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Book Reviews

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BOOK REVIEWS

LAW IN ACTION, Edited by Amicus Curiae.
1947. pp. XIV 498; Crown Publishers, New York, N.Y.

This is one of the most interesting volumes for general reading which has been published since THE ROAD TO THE LAW (22 Ky. L. J. 157, Nov 1933) It is an anthology of the law in literature, comprising forty-two stories about lawyers, judges, criminals and other men concerned with the law. The subjects embrace liberty, morals, justice and crime. The Introduction by Roscoe Pound is adequate recommendation. The authors include Sir Walter Scott, Charles Dickens, John Galsworthy Arthur Train, Carl Sandberg, and others ancient and modern. The subject of morals includes the decision of Judge Woolsey lifting the ban on "Ulysses." The subject of crime ends with the trial of Alice's Knave of Hearts. The subject of justice includes, in translation, Plutarch's Laws of Solon. The last paragraph of this (p. 327) relates that Solon, after enacting his laws, went on a ten-year voyage, hoping by that time his laws would become familiar. This might be a popular suggestion for legislators now, if they could spare the time, particularly if a general law reducing taxes could be arranged immediately before their departure. This is a book which the lawyer will benefit much by reading and the layman should not miss. It is a valuable addition to any private library

WOODSON D. SCOTT.

New York, December 29, 1947.

LAWYERS, LAW SCHOOLS AND THE PUBLIC SERVICE. By Esther Lucile Brown. New York: Russell Sage Foundation, 1948; pp. 258. $3.00.

This stimulating monograph is the result of the author's continuing interest in the legal profession following her LAWYERS AND THE PROMOTION OF JUSTICE, and is the most recent of her six studies of the professions, all published by the Russell Sage Foundation. It is well written, well documented and very timely To use a key explanatory sentence from the introduction, the author is concerned primarily with " how the law school may minister more effectively to the education of those many thousands of law-trained persons who will subsequently find themselves legislators, judges, and

members—on the policy-making levels—of the executive branch of the government, or who, as lawyers outside the government, will nevertheless exert large influence over it." In fact, the scope of the book is more extensive than the quoted sentence would lead one to believe; and while it probably will attract the special attention of law teachers, it will never suffer from limited interest because the author's criticism of legal education in general is too pointed, and, in the reviewer's opinion, too well taken to be missed or ignored by any member of the legal profession.

Pointing one's critical finger at the present state of legal education isn't exactly an exclusive pastime these days. Law school faculties, post-war students, law review contributors and members of the bar are all participating in a kind of grass roots ferment about the failings of legal education. Antiquated teaching techniques, curriculum inadequacies, general (but not universal) inertia to methodological change and preparing graduates to cope with private and public social problems are only a few of the areas of law school weakness that confront anyone interested in the future of legal education. This book, however, is one of the first attempts by one not a member of the profession to analyze some of the problems and make constructive suggestions. We are of the opinion that it is high time to hear the testimony of an objective expert witness in the case, and this book meets the need. The validity of the criticism in it is enhanced by the fact that the author is a trained anthropologist who bases her analysis on first hand knowledge gained from numerous visits to representative law schools as well as from a wide acquaintance among law teachers. We hasten to add that the thesis of the book is not limited to criticism but includes a rational plea for planned change in the law school way leading to graduates who are aware of the opportunities, responsibilities and rewards in the public service in that term's broadest sense. Best of all the plea is for change in our time.

The book is arranged in three parts. Part One presents a statistical and descriptive development of the "Important Role Played by Lawyers in Official Positions." The critical position of the law school in this regard is shown in a six page evaluation of "Attitudes of Law Teachers Toward Training for Public Service." Part Two portrays in greater detail the "Nature of Work Done by Lawyers in Federal Agencies." The touch of the experienced researcher is apparent here with considerable space given to job analysis, classification and description based on the official reports of the agencies concerned. Some effort is made to brighten up the facts obtained from these reports with a description of "Characteristics of Lawyers and Agencies," and one interested in the Washington scene may want to read the author's notions about the difference between "Political Appointees," "Top-Flight Career Men," "The Permanent Career

Service" and "Temporary Government Lawyers." At the end of this part of the book is a discussion of "The Process of Policy-Making" through drafting, interpretation, review, litigation, counseling and administration which sets the stage for Part Three, titled "Implications for Legal Education."

Only a careful reading of the 165 pages in Part Three will do justice to the author's excellent treatment of the implications for legal education, but a very brief resume here may help in giving her analysis and suggestions wider dissemination. In the order of discussion in the book the problems considered in this part are:

REDUCTION IN NUMBER OF COURSES AND CO-ORDINATION OF TEACHING MATERIALS:

Dr. Brown shows here how for many years the usual law school curriculum was not a course of study based on sequence or interrelationship of subject matter but rather a miscellaneous collection of offerings that tradition and individual opinion had decreed would be useful for practicing lawyers or interesting to teach. Some evidence of improvement is seen in the present tendency to eliminate courses and to rearrange the most essential elements from certain related traditional courses in new teaching units. The well known practice of offering a course in Judicial Administration rather than a number of courses in pleading and practice is cited by way of illustration. Also, the suggestion is made that the process of selection and reorganization might be applied to an entire curriculum so that the student, in many instances, will receive more instruction in private law than ever before.

