

1982

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Recommended Citation

Table of Contents - Volume 21, Number 1, Fall 1982, 21 Duq. L. Rev. iii (1982).

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Duquesne Law Review

Volume 21, Number 1, Fall 1982

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Articles

LIBERALISM AND JUDICIAL AUTHORITY

Cornelius F. Murphy, Jr. 1

In Dworkin's Rights Thesis, the ideal judge who decides a "hard" case must determine whether the asserted right exists under the Constitution. The author criticizes this thesis by first contrasting it with an alternative model of adjudication in which the weighing of competing interests is decisive. He then demonstrates that no model is adequate to cover the complexity of "hard" cases. The "hard" case requires the exercise of judgment. The individual Justice makes a judgment based upon all the relevant factors which must be addressed in order to carry out the administration of justice. The content of the judgment cannot be determined in advance. It is indeterminate, yet has a moral quality and is not arbitrary.

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The Duquesne Law Review is published quarterly at Pittsburgh, Pennsylvania. Editorial Offices: 132 The Edward J. Hanley Hall, 900 Locust Street, Pittsburgh, Pennsylvania 15282. Subscriptions: \$12.50 per year. Subscriptions are automatically renewed unless otherwise stipulated.

Single issues of the current volume are available from Duquesne Law Review at \$4.00 per copy. Other back issues are available through Dennis & Co., Inc., 251 Main Street, Buffalo, N.Y. 14203.

Citations conform to *A Uniform System of Citation* (13th ed. 1981).

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