1966

Reflections on Professor Chroust's The Rise of the Legal Profession in America

Donald P. Kommers
Notre Dame Law School, donald.p.kommers.1@nd.edu

Reflections on Professor Chroust's *The Rise of the Legal Profession in America*†

by DONALD P. KOMMERS*

PROFESSOR CHROUST'S TWO-VOLUME HISTORY of the legal profession is an imposing assemblage of dates, names, places, and laws organized to give us a profile of the American lawyer and the status of his profession before, during, and a quarter century or so following the Revolutionary War. This study also seeks to assess the contributions of the colonial and post-colonial bar to the development of a civilized legal environment and to record the bar's struggle to liberate itself from restrictive, often punitive, legislation which greeted the lawyer's presence in early America. Court records, bar reports, archival collections, but mostly secondary legal treatises and bar histories, constitute the main sources out of which this study is weaved. The author's heavy reliance on early statutory and constitutional provisions pertaining to the preparation and professional conduct of lawyers is also evident. The first volume is devoted exclusively to the colonial lawyer while the second records the difficulties of the bar's growth and organization after the Revolutionary War, although Professor Chroust does not carry his story much beyond 1836.

Before turning critically to Professor Chroust's work, it might be convenient to present a brief expository review of his major findings and conclusions. A dominant theme pervading these two volumes is that a highly skilled and developed legal profession is necessarily and absolutely dependent upon a socio-legal environment that includes a disciplined and systematic body of law administered according to uniform and impartial procedures by an independent system of regular courts staffed by competent and highly trained personnel; it depends as well on a general popular attitude which is at least congenial to the administration of justice by these institutions and means. A corollary theme is that in the absence of

* Assistant Professor of Government and International Studies, University of Notre Dame, Notre Dame, Indiana.

† Anton-Hermann Chroust, *The Rise of the Legal Profession in America.* Norman, University of Oklahoma Press (1965), 2 vols.

such institutions justice inevitably will be administered either capriciously, by the ill-defined and varying standards of natural justice, or in accord with the precepts of some authoritarian or religious value system.

During the century or so prior to the Revolutionary War, according to Professor Chroust, several factors inhibited the development of the legal profession. The most important among these were (1) the influence of the Puritans who enforced decisions based on the "word of God" as they understood it, rather than on English law, (2) a hostile public attitude toward a profession associated with the arbitrary behavior of the Crown, (3) a poorly trained bar due in part to the almost total absence of formal legal education, and (4) the fact that the power structures of the community, dominated in the southern colonies by planters and merchants and in the New England colonies by religious leaders, refused to admit the lawyer into their ruling circles.

Nevertheless, the lawyer was a functional necessity even in pre-Revolutionary days given the general adoption, though with important modifications, of English law and judicial institutions. Yet, popular unwillingness to accept a highly trained legal profession as a necessary adjunct to these institutions resulted in courts administered by untrained, and frequently unscrupulous, lawyers and judges. Professor Chroust concludes that "a class of irresponsible spellbinders and pettifoggers who prey upon the timid" invariably followed colonial legislation restricting the activities of those whom he calls "trained and responsible lawyers." The product of these conditions, he finds, was a substantial amount of chicanery and deceit among poorly trained lawyers seeking to exploit an unsuspecting and ignorant public in need of legal services; this, in turn, led to gross procedural irregularities and unjust decisions from the bench. Though the author's description of these phenomena does not entirely make clear, with respect to each colony, the precise source of popular antipathy to lawyers, the chain of causality seems to go something like this: Cultural and environmental conditions originally prevented the rise of a trained bar; but the lack of a trained bar, which invited pettifoggery, led to the intensification of public antipathy to lawyers; this resulted in widespread punitive legislation curtailing their activities and fees, adding one more significant impediment to the rise and development of a skilled profession.