INFLUENCE OF FUNCTIONALISM:

Described here is the experience of Llewellyn, Green, Havighurst, Lewis and others in handling cases in their courses so as to treat them functionally instead of restricting their use to illustrating legal doctrine. Approval is given to the functional technique of grouping course materials along factual rather than conceptual lines to show how particular legal doctrines arose, or their economic, social and philosophical or political setting. Also, attention is given in this section to the place of "policy-making," particularly as it has been worked out at Yale through the efforts of Laswell and McDougal.

THE SOCIAL SCIENCES AND OTHER NON-LEGAL MATERIALS:

An unusual number of instances where non-legal materials are being used are related here, and this section will prove valuable as a source of reference for any teacher who wants to make greater use of such materials and has not known how to implement his good in-

tentions. The experience of some schools in adding social scientists and others to the law faculty is cited, as is the plan adopted by other schools of urging collaboration with the University faculty as a whole. As a suggestion for solution of the problem presented when students elect practical courses rather than experimental courses where non-legal materials are used, the author advocates creating "a climate of opinion in which the outlook on the purpose and function of the lawyer is immeasurably expanded."

"NEW" COURSES AND TEACHING MATERIALS:

This section is devoted to a description of some of the experimental courses the author found being offered in her visits to law schools throughout the country. Selected for mention (and referred to as "a mere handful") are those the author thought were particularly designed to broaden the horizon of lawyers by viewing law within its social and economic setting. A mere listing of the course titles will give an idea of the trends portrayed here: "Modern Social Legislation," "Judicial Administration," "Function of the Lawyer in Reference to Civil Liberties," "Legal Factors in Economic Society," "Law and the Adjustment of the Individual," "Legal History" and "Coursebook in American Institutions." This well documented section indicates the law schools themselves are feeling their way to a revitalized curriculum, but it leaves to each law school the problem of working out the details of change applicable to its peculiar situation.

REORIENTATION OF SELECTED PORTIONS OF THE CURRICULUM:

Here the reader will find some of the most valuable suggestions in the book. In the author's view, any law school can achieve immediate improvement simply by urging each faculty member to reorient his own courses so as to point them toward modern problems in legal experience. In other words, much can be done within the framework of existing courses to revitalize the curriculum. The idea is simple and not entirely new but it is made to order for those schools where extensive experimentation in new courses, over-all curriculum changes and the like is limited by financial problems and the size of the staff. Here the possibilities for course reorientation are developed and illustrated by a discussion of three traditional courses offered in all schools: Administrative Law, Legislation and Real Property. The last named was selected because of its fundamental nature, and anyone who thinks there is little that can be done to modernize this common law fixture in the curriculum should read carefully the suggestions here, for they explode the idea held by many that the basic courses are immune to the change which has come first in other sections of the curriculum. Since the reviewer's

current responsibility includes teaching real property he can recommend with considerable candor that anyone similarly interested read pages 157 through 174 of this section.

TEACHING METHODS:

In this section a cautious presentation is made of some of the ideas now current in the profession about alteration in teaching methods which must accompany an enriched curriculum. The author is careful to warn that changes in teaching methods cannot be premature and should be introduced only after general consideration of how legal education is to achieve its broadened purpose. The following three comprehensive methods are discussed and evaluated: *case method, problem method* and *clinical method.* As to the first, its success is attributable to the sense it has given students of examining "real situations" and its failings stem from the fact that it has been the only teaching method used and many instructors have employed it in a routine and unimaginative way. As to the second, it is thought that much of the potential value of the problem method lies in its adaptability to reproducing the atmosphere of situations with which lawyers actually find themselves confronted. However, it presupposes small classes, individualized instruction, and ample library facilities which are luxuries many schools find it hard to provide. As to the third, the author suggests that moot courts and law reviews are evidence of the clinical method and the technique should be expanded so as to diversify instruction in legal education and increase its stimulus and possible effectiveness.

RESEARCH:

Here the advantages of training in research are discussed in some detail under a separate section heading although they receive considerable attention in all sections of the book.

IMPLEMENTATION OF PROPOSED CHANGES:

In this final section certain prerequisites for any considerable expansion of the intellectual horizon of legal education are suggested and discussed. They are: "larger financial resources, teaching staffs, and research and clinical facilities; an over-all Plan for each school; and a more affirmative attitude toward the task of law and government." Of the three, the second is the most necessary in the reviewer's opinion, and he suspects the author would agree, because the existence of a plan will do more than anything else to implement the other two essentials. A valuable comparison between law school and medical school budgets is made here, a number of plans are dis-

cussed, and a fine statement is made for a more affirmative attitude toward law itself. The section and the book end on a challenging note as follows: "A great opportunity and a similarly great responsibility still lie ahead of legal education. They are the task of implanting conviction in faculty and students, both of whom have been conditioned by the opinion of a nation that has never entirely grown to repose abiding faith in its government, that government is important; that through no other means, perhaps, may the lawyer so largely determine his own future and that of all of us."

This book points the way for legal education; a way that builds on the past but recognizes that the future for the law schools is already here. The book suggests improvements designed to meet the problems of such a future, but most of all it calls for an awareness about those problems and urges a planned solution to them. Anyone who expects to be a participant in the days ahead for legal education owes it to himself to read this book.

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CRIMINAