemony. He seems to agree that most choices judges make should be controlled by a legislature.

Nevertheless, Cahn assumes as well that judges will rely upon their own moral values in deciding cases. Cahn defines the wise judge as one who is able to separate "good from evil."<sup>52</sup> Cahn says a court trial serves "one main objective: finding out what a litigant *deserves* in connection with some *particular* transaction. . . ."<sup>53</sup> Cahn quotes, with obvious approval, John Chipman Gray's observation that "many cases should be decided by the courts on notions of right and wrong."<sup>54</sup>

I am not going to attempt to resolve the unresolved in Cahn. It is our time, not his, that has rendered the relationship between law and morality, between institutional values and the judge's moral views, increasingly problematic by giving law so much to do. Lawyers have decided that cases should be used to maximize wealth, provide social insurance, regulate commercial transactions and so forth. We have created conflicts between law

---

48. *Id.* at 145.

49. 107 P.2d 813 (Okla. 1940).

50. CAHN, *supra* note 1, at 88.

51. *Id.* at 89.

52. *Id.* at 290.

53. *Id.* at 117.

54. *Id.* at 302.

and morality, or at least created ever more legal contexts in which moral judgment is not seen as important.

Cahn does have a final word of insight about the role of the judge, however. Cahn would not be opposed necessarily to our use of the judiciary to analyze problems of pollution, to solve cost benefit puzzles, or to restructure the communications industry. But he might believe that such assignments, if they predominate, represent the waste of a precious resource—judgment. In Cahn's view, the judge is not a technician, but rather one who seeks to understand the parties in the case,<sup>55</sup> "to see through illusions to the true circumstances that lie beneath and beyond."<sup>56</sup> Cahn might say that to ask whether there is a relationship between the judge and moral judgment and to seek to specify the content of such relationship, is to ask the wrong questions. In the trial courtroom, at least, the judge is always, and in every case, called upon to understand the relationship of the parties who are before the court. A judge can only know these others by the methods of moral decision-making Cahn describes as the moral constitution: dramatization, projection and the sense of wrong. Thus, the search for truth, always the judge's task, cannot be distinguished from the search for the good.

*Bruce S. Ledewitz\**

---

55. *Id.* at 148.

56. *Id.* at 290.

\* The reviewer is an Associate Professor of Law, Duquesne University School of Law.