The difficulties and uncertainties in this formative era of American bar organization are attributed to the general failure of the colonies to hasten the reception of common law into their legal systems and to accord the lawyer his rightful place in society. In fact, Professor Chroust's ardent defense of common law and the

legal profession leads him to regard these two instruments of socio-legal control as the most important civilizing agencies of the time. A recurrent theme of this work is that there can really be no law without lawyers and no justice without law. Thus, the appearance and rise of the legal profession seems to be positively correlated with the acceptance of common law.

There appear, however, to be some important variations on this theme. For example, while the common law was fully accepted in Virginia, lawyers as a class were often suppressed; the acceptance of the common law in Maryland, on the other hand, did lead, in the author's view, to the early emergence and development of a "trained" and "respected" bar. In some colonies such as New York, New Jersey, Maryland, and Georgia the common law was recognized by the courts at an early date and generally accepted by the public. Here it appears that lawyers exerted considerable influence in legal affairs despite much popular prejudice against them. In other colonies, however, such as Connecticut, Massachusetts, and Pennsylvania, the introduction of common law was militantly and successfully resisted while the emergent lawyer had enormous difficulty gaining status and recognition as a professional advocate. The suppression of the legal profession in many of the colonies did not consist essentially in prohibitions against the practice of law—though it was sharply circumscribed by measures that limited fees so severely that few men of the time cared to assume the financial risks of full-time law practice—but in the colonial refusal to recognize that judging, pleading, or the giving of legal advice was the exclusive preserve of a single class of men. Nevertheless, by the time of the Revolution, the common law was fairly well received in the colonies and a distinctive and recognizable body of men called lawyers had arisen.

Though Professor Chroust's attention to detail adds up to a salutory reminder of the colonial bar's importance to the development of our law and judicial institutions, one is still left with the uneasy feeling that the conclusions or generalizations advanced by the author do not inexorably follow from the data he has chosen to stress. His framework of inquiry seems to lack a principle of inclusion and exclusion in terms of which a consistent theory of the rise and development of the bar might be postulated.

The point is in need of some amplification. Volume one, like volume two, is a virtual dictionary of dates, places, and events relevant to legal history, a veritable *who's who* containing capsule biographies of nearly every lawyer fortunate enough somehow to have had his professional contributions—or machinations—recorded, a catalogue of the major rules, regulations, and statutes

which bear upon the legal profession, and a collection of entertaining stories and anecdotal materials about the lives and activities of famous and infamous lawmen. Such a *tour de force* may constitute more than adequate justification for the publication of these volumes. But the author does not give us new insight into the quality of seventeenth and eighteenth century judicial administration, if measured by the satisfactions people generally received from legal counsel and court decisions, or new insight into the purposes for which lawyers utilized and manipulated law. One gets the feeling that the real life of the law and the role of the lawyer in determining law's life are submerged if not somewhat distorted by Professor Chroust's fixation upon many *single* cases or situations which depict the lawyer either at his best or at his worst. The history of the bar is almost made to look like a contest between good lawyers and bad lawyers, if not a struggle between good men and bad men.

Professor Chroust argues throughout that the only effective way to overcome the professional misconduct of the bar's lax brethren was to bring the entire profession under the firm discipline of tighter bar organization; hopefully such control would generate more skilled lawyers schooled in the tradition of common law. But in determining whether the colonies had a "trained," "respected," or "distinguished" bar Professor Chroust resorts to a questionable reputational technique. While it is probably true that the progressively higher standards of bar admission resulted in lawyers of increasingly greater skill, the reputation of a bar—or a lawyer—is no necessary index of its probity or influence. (If I may be permitted this interjection it might be of some methodological interest to note here that the traditional and so-called reputational—or sociological —method of determining the identity, power, or influence of community leaders—and community power structures— has been subjected to substantial criticism in the literature of modern sociology). A considerable measure of bias would seem to have inadvertently slipped into this study by the mere fact that many of the author's judgments about lawyers and the bar derive from the writings of lawyers about other lawyers. More importantly, the author's rapid-fire rendition of capsulated biographies tells us little about the social role of the lawyer in the resolution of conflict at this time, or about the role that law played in the lives of ordinary people. For example, the judgment that "Delaware never developed a truly distinguished bar of its own" tells us nothing about the satisfactions or dissatisfactions that law brought to the inhabitants of that colony in the light of its political and social objectives. It

seems that assessment of the bar's quality or contributions would have to include inquiry along these lines.

