Philosophy in Review

Melvin Eisenberg, 'Legal Reasoning'

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See table of contents

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Melvin Eisenberg. *Legal Reasoning*. Cambridge University Press 2022. 180 pp. $89.99 USD (Hardcover 9781009162524); $29.99 USD (Paperback 9781009162500).

Legal Reasoning, by Melvin Eisenberg, is a comprehensive and thorough examination of the foundations, principles, and tools of legal reasoning–those dialectical processes and techniques by which courts, jurists, scholars, and lawyers apply, interpret, develop common law rules, and construct legal arguments. The book addresses both the conceptual foundations that define legal reasoning as well their practical applications in interpreting and applying the law. Aimed at law students, academics, and practitioners, *Legal Reasoning* is a structured approach to understanding legal argumentation and reasoning in the common law context. Eisenberg's book is comprehensive in this respect, engaging with a number of important formal and informal legal techniques, jurisprudential concepts, and influences, including the distinction between legal rules and legal principles, the principle of *stare decisis*, and concept of *ratio decidendi*, to name but a few. His treatment of these topics is rigorous, with a writing style that is accessible, direct, and succinct. Of particular value is Eisenberg's use of case studies and references throughout the book to tie the abstract legal concepts under discussion together with their practical applications *in situ*. Throughout, Eisenberg makes clear his intention to consider, explain, and analyze legal reasoning in the common law, and his success in this regard is evident in the clarity with which he elucidates both the mechanics of legal argumentation as well as the deeper intellectual commitments and social contexts that shape legal reasoning and interpretation.

Eisenberg begins his project in the opening chapter by describing the function and role of legal reasoning within the common law system and outlining its significance within the broader field of jurisprudence. He describes the dual function of the common law courts as resolving disputes and creating legal rules. He then situates common law legal reasoning within this framework, setting the stage for his subsequent analysis in the book of the methodologies and conceptual commitments of legal reasoning.

Chapter 2 continues with this analysis and focuses on the role *rule-based* reasoning plays in the common law. While acknowledging the occasional role of analogy-based reasoning and similarity-based reasoning in the law (the former topic is addressed in some detail in Chapter 10 of the book), Eisenberg devotes the majority of this chapter to demonstrating how common law legal reasoning is predominantly rule based–"that is, based on the application of legal rules to the facts of the case

to be decided" (ix). His use of the *Hernandez* case to demonstrate rule-based reasoning is particularly illustrative of this process, and is indicative of the important role that actual judicial decisions play in Eisenberg's project.

In Chapter 3, Eisenberg investigates the principle of *stare decisis*, which, he explains, is foundational to maintaining consistency and predictability within the common law system. This section addresses various balance constraints and substantive limitations on *stare decisis*, making substantial reference to legal decisions and rulings to effectively illustrate these points. Understanding *state decisis* is essential for grasping how the common law evolved and operates in practice, and Eisenberg's analysis is particularly insightful in this respect.

Chapters 4 and 5 discuss, respectively, how precedent is used to determine legal rules, and, the role of non-legally binding rules, such as authoritative legal treatises, in determining legal outcomes. Eisenberg's discussion of H.L.A. Hart in relation to this later point is a unique and particularly insightful contribution to the field of applied jurisprudential analysis, and it effectively demonstrates Eisenberg's project of tying together theory and practice. Again, both chapters contain a great many references to informative legal decisions and relevant scholarly commentary, assisting the reader in grasping otherwise obtuse and byzantine legal principles in a clear and direct manner.

I won't discuss all of the remaining chapters in detail, but I do wish to highlight three that I think are particularly useful for anyone interested in the philosophical and jurisprudential commitments and implications involved in the common law legal reasoning process and tradition. They are, respectively, 6 – "The Role of Moral, Policy, and Empirical Propositions in Legal Reasoning"; 7 – "Legal Rules, Principles, and Standards"; and, 11 – "The Roles of Logic, Deduction, and Good Judgment in Legal Reasoning".

Chapter 6 focuses on the distinction between legal rules and social propositions (the moral, policy, and experiential reasons behind those rules). Social propositions, explains Eisenberg, can and do influence the judicial decision-making process by providing context for why certain legal rules exist, and effective legal reasoning must consider, weigh, and balance both sources. Eisenberg's analysis here is illustrative of how the law, and hence, the proper standards of legal reasoning, can and do evolve and adapt with changing social mores.

Chapter 7 is particularly interesting and informative from the perspective of jurisprudential analysis. Here Eisenberg categorizes the norms used in legal reasoning into rules, principles, and

standards, providing clarity on the distinct role each plays in legal reasoning. While this is one of the shorter chapters in the book, it is by far the most philosophically rich, and Eisenberg's short discussion of Dworkin's contributions to this analysis is straightforward and focused on how the latter's work can be used to best understand and situate extant legal decisions and rulings within the broader context of the common law.

In Chapter 11 of *Legal Reasoning*, Eisenberg discusses the roles of logic, deduction, and good judgment in effective legal reasoning. His treatment of these first two concepts is straightforward and does not depart in any significant way from the standard approach. I was, however, gratified to read Eisenberg's dismissal of syllogistic deduction as mostly irrelevant to legal reasoning. As someone who teaches a course in legal reasoning and analysis, I find myself often frustrated by textbooks on the subject that devote undue attention to syllogistic logic; in my over 20 years of doing legal research, I have yet to come across a case where minor and/or major premises were explicitly debated or formed the basis of a substantive legal resolution, and I have certainly never felt a need for an in-depth discussion of the issue in a course devoted to legal reasoning and analysis. Eisenberg's discussion of 'good judgment' – which he defines as "the ability to make sound and well-rooted decisions based on precedent and principle together with a breadth of vision and an understanding of how law can advance the common good" (89) – is certainly interesting, but is a bit cursory and as a result lacks a certain depth of analysis. This is no doubt because, as Eisenberg himself admits, something as nebulous as good judgment is somewhat difficult to quantify, codify, and analyze. Nevertheless, more seemingly could be said regarding the role of these informal, qualitative judgments in the law, and their proper criteria for assessment. Such judgments, after all, are the foundation of much legal scholarship and jurisprudence.

One topic underexplored in *Legal Reasoning* is the role of juries in legal outcomes and the indeterminacy they introduce into the judicial process. While Eisenberg provides a detailed account of the tools used in judicial reasoning and the interpretive principles guiding judges, he leaves relatively untouched the reality that jury decisions and the influences that guide them lack the same formalized reasoning process as judicial opinions, yet significantly influence legal outcomes and judicial behaviour. This discussion would add depth to Eisenberg's analysis, as the presence of a jury affects not only trial outcomes but also the way judges might frame instructions, interpret law, and make evidentiary decisions. A deeper exploration of how legal reasoning interacts with and is sometimes constrained by the presence of a jury would provide readers with a fuller understanding

of the factors that shape real-world legal decisions, reasoning, and outcomes. While this focus on a 'jury effect' could enhance the scope of *Legal Reasoning*, it should be noted that this is not meant to be a major criticism and does not in any way detract from the value or thoroughness of Eisenberg's core aim – to explain the foundations of legal reasoning in the common law. Rather, such considerations point the way forward for how Eisenberg's project might be further developed and expanded upon.

Except for that (very small) lacuna, *Legal Reasoning* by Melvin Eisenberg is a well-crafted exploration of legal analysis in the common law and will no doubt prove to be a useful resource for anyone engaged in the study, teaching, or even practice of the law. I intend to use it as a supplementary text for my upcoming course in legal reasoning and analysis next semester.

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