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Book Reviews

John T. Noonan

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BOOK REVIEWS

LAWYERS ON THEIR OWN. By Jerome E. Carlin. New Brunswick: Rutgers University Press, 1962. Pp. x, 234, \$6.00. A flamboyant subtitle for this book might have been "Texts to Accompany Daumier" or "Notes from the Fourth Circle." Not that Mr. Carlin's modest, moderate, balanced, and observant sociological study is itself flamboyant. It is a model of careful research in a limited area — a report of interviews in depth with ninety-three individual practitioners of law selected at random in 1957 in Chicago, buttressed by a variety of analytical charts and many helpful references to literature in the field. But the picture that emerges of these members of the bar is that of the ambitious, avaricious, envious, disgruntled, and frustrated. They are the kind of men whose human features, as Dante has depicted, are being effaced by a hectic concern for money.¹

As Carlin shows in his first chapter, the motivation of most of these lawyers to become lawyers was to achieve something called "status" — a modern version of "fame," which these people believed somehow, magically, would attend their admission to the bar. Discovering that there was no such magical transformation of themselves or even of their reputations, they have devoted themselves to making money, so that at least half of Carlin's respondents have doubts about whether they are in a profession or a business. Their work, as Chapter 2 spells out in detail, consists chiefly in bookkeeping, accounting, or semi-clerical work for small corporations; real estate closings; tax foreclosures, and tax abatements; zoning and licensing matters; personal injury suits; divorces; police court work; and collections. As Chapter 3 makes clear, much of their effort is devoted not to serving clients, but to securing them — through ethnic, religious, or fraternal organizations (rather poor pickings), precinct political organizations (much more helpful), and runners or other lawyers (particularly helpful in building a personal injury practice).

Chapter 4, tactfully entitled "The Ethical Dilemmas of Individual Practice," reveals a general disregard of the canons of professional ethics on the solicitation of business; the general use of bribery to promote administrative action by clerks of court and similar administrative officials; the probability of bribery and the certainty of political influence in work involving tax foreclosure, tax abatements, and zoning; and a pervasive lack of a sense of fiduciary obligation to the client. The last "dilemma," is probably the most serious one, and it is manifested in two ways. The dependence of "lower level" single lawyers on other lawyers for referrals means that the referring lawyer is apt to be treated as more important than the client. On the other hand, the "upper level" single lawyer is apt to have such a close relationship with his business client that he enters into the deal with him. Hence, Carlin's two subtitles "Clients are Expendable," and "Clients are Partners."

Not surprisingly, Chapter 5 demonstrates that men following this trade are profoundly dissatisfied with it and with themselves. They feel themselves to be the proletariat of the profession; they envy the big law firms; they envy professional men like doctors. Each boasts that he is his own boss; but the independence of these lawyers is acknowledged to be illusory, as they are the slave of the most pressing economic exigencies and at the beck of the meanest politicians. They wonder why they ever took up the profession of law.

To anyone familiar with the practice of law in any large city in this country the picture Carlin has drawn from their own lips of the individual practitioners in a metropolitan area will not seem exaggerated. There are, of course, a few outstanding individual practitioners, exceptions to the average, although Carlin does not appear to have encountered them. Moreover, as Carlin points out, there are

1 "They labored to be blind. And now their souls are dimmed past recognition." (*Inferno*, Canto 7, Ciardi trans.).

nuanced distinctions between the practice and ethics of the "upper level" single lawyer, using some technical skills and the "lower level" single lawyer, whose job has become largely clerical. The picture also, it must be emphasized, is true of the big cities where the practice of law is largely in the hands of the big firms, and it is not to be taken as accurate for small towns or even medium size cities where firms of over ten men are uncommon. Even restricted to the metropolitan one-man law firm, Carlin's report is a disturbing one; half of the lawyers in these cities are in the category he describes.

Carlin, as a good sociologist, is interested in changing the conditions that make this kind of practice of law common. He says — quite rightly, I believe, — "Punishment of wrong under these circumstances makes very little sense except as a symbolic gesture, when the real problem is one of altering the underlying conditions. . . ."² He further suggests that the responsibility for these conditions lies to some extent with the leaders of the bar. He suggests, "In some strange way it appears that the elite of the metropolitan bar has made its gentlemen's agreement with the lower elements of the bar in the same way that it has made its peace with the local politicians — namely, by agreeing not to interfere with one another, by a kind of ritual avoidance and separation."³

What shall the leaders do? Some of Carlin's data would seem to suggest a primary fault in the law schools. Two-thirds of his respondents are graduates of a handful of law schools. But it would be unfair to jump to conclusions here. Most of the graduates interviewed went to law school in the thirties. Has there been improvement in this kind of school since then? More information is needed, but I should think the data presented by Carlin would call for inquiry both by the American Bar Association and by the Association of American Law Schools. I would also suppose that the teachers and lawyers involved in this work in the big cities would want to ask themselves what they have accomplished. It would be ironic indeed if men whose primary vocation is educational should be found in the past to have made a positive and terrible contribution to a serious social evil — a turning loose upon the public of a substantial body of uneducated, irresponsible men equipped for nothing else than to slip past the slack eye of bar examiners.