There can be no doubt that popular antipathy toward the lawyer was strong in early America. What is to be doubted, however, is that even a small part of this antipathy stemmed from the malpractices of unscrupulous lawyers. Of course, hostility to the lawyer in the context of colonial America should surprise no one. Professor Chroust's very careful listing or cataloguing of the "most distinguished" colonial lawyers indicates that a large number of them—perhaps the overwhelming majority—came from the upper classes. A high proportion of colonial lawyers, particularly from South Carolina, Virginia, and Pennsylvania, even had the means to acquire their professional training in the English Inns of Court. Most of them returned to argue the Tory cause and resist the movement toward national independence. As Roscoe Pound noted, "The Conservatism characteristic of lawyers led many of the strongest men at the bar to take the royalist side and decimated [as Chroust does not neglect to point out] the profession."[1] The upper-class bias of the legal profession at that time was also indicated by the profession's almost total commitment to the protection of property rights. Indeed, the legal profession was to be identified as much by social status as by training and temperament; some years later Tocqueville observed that lawyers formed "the most cultivated portion of society," constituting America's aristocracy.[2]

Though the perceptive Frenchman meant by this an aristocracy of talent or position rather than of wealth, the bar for the most part sided with the rich in legal controversies, both great and small, during this formative era of our law. The debtor's enmity toward the lawyer was sufficient evidence of this. The lawyer's contribution to political stability at this time may well have been due to his ardent defense of legality which amounted to a defense of property. But his failure may well be attributed to his reluctance, even refusal, to invent new legal devices, institutions, or concepts to accommodate the demands and claims of poor workers, farmers, and debtors. It is here that criticism is due the legal profession in the early days of its growth and organization.

This upperclass bias of the legal profession became even more pronounced in the nineteenth century. The bar, of course, has always had its distinguished cadre of leaders who were conscious of the need to elevate professional standards and mindful of their public responsibilities. But Willard Hurst pointed out that "as a group,

[1] Roscoe Pound, *The Formative Era of American Law* (1938), p. 7.
[2] Alexis de Tocqueville, *Democracy in America* (1955), v. 1, 288.

they [bar leaders] never had a determining influence on the working values and behavior of the bar as a whole." He continued: "For better or for worse, the bar in the United States was middle class—in its outlook, predominantly upper-middle class. That implied an unresolved mingling of the urge to get on, with an only partly articulate and partly practiced sense of social obligation such as men could afford to have who came from a point above the margin of subsistence."[3] On the other hand, Professor Chroust's almost total concern with the internal problem of bar organization and discipline leads him, not unexpectedly, to over-emphasize the prevalence of legal chicanery. For every instance of pettifoggery—the existence of which is attributed to the relative absence of the trained lawyer and disciplined bar organization—there probably were numerous instances of satisfied judgments.

Furthermore, there was no intrinsic reason why intelligent men of affairs generally—without highly developed legal skills—could not, in many colonial settings and later on the frontier, administer justice with invariable standards of judicial administration. The author argues that justice according to law was the necessary by-product of the common law administered by a professional class of lawyers. If such professional law administration became necessary later in a more interdependent and mercantilistic society, it did not seem requisite to a just social order on the frontier. Indeed, many frontier communities seem to have achieved remarkably just and stable social orders without the formalized agencies of law the author believes were so necessary to avoid lawlessness and injustice even in the context of eighteenth and early nineteenth century America.

