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Book Reviews

LAWYERS AND THEIR WORK. By Quintin Johnstone and Dan Hopson, Jr. New York: The Bobbs-Merrill Company, Inc., 1967. Pp. 604. \$10.00.

I.

Lawyers are fast becoming more visible to the lay world, consumers of their product. They are also coming more and more under their own introspective scrutiny, as a series of fast-moving events bring it home to all that established ways of doing business will not suffice to meet the needs of the future. Recently, the Harvard Law School, which has long been a leader in American legal studies, celebrated the Sesquicentennial of its founding with a two-day convocation, the theme of which was an anxious peering ahead to try to discern the tasks which face us, and what law schools and lawyers will have to do to meet their responsibilities. In the fields of criminal law, "poverty law" and urban legal problems, for example, we will need great numbers of lawyers. Will their recruitment present problems? Is the bar prepared to accept smaller recompense than it now enjoys for doing the jobs which have to be done?

A recent issue of the *Harvard Law Record* (Vol. 45, No. 5, Oct. 26, 1967) lists some statistics, suggesting that graduates of that school have fared well in the last three or four decades dealing with the less vexing problems of the past. Graduates of the class of 1932, in private practice, show yearly incomes varying from an average of \$43,300 for single practitioners, to an average of \$147,000 for partners in large firms. Figures for the comparatively recent class of 1951 range from averages of \$25,850 for single practitioners, to averages of \$50,390 for partners in large firms.

This is surely a comfortable status quo, and one can imagine a good deal of determined resistance to changing it. The same issue of the *Record* contains a comforting indication that the lawyers of tomorrow will not be lacking in idealism, however. A student editorial notes and approves the Harvard Law School faculty's offerings of new courses designed, not to sharpen skills useful in fashioning even larger incomes in corporate offices and Wall Street law firms, but to respond to broadly felt social needs which can scarcely be expected to yield large financial rewards (*id.*, p. 8):

At the present time the needs of a society in flux have forced into the limelight the many-faceted field of urban law—from individual rights and crime prevention to city planning and increasing federal regulation.

In addition, current Supreme Court decisions, new government programs and recent additions to the Law School curriculum suggest that a wave of new demands is challenging the legal profession and American law schools.

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What is important, both for the School and for the students, is the fact that the faculty has recognized the general need and is responding to it individually and collectively with new approaches and new course offerings.

II.

Yale Law School, although smaller and younger than its friendly rival in Cambridge, has long been a leader in the sort of empirical approach which brings the tools of the sociologist and statistician to bear in helping to get at the roots of legal problems. For a number of years, studies have been carried out at that institution by faculty members and students on the role and function of lawyers in various fields of practice. Some thoughtful and useful works on the nature of the lawyer's work have resulted, and the present book is one.

This book and others like it will command attention because we will need trustworthy information about the merits and demerits of our present legal system before we can plan intelligent solutions for the new problems we see in the offing. Well-meant panaceas, put forth without a full understanding of the historical and social reasons for seemingly irrational customs and usages, can be terribly destructive. While the social scientist seeking to describe a forest sometimes does fail to see it because of the trees, equally often he may be too impatient to look at enough trees before coming to his conclusion, or he may not be an astute observer of trees, their branches, roots and bark. The workings of a profession are generally too subtle and complicated to yield to the scrutiny of outsiders. Even nominally accredited members of a profession, who are academics, rather than long-time veterans of its work-a-day practicalities, usually cannot be relied upon to furnish a reliable appraisal of it, in depth. The remarkable achievement of this book is that every practicing lawyer will instantly recognize not only the factual correctness and thoroughness of the discussions of the special sphere of the law with which he is most familiar, but the common sense, fairness and practicality of the extrapolations and opinions based thereon. While the goal of the authors is a picture of the law from the broad point of view of what is best for all society, rather than from the egocentric view of the lawyer, the latter will recognize the truth of what he reads, even when the authors bring to light and condemn some of the shoddier aspects of the practice. This book is the result of interviews and research carried on by the authors themselves, and by research assistants and law students working under their direction, from 1960 to 1964. More than 400 interviews with lawyers, and employees of legal organizations, in this country and in England were undertaken.

Designed to give a picture of the American lawyer and his work, as a basis for its suggestions for improvement, the book adopts the device of a detailed comparison,

in great depth, with the English lawyer and his work. About half the book is devoted to a careful and informed consideration of the English profession, although the authors note that this is done with the purpose of illuminating what the American legal profession can profitably borrow from it, or carefully avoid.

The great numbers of American lawyers who have made one or more trips to London, visited with charming English legal friends, lunched well at an Inn of Court, or at The Law Society, and enjoyed the witty, competent and cultivated performances of bewigged barristers, are apt to sigh, like Miniver Cheevy, for the good old days. Bar Association meetings from coast to coast have been regaled—and sometimes bored—with the name-dropping reminiscences and learned commentaries of such returned visitors. One chuckles—albeit guiltily—at the authors' brisk note that:

The legal profession in England is often looked at starry-eyed by lawyers from this country and it is time that Americans examined the English situation more closely. There is much we can learn from such observations, and the views of American lawyers, when no longer awestruck by being back in the womb, may even be helpful to the English, disconcerting though it is to have criticism volunteered by outsiders.