Apart from controlling entry to the profession more strictly, the bar could act, as Carlin suggests, to reform legislation which is particularly conducive to "manipulation of officials" and so particularly the province of the one-man firm. In this area Carlin cites the personal property tax laws, divorce laws, licensing, and zoning. In most communities the first two types of law provide the kind of opportunity he deplors, and they could be radically improved without serious harm to other interests. I have more difficulty with his examples of zoning and licensing. Here, it would seem there is an unavoidable element of discretion to be given the local officials. I see no way of improving this kind of situation except by courts insisting on licensing and zoning boards observing all of the proprieties of a court. What the Court of Appeals for the District of Columbia has done in regard to the federal administrative licensing agencies such as the F.C.C. might, perhaps, be done by a state court for municipal licensing and zoning agencies.⁴

Finally, Carlin recommends that a great deal of the work of the individual practitioner be taken over by lay organizations. As he notes, this work requires a low level of professional ability. It is in many instances, "a fairly routine, clerical-bookkeeping job."⁵ The lay organizations, such as banks, title companies, and accounting firms, are much better equipped to provide qualified service in these areas than the individual lawyer. In fact, they have increasingly invaded the field.

² *Text* at 210.

³ *Ibid.*

⁴ E.g., *Massachusetts Bay Telecasters v. F.C.C.*, 261 F.2d 55 (D.C. Cir. 1958). *Sangamon Valley Television Corp. v. U.S.*, 269 F.2d 221 (D.C. Cir. 1959).

However, they still seem to be admitted only grudgingly by the bar associations, and there are occasional attempts by bar associations to prosecute them for the unauthorized practice of law. Carlin rightly feels that the efforts to keep the lay organizations out are an anachronism, and his data makes clear that the individual practitioners bring with them all the evils which it is claimed the lay associations might bring. It would seem evident that a man is not practicing law merely because he is a lawyer, and that the courts ought to start drawing a line between the routine clerical work and the areas of activity which still deserve to be protected as a profession.

A moralist might demur to Carlin's observation that the conditions "force certain practitioners into unethical practices." These men are where they are because they have chosen this kind of life: their practice reflects their values. Nonetheless, it is clear that a change in some conditions would at least eliminate some of the ways in which these unhappy human beings choose to live. Carlin's book is an important book for anyone interested in the improvement of the law. The law schools could lead the way in all three areas of reform he proposes; their efforts need to be given force by the prosperous leaders of the profession.

*John T. Noonan, Jr.**

5 *Text* at 207.

* Editor, *Natural Law Forum*, Notre Dame Law School.

BOOKS RECEIVED

CONSTITUTIONAL LAW

EX-COMMUNIST WITNESSES: FOUR^k STUDIES IN FACT FINDING. By Herbert L. Packer.

Stanford: Stanford University Press, 1962. Pp. viii, 279. \$4.95.

FREEDOM OF SPEECH AND PRESS IN AMERICA. By Edward G. Hudon.

Washington: Public Affairs Press, 1963. Pp. xiv, 224. \$4.50.

CRIMINAL LAW

CRIME WITHOUT PUNISHMENT. By John L. McClellan.

New York: Duell, Sloan and Pearce, 1962. Pp. 300. \$4.95.

HISTORY

DESPOTISM: A PICTORIAL HISTORY OF TYRANNY. By Dagobert D. Runes.

New York: Philosophical Library, 1963. Pp. 269. \$12.50.

LEGAL ETHICS

LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO. By Jerome E. Carlin.

New Brunswick: Rutgers University Press, 1962. Pp. 234. \$6.00.

PROPERTY LAW

INTRODUCTION TO THE LAW OF REAL PROPERTY. By Cornelius J. Moynihan.

St. Paul: West Publishing Co., 1962. Pp. 254. \$4.50.

SOCIAL WELFARE

LAW OF SOCIAL SECURITY AND UNEMPLOYMENT INSURANCE. By Thomas F. Broden.

Mundelin: Callaghan & Co., 1962. Pp. 529. \$27.50.