Merle Curti's excellent description of social processes in Trempealeau County, Wisconsin—a typical frontier community—shows a healthy, developing, and self-sufficient community where neighbors by and large administered to each other's needs; there was little demand for the services of professional men. Lawyers, for example, who in 1860 numbered only five out of a total population of 2,559 in Trempealeau County were forced to supplement their incomes by farming or business; two of the five lawyers left the thriving County to seek greener pastures elsewhere.[4] Here the plight of the lawyer was not due to popular antipathy toward him, but to the very nature and circumstances of the time. The popular stereotype of an unruly frontier is seriously undermined by the image of relative social stability and law-abidingness that characterized this

[3] James Willard Hurst, *The Growth of American Law* (1950), p. 254.

[4] Merle Curti, *The Making of an American Community* (1959), pp. 249-251.

frontier community, notwithstanding the relative absence of lawyers and courts of law. Yet, said Curti: "Where county government acted, it acted with simple pragmatic competence. A pattern of roads and bridges emerged. The needs of the dependent poor were met. New towns were established. Taxes were levied and collected. In the early days, county action depended upon a half-dozen supervisors reaching consensus through informal discussion." One is also impressed with the *regularized,* though lawyerless, methods of solving problems and achieving results. Curti notes: "One looks in vain in Trempealeau for a frontier effort to circumvent a law defining county or township government. Evidence suggests no attempt to solve a community problem through an extra-legal association rather than through the constitutionally established organs."[5] My own research on law administration in the primitive setting of pre-territorial Wisconsin largely confirms these impressions.[6]

It should be remembered that judicial justice, in the sense used by Professor Chroust, was not always to be equated with social or economic justice. A broad perspective on legal history should perhaps involve the measurement of the lawyer's contribution to legal development by his attention to judicial mechanics and his insistence on proper procedure against what appears to be his relative failure to give equal attention to the broad purposes of the law that he helped to make and enforce.

But Professor Chroust was good enough to give the reader advanced warning of his overwrought defense of the skilled legal technician. In the foreward to the first volume he admonished: "But let the reader beware: I was educated in the law, and am, perhaps, too eager to overlook many instances of pettifoggery, barratry, champerty, maintenance, and the other vices only too commonly found in the practices of certain lawyers in the colonies and in young America. My views may be excessively one-sided, especially when I consider the situation in areas and historical periods which together with their unreasonable hostility toward trained lawyers attempted to institute a system of 'common sense law' and 'natural justice' administered by well-meaning (and sometimes not too well-meaning) laymen" (page ix).

The tendency of these two volumes is to evaluate the legal profession largely in terms of its organizational characteristics. Professor Chroust is inclined, in my view, to be overly critical of those forces, individuals, and institutions which are responsible for inhibiting the development of a professional guild of trained law-

[5] Curti, *op. cit. supra,* note 4, p. 294.

[6] See Donald P. Kommers, "The Emergence of Law and Justice in Pre-Territorial Wisconsin," 8 *Amer. J. of Leg. Hist.* 20 (1964).

men. In fact, legislators and lawyers who resisted bar organization are charged with having been enemies of the legal profession and opposed to the administration of justice according to law. Polemicism of this sort does not belong here; the author might well have devoted more of his time trying to identify the non-legal and external social, economic, political, and cultural conditions—over which the lawyer had little or no control—which led to the professionalization and/or deprofessionalization of the bar. Not everything in history can be explained by the personal motivations or animosities of men.

