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Book Reviews

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BOOK REVIEWS

LAWYERS IN POLITICS — A STUDY IN PROFESSIONAL CONVERGENCE. By Heinz Eulau and John D. Sprague. Indianapolis; New York: The Bobbs-Merrill Company, Inc., 1964. Pp. xii, 164. \$5.00. This book explores what the authors consider to be a paradox. Lawyers are clearly the dominant occupational group in American politics, but yet "their private profession does not seem to affect a great deal of their political behavior. . . . The lawyer-politician does not differ appreciably from other politicians."¹

The data used by the authors concerns members of the legislatures of four states, so the study is of legislators rather than politicians in general. The authors make this clear by explaining that "at times, we speak of politicians when it would be more correct to speak of legislators,"² but this is done to break the monotony.

The authors first probe to find reasons for the extensive involvement of lawyers in politics. They examine the various explanations that have been given by others for this affinity. The first is called the institutional link; that is, because of the social, economic or political status of the lawyer, he is quite naturally brought into politics. The next is called the career nexus; that is, the high compatibility and similarity of interest of law and politics. The last is called the role cluster, which focuses on the similarity of the roles of the lawyer and the legislator.

The authors consider all of these to be factors of some significance, but inadequate to fully explain their paradox. They would add another theory called professional convergence. According to the authors, law and politics are convergent professions. That is, law and politics have common characteristics that are especially relevant to the performance of professional functions.³ Three characteristics are identified: professional independence, a code of ethics, and a norm of personal service.⁴ It is suggested that these characteristics are now shared by both professions because the professions have been integrated into the structure of political authority and perform functions of a political or governmental nature.⁵

The convergence of professions is seen as an evolutionary and continuous process.⁶ The authors' position is that as law and politics become more integrated into the structure of political authority, they will develop many more common characteristics relevant to that structure.

According to the authors, the theory of professional convergence explains why lawyer-politicians do not differ appreciably from other politicians. "The more law and politics converge as professions, the less distinct will be the particular kind of contribution that the lawyer-politician is likely to make to politics as a lawyer."⁷ It should be added at this point that the authors do recognize certain distinctive features to the lawyer-politician's contribution. For example, he is much more likely to rise to a position of leadership in legislative bodies than a member of any other occupational group.

I have one reservation about the authors' theory of professional convergence as applied to the work of lawyers and legislators. I completely agree that there are many similarities between the traditional work of a lawyer and the traditional work of a legislator. I would willingly extend this observation to politicians in general, including legislators. In fact, taking politics in the Aristotelian sense, I

1 Text at 3.

2 *Id.* at 5.

3 *Id.* at 125.

4 *Id.* at 143.

5 *Id.* at 130.

6 *Id.* at 126.

7 *Id.* at 145.

would be willing to defend the proposition that the most meaningful functions of the lawyer can be considered a vital part of the political life of a community. This is obviously true of the lawyer's working relationship with courts, legislatures, administrative agencies, and executive officers. In this light, the lawyer is deeply immersed in the political life of the community.

The reservation I have concerns the historical view of the authors that at one time law and politics were not so closely related but are now coming closer together.⁸ In the context of the authors' theoretical approach, historical disagreement is not too significant. Also, the disagreement may be more apparent than real, as it involves in part the authors' concentration on legislators. Part of their historical picture antedates the existence of representative legislative bodies when, of course, there were no relationships between legislators (so understood) and lawyers. In any event, I read Anglo-American legal history to show a continuous and inseparable relation between lawyers and politicians, a close affinity of lawyers for politics throughout our entire history. Just two examples should suffice. First, Holdsworth gives extensive credit to common law lawyers for the development of parliamentary procedure. Second, the 16th and 17th century involvement of lawyers like Lord Coke in the political struggle between Crown and Parliament is well known.

Indeed, this close affinity between law and politics has been the traditional view. Historically, the institution of law has been seen as the means by which political authority is exercised. Lawyers only truly understand their profession when they recognize this and realize that they have a vital role to play in this institutional life. All good law schools try to expose their students to this public responsibility of the lawyer which the authors call the role of personal service.

This subject is of special interest to law teachers, many of whom feel law schools have not been very successful in this area. Witness the widespread discussion in the law school world of ways to bring about a deeper understanding of, and commitment to, public and professional responsibility.