III.

At the outset, the authors state the goals which they had in mind in undertaking their studies. These include conditions which make available satisfactory legal services at a fair price, to all who can benefit from them, regardless of financial resources, low social status or unpopularity of the client's cause. For lawyers, there should be enjoyable and satisfying work, at a fair remuneration, and reasonable job and retirement security, commensurate with contributions and abilities.

Inadequacies noted include excessive cost of legal services, principally due to inefficient methods of doing the work and to taking advantage of the monopoly enjoyed by the profession; low quality of a good deal of the legal services rendered, due in part to an unequal distribution of good lawyers, and in part to inadequate legal training, a lack of continuing legal education, and the desultory enforcement of proper discipline; and the fact that many in need of legal services never get them, because they are too poor to afford them.

The first part of the book gives an "overview" of the legal profession in the United States, setting forth statistics on the numbers and distribution of lawyers; an informative history and description of the American Bar Association; a short description of how law schools are organized and how they function; a discussion of the economics and mechanics of fixing fees; and some view of how the status of lawyers in our larger society, as well as in their own smaller world, is determined.

While most of this will be familiar to lawyers, and it is intended as orientation for non-lawyer readers, it is so well organized and stated that it makes good reading for lawyers as well.

Other chapters on the American legal scene deal with work tasks of lawyers; specialization and standardization; the law of unauthorized practice; corporate law departments; mortgage review organizations; the big plant title insurer; the architect as advocate and adjudicator; and standardized legal documents: AIA Forms. At first

glance, this listing of chapter titles may seem to imply a disorganized congeries of narrow and separate subjects scarcely calculated to give any sort of connected insight into our legal system. On the contrary, the logic of the organization of the book is admirable, and extraordinarily well-conceived to achieve the authors' goals.

Thus, one important conclusion of the authors is that American lawyers are enjoying a monopoly which may be crumbling. As a basis for it, they analyze the actual work tasks of each segment of the bar, including specialists, and then show how practitioners of other non-legal professions and occupations are increasingly able to perform a good many of these services as well as, or even better and more economically than, lawyers do. Encroachments on traditional law practice by corporate law departments, by accountants taking over tax work, by real estate agents, banks and trust companies performing necessary services in the sale of real property and managing of money and estates, with efficiency, at low cost; by title insurance companies and architects, in the special fields of their expertise, which overlap the practice of law; are all discussed in painstaking, practical and intensely interesting detail, with a good deal of objectivity. The use of "Unlawful Practice" laws to maintain the lawyer's monopoly is examined, and found to be a device of doubtful legal validity, as well as of diminishing utility, in view of recent decisions such as *Brotherhood of R.R. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964). Corporate law departments are also examined, as to their functioning, in the most minute detail, taking the actual experience and methods of several large companies as examples.

Another important conclusion of the authors is that if we are going to maintain and increase our efficiency and ability to compete with the encroaching competitors, we will have to make a great deal more use of non-lawyers to perform tasks now done by professionals admitted to the bar. Here, comparison with the English experience, where non-admitted clerks do a great many of the jobs which lawyers do in this country, is enlightening, as is a consideration of the limited supply of law students, the rapidly growing needs of the public for increased legal services, and the insistent pressure for reducing costs and getting more efficient service than is now rendered.

IV.

The straightforward, unadorned style and tone of the book are refreshing. Social-science and neo-Freudian gobbledygook terms so often encountered in books of this type, are avoided, and the book will undoubtedly make as useful and informative reading for an intelligent layman as it will for the lawyer. Any judge, lawyer, bar association officer, or law teacher who has his sights set higher than his own immediate bread-and-butter interests will find that reading the work of Professors Johnstone and Hopson will enlarge his horizons, correct some of his unfounded beliefs, however cherished heretofore, and replenish his basic storehouse of interesting shoptalk with a great stock of fascinating and enjoyable factual material about our English cousins.

The final conclusion of the authors, on the last page, is not only fully warranted by what has gone before, but is so pithily expressed that it is worth quoting in full. Despite problems, weaknesses and malfunctionings of our system, they hold out a

hopeful and encouraging future for American lawyers. One learns with concern that the prospects for the English are more somber:

Prospects for the future. Not only are American lawyers a more significant force than lawyers in England, but this disparity may become more pronounced in the future. We are inclined to be pessimistic about prospects for lawyers in England. Legal aid there has about reached its limits as a source of additional work for lawyers. Conveyancing is likely to decline as a source of solicitors' income. The dwindling supply of competent lay law clerks is raising the cost of running solicitors' offices and cutting into solicitors' profits, and this situation will probably become more serious. Neither barristers nor solicitors are showing much inclination to increase the scope or quality of legal services, and needed organizational changes in the profession are likely to come very slowly. Prospects are brighter for American lawyers. The American profession is more flexible, with greater facility in adapting to new conditions. Lawyers in the United States will continue to be very extensively relied on by both government and private interests in the broad area of government regulation, and new forms of government control will provide vast new opportunities for lawyers. But, perhaps most important of all, the long-term economic outlook for the United States is much more encouraging than that for England, a factor that by itself may mean a growing divergence in the relative significance of lawyers in the two countries.

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