Unfortunately Professor Chroust's material on the emergence and decline of bar organization between 1790, roughly, and the late 1830's offers no new insights into the reasons for the sharp decline in bar organization after 1830. And despite the author's labors in the archives of the original states he has presented little that was not known before, or that could not be quickly discovered by reference to any other standard or reliable history of the bar in America. In fact, Professor Chroust has given us a series of isolated and very brief case histories, sometimes running a single paragraph in length, of the Suffolk (Boston) Bar, the Essex County Bar, the Franklin County Bar, the Norfolk County Bar—all of Massachusetts—the New Hampshire Bar, the Maine Bar, the New York Bar Association, the Philadelphia Bar Association, and others. All appear to have gotten started around the turn of the century. Some of them—particularly local bar associations in Massachusetts, Rhode Island, and New Hampshire—became so organized and cohesive that they gained complete control over the requirements and standards of admission to the bar, a practice in which the courts, officially given this responsibility, apparently acquiesced. Not only were they organized to establish educational qualifications and admission standards, but also they seem to have been established for the purpose of founding law libraries, to create fellowship among lawyers, and to discipline the profession. In any case, these bar associations had all the characteristics of a self-governing profession or guild. This development, of course, merits Professor Chroust's praises. Then, suddenly, after 1830, most of these bar associations atrophied and eventually disappeared. The growth of the early American bar did not, of course, fall entirely into this neat pattern of emergence and decline; there seem to have been some exceptions, such as the Philadelphia Bar, which continued to survive despite the many pressures towards dissolution.

Professor Chroust attributes the decline of bar organization after 1830 to state legislation which pre-empted the self-regulatory functions of the local bar associations mentioned above and to the

spread of Jacksonian egalitarianism. Though the author makes much of the fact that some state legislators sought to destroy bar organizations altogether, no state in fact proscribed professional organization. Much of the information and some of the generalizations which appear in the second volume seem to have been culled from the works of other legal historians, and fail to seek out the multiple causes which may have explained the bar's decline as well as the differences in the rate of bar decline in certain areas.

But it is interesting to note, by Professor Chroust's own account, that while bar organizations were declining many states did retain or pass legislation requiring several years of study in addition to a bar examination administered by the state before one could be admitted to the practice of law. Admittedly, these standards were more relaxed than those formerly imposed by the bar. And it is probably true, as Professor Chroust believes, that local bar associations at the time were better supervisors of the legal profession than the state. But he ignores factors which at this stage in history might well have rendered self-regulating bars antagonistic to the public interest. It should be kept in mind that many of the so-called competent and highly educated lawyers of the time were deeply distrustful of democracy—men such as John Adams and Daniel Webster of Massachusetts, and James Kent of New York. Many, if not most of these men were committed to a languishing Federalist ideology and supported Whiggery. Which raises the interesting question whether bar decline in New England —where, for example, local bar associations rapidly declined after 1830—can be attributed to Jacksonian democracy. It would appear that Jacksonianism did not penetrate as deeply into the social, cultural, and political fabric of New England as it did in other regions of the country.

One could as easily hypothesize that the states wrested control of bar admissions from local bar associations for pragmatic reasons. At the very time that local and state bar associations were making it tougher—unconscionably tougher in some instances—to enter law practice the need for lawyers was growing. America of the 1830's was experiencing swirling growth in business and trade as well as vast expansion and settlement westward with all that this implies in terms of need for many and varied legal services. Willard Hurst noted that the required preparations in Massachusetts and New York were actually analogous to 1940 standards; "plainly," he noted, "they were not justified by the available education of 1800." [7] Indeed, a dynamic society seeking to conquer new frontiers of both geography and trade could not tolerate such ex-

[7] Hurst, *op. cit. supra.*, note 3, at 278.

clusivity on the part of any group ordained to play such an important and functional role in the development of our political economy. The quality of the lawyer which emerged from these changes in professional preparation may not have been terribly high; on the other hand, there is little evidence to sustain the author's following statement: "Since an increasingly enlarged proportion of the lawyers were thus out of reach of any responsible organization, a competent and responsible profession could no longer be guaranteed. As a matter of fact, *the irresponsible elements in the profession soon seemed to predominate.*" (Volume II, page 155, my italics.) Both the temper and the tempo of our society at that time would seem to account for the lack of disciplined cohesion among lawyers. This was a society, wrote Professor Hurst, "whose members were bent on personal gain in the feverish exploitation of a rich new continent. The economic organization of the bar— which, translated, meant the lack of professional organization at the bar— offered no great barrier and to the contrary encourage men to treat law as only another road to personal gain." [8]