One possibility that has not received as much attention as it should has to do with the most effective method of teaching—*i.e.*, by example. If there is a close personal relationship between faculty and students and some members of the faculty are actively involved in an exemplary way in the legal and political life of the community, this should be exploited for educative purposes. If a teacher is representing an indigent defendant in a criminal trial, this should be worked into the educational process somehow. The same use should be made of faculty involvement on judicial conferences, administrative bodies, community action organizations, and campaigns for civil rights; and the sooner that this is done, the better. For example, many feel that equal opportunity can be better taught by participation in a single event like Selma, than by all the classroom, law library, and extracurricular devices and techniques that can be crammed into a three-year program. The personal witness may still be the most effective pedagogical approach. A college president, or dean, or teacher often has had great impact on many students as a result of his public activity.

We must devise ways to exploit for teaching purposes the legal and public life of law teachers. Many are active, but more often at the expense of, rather than to the benefit of, their teaching effectiveness. Techniques must be found to reverse this situation. There are, of course, problems to be overcome. Careful planning is essential to assure a breadth and evenness of exposure and involvement. Adequate clerical and stenographic assistance must be available so that relevant documents can be reproduced and put in the hands of all the students as quickly as events demand. But these and other housekeeping problems are not unique or

8 *Id.* at 128.

extraordinarily difficult. Without doubt, ways can be found to put an end to the wasting of much of the pedagogical value inherent in the legal, governmental and community service activities of law teachers.

*Thomas Broden, Jr.**

A MAN'S REACH. Edited by Barbara Frank Kristein. New York: The Macmillan Company, 1965. Pp. xxviii, 450. \$10.00.—Momentous changes in our law which are now manifest began to be revealed in the decisions of the Supreme Court some thirty years ago. They were foreshadowed to a great extent by Holmes and Brandeis in dissenting opinions and by Cardozo in his essays. Pound and Llewellyn and other distinguished professors were contributors to the movement. Nevertheless, when Jerome Frank appeared on the scene with his *LAW AND THE MODERN MIND* there was, besides the cheers, a considerable amount of booing. Controversy raged about the book, and the author became famous. His ideas stimulated many lawyers and law students and, no doubt, helped bring about some of the developments that have occurred since that time. Jerome Frank went on writing books and articles. He became a distinguished administrator in the New Deal days and from 1941 until his death in 1957 he was a judge on the Court of Appeals for the Second Circuit. While on the bench he delivered numerous noteworthy opinions.

The present volume consists of selected writings of Jerome Frank edited by his daughter. The selections have been taken from *LAW AND THE MODERN MIND*, *IF MEN WERE ANGELS*, *COURTS ON TRIAL*, *NOT GUILTY*, speeches, articles, a book review and judicial opinions. The editor has "for reasons of purely personal taste" omitted the author's footnotes "as such."¹ This circumstance may detract somewhat from the value of the book for many readers. However, the sources of the various pieces are indicated in a bibliography at the end of the volume. All the selections are worthy reading and some re-reading, but not in one or two sittings, for there is, unfortunately, a great deal of repetition not only of ideas but of whole sentences and examples. Such repetitions may have a wholesome pedagogical effect, but many readers might find them annoying.

The first selection is a talk entitled "On Holding Abe Lincoln's Hat" in which Frank quotes with approval Lord Halifax's definition of a Trimmer: "If men are together in a boat, and one part of the company would weigh it down on one side, and another would make it lean to the contrary, it happeneth there is a third opinion of those who conceive it would do as well if the boat went even, without endangering the passengers." Frank says: "Halifax's definition of a Trimmer satisfies, in large measure, my definition of a true liberal."² Frank would be classified by most as a "liberal" in the law. It is interesting to note what he considered that vague term to mean.

There follows a thoughtful article on "The Place of the Expert in a Democratic Society." Here, as in many other places we find evidence of Frank's omnivorous reading. Next comes "The Speech of Judges: A Dissenting Opinion," which is a sprightly discussion of style in legal writing. Particularly noteworthy are some strictures on the style of the venerated Cardozo. Rounding out the first part of the volume (which is entitled "The Democratic Spirit") is a fine eulogy of Judge Learned Hand.

The second part consists of generous excerpts from *IF MEN WERE ANGELS*, Frank's concurring opinion in *United States v. Roth*,³ and a book review (of George Calhoun's *INTRODUCTION TO GREEK LEGAL SCIENCE*). These pieces are character-

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1 Text at v.

2 *Id.* at 3.

3 237 F.2d 796, 801 (2nd Cir. 1956).

ized by the editor as concerned with "The Conflict between Freedom and Authority." The concurring opinion in the *Roth* case is perhaps the most interesting material in the whole volume because of the present concern over the legal problems connected with obscenity. No one who insists on imparting his views on such problems to others should fail to read Frank's brilliant and profound treatment of the subject.