Professor Chroust concludes his second volume with two rather long chapters on legal education and state legislation pertaining to admissions and the practice of law. The former traces the changes that evolved in the system of preparation for the bar. It appears that several of the original states were moving away from a system of apprenticeship training by requiring considerable formal education in the universities. Law schools were also beginning to play an important role in the training and preparation of lawyers. On the frontier, however, standards of admission hardly existed. The last chapter is a fifty-six-page recital of various state statutory provisions, enacted between 1780 and 1837, which controlled admission to the bar and lawyers' fees. One is struck by the variations in state standards of preparation and admission. But the reasons for these variations are not systematically discussed. Though Professor Chroust informs us that these statutes were frequently "the product of plain prejudice and ignorance," they do not seem unduly discriminatory or regulatory given the nature of the times and condition of the legal profession. Reasonable arguments are available to explain many of these regulatory provisions. Indeed much of the legislation, particularly that controlling fees, was probably necessary precisely because the lawyer was carrying out public functions through his fiduciary relationships. Moreover, these regulations do not seem inconsistent with the development of a competent and prominent bar.

It should be remembered that no state regulation of the legal

[8] Hurst, *op. cit. supra*, note 3, p. 327.

profession would have meant no regulation at all. At no time in this country's history have we ever granted or accepted the principle that any business or profession has the right to remove itself from effective public surveillance, relative to its activities, through properly constituted organs of representative government. Indeed it is questionable whether any social, economic, or legal institution should be isolated from political controls. This is a problem, incidentally, which is still with us today. Many contemporary judicial reforms—e.g., court reorganization and changes in the method of judicial selection, to mention only two—seem calculated to remove the judiciary from effective public control, to such an extent that in some states judicial reform has virtually led to the legislature's complete abdication of responsibility over the functioning of the judiciary. When we add to this the growing reality of a self-regulating bar—the integrated bar— in intimate contact with courts and judges we may be confronted with the possibility of a court system under the exclusive control of a very cohesive and tightly knit group of bar leaders.[9] The judicial selection process, particularly, would be tied to this structure of control. Thus, it is not improbable that future policies which emerge from some state courts will, to some extent at least, reflect the predominant ideology of the bar and the judicial bureaucracy. How the public interest is to be preserved in the face of this movement toward guildism, on the part of law as well as other professions, is a central problem of our democracy.

One final matter merits attention. In his summary Professor Chroust speaks of the 1780-1837 period as the "golden age of the lawyer in the sense that the public leadership of the American legal profession attained unprecedented height. It was a time when lawyers spoke and acted with that conscious authority which is characteristic of truly creative founders and promoters of public institutions and policies." I suppose this view is reasonable enough, particularly if it relates to the great era of American constitution-building between 1776 and 1790. The author then makes reference to the fact that since that time lawyers have populated nearly half the House of Representatives and United States Senate, dominated state governorships and had, as a class, high representation in state legislatures. The significance of these figures is not made entirely clear. Surely human creativity does not spring from numbers alone. In any case, if we were to describe the accomplishments of lawyers in early American history, they would be stated not so much in terms of the lawyer's contribution to socio-political policies as in his contribution to the practical day-to-day operations of our society. Here is where his real genius lay. For the lawyer developed legal

[9] See Dayton David McKean, *The Integrated Bar* (1963), esp. p. 84 ff.

instruments which seemed adequate to the dynamic growth of American society in trade, in finance, in shipping, in mercantile enterprise, setting the basis for a powerful and vigorous economy.

On the other hand, there is little basis for concluding that lawyers as a class were any better or worse, more enlightened or short-sighted, more or less devoted to high ideals, the rule of law, or to the public interest than any other group of men who happen to have participated in the political processes of an earlier day. If the lawyer had his debits in American history it was probably along the lines suggested by Professor Hurst who said that "common criticism [of the lawyer] did not often strike at the intellectual dishonesty with which influential parts of the bar now and again supported private against public interest. Common criticism generally had little to say of the inertia of lawyers in the face of patent defects in the administration of justice, though such defects robbed ten thousand of their due for every one whose money was misappropriated by a faithless counselor.[10]

The fact that in colonial days some lawyers were found defending human freedom and dignity against slavery, social and economic injustice, or the misbehavior of the Crown, can probably be attributed more to their social and political connections and to their knowledge of history and education in political theory than to their training in the tradition of common law. Even today, despite the common tradition and common values communicated by law schools, lawyers are neither ideologically nor behaviorally cohesive in their political activity. A recent study concluded: "Though lawyers are clearly a distinct occupational group that is more visible, more ubiquitous, more prominent, and even more dominant in American political life than in any other, their private profession does not seem to affect a great deal of their political behavior. To put this somewhat differently, though he is a lawyer, the lawyer-politician does not differ appreciably from other politicians." [11] It is much easier to predict a person's political behavior or describe his political ideals by knowing his party affiliation than to know that he is a lawyer. Contemporary lawyers seem much more cohesive in their concern for bar organization as a method for elevating the standards of admission to the bar, resisting encroachments on the practice of law by non-lawyers, and controlling the legal profession. So it has always been.

I have not sought to summarize here all the many interesting things Professor Chroust has said about the legal profession. And

[10] Hurst, *op. cit. supra*, note 3, at p. 252.

[11] Heinz Eulau and John D. Sprague, *Lawyers in Politics: A Study in Professional Convergence* (1964), p. 31.

he has marshalled facts and figures about the profession which will be of interest to many. Rather, I have sought to question some of the implications that the author draws from his material.

Part of the author's difficulty stems from the attitude he adopts toward his subject. As a work of scholarship the book suffers from the fact that the author seems more interested in praising the legal profession than in analyzing the conditions of its growth. It bears reiteration that his material is not organized in accordance with a theory or conceptual scheme in terms of which one might seek to account for the regularities and variations in the development of the legal profession. It is possible that this will have to be done in the context of a wider study which includes several professions, since the problems of growth described by Professor Chroust may not be unique to the legal profession, but to the professions generally.

More disconcerting is the author's occasional tendency to equate legal history with the pious and self-righteous rhetoric of historical figures like John Adams and Chancellor Kent. A good example of this confusion is to be found in the author's puzzlement over the failure of the New York bar to organize itself effectively in the light of Kent's address to that bar in 1836 where he pontificated about the great duties and responsibilities of the bar, reminding the lawyers that the public's confidence in them depended upon "their skill and industry, their knowledge, integrity, and honor, their public spirit and manly deportment, their purity, moderation, and wisdom." Such cant ought not to be taken at face value. Overlooked in Professor Chroust's reverential nod in the direction of the famous New York judge is the fact that brilliant and scheming conservatives like Kent would not have hesitated to twist professional organization to their own political ends. Kent, as we know, was no paragon of fine impartiality; he hated Jackson, fought the extension of suffrage, distrusted democracy and firmly believed, as Parrington pointed out, that government should be a patriarchal institution run by the rich whom he had no trouble identifying with the wise and the good.[12]

Despite these reservations, it is fair to say that these two volumes represent a substantial effort to tie together some of the loose ends of American legal history reflected in the early rise of the legal profession. Because of its wealth of fact and detail the future scholar who sets out to clarify some of the questions raised above would be well advised to keep a copy of Professor Chroust's book handy.

---

[12] Vernon L. Parrington, *Main Currents in American Thought* (1927), v. 2, p. 198.