The third part consists of excerpts from *LAW AND THE MODERN MIND*, *COURTS ON TRIAL*, *NOT GUILTY* and the opinion for the court in *Skidmore v. Baltimore & Ohio R. Co.*⁴ In these pieces Frank develops his famous doctrine of "fact skepticism."

The last part ("The Protection of Due Process") consists of Frank's opinion in eighteen cases, some for the court, some concurring, but most dissenting. The best known among these cases are *United States v. Rosenberg*⁵ and *United States v. On Lee*.⁶

This volume presents most of Judge Frank's important ideas. Many of these are highly relevant for the law and lawyers today. It is, therefore, serviceable but not as useful as it might be since it lacks an index. It is unfortunate, also, that it is marred by numerous misprints. There is a striking photograph of the judge on the dust-cover. It would have been appropriate to have it inside the volume.

Roger Paul Peters*

4 167 F.2d 54 (2nd Cir. 1948).

5 195 F.2d 583 (2nd Cir. 1952) (opinion for the court).

6 193 F.2d 306 (2nd Cir. 1951) (dissenting opinion).

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ANTITRUST

- AN ANTITRUST PRIMER. By Earl W. Kintner.
New York: The Macmillan Company, 1964. Pp. xviii, 316. \$7.95.

AUTOBIOGRAPHY

- A LIFE IN MY HANDS. By J. W. Ehrlich.
New York: G. P. Putnam's Sons, 1965. Pp. 379. \$5.95.

CONFLICTS OF LAWS

- THE LAW OF MULTISTATE PROBLEMS: Cases and Materials on Conflict of Laws. By Arthur T. Von Mehren and Donald T. Trautman.
Boston, Massachusetts: Little, Brown & Company, 1965. Pp. lxxv, 1646. \$15.00.

CONSTITUTIONAL LAW

- LEGAL ASPECTS OF THE CIVIL RIGHTS MOVEMENT. Edited by Donald B. King and Charles W. Quick.
Detroit, Michigan: Wayne State University Press, 1965. Pp. ix, 447. \$12.50.
- THE NEGRO AND THE FIRST AMENDMENT. By Harry Kalven, Jr.
Columbus, Ohio: Ohio State University Press, 1965. Pp. ix, 190. \$4.75.
- THE SOUTH AND SEGREGATION. By Peter A. Charnichael.
Washington, D.C.: Public Affairs Press, 1965. Pp. vi, 344.
- THE SUPREME COURT REVIEW. Edited by Philip B. Kurland.
Chicago, Illinois: University of Chicago Press, 1964. Pp. 315. \$6.50.

JUDICIAL COMMENTARY

- LAW AND POLITICS IN THE SUPREME COURT. By Martin Shapiro.
New York: The Macmillan Company, 1964. \$6.95.
- LAWYERS AND JUDGES. The ABA and the Politics of Judicial Selection. By Joel B. Grossman.
New York: John Wiley and Sons, Inc., 1965. Pp. xii, 228. \$6.75.

LEGISLATURES

- LAWYERS IN POLITICS. By Heinz Eaulau and John D. Sprague.
Indianapolis, Indiana: The Bobbs-Merrill Company, 1964. Pp. 164. \$5.00.
- STANDARDS OF AMERICAN LEGISLATION. By Ernst Freund.
Chicago, Illinois: University of Chicago Press, 1965. Pp. xlix, 327. \$2.45 (paper).

RELIGION AND LAW

FREEDOM IN EDUCATION: Federal Aid for All Children. By Virgil C. Blum, S.J.

New York: Doubleday & Company, 1965. Pp. 235. \$4.95.

PUBLIC REGULATION OF THE RELIGIOUS USE OF LAND. By James E. Curry. Charlottesville, Virginia: The Mitchie Company, 1964. Pp. xxii, 429. \$12.50.

MISCELLANEOUS

A MAN'S REACH. Edited by Barbara Frank Kristein.

New York: The Macmillan Company, 1965. Pp. xxviii, 450. \$10.00.

FOREIGN ENTERPRISE IN COLOMBIA. By Seymour W. Wurfel.

Chapel Hill, North Carolina: University of North Carolina Press, 1965. Pp. xv, 563. \$10.00.

SEX AND CRIME. By Clinton T. Duffy and Al Hirshberg.

Garden City, New York: Doubleday & Co., 1965. Pp. 203. \$4.50.

TREASURY OF LAW. Edited by Richard W. Rice.

New York: Philosophical Library, Inc., 1964. Pp. xiii, 553. \$10.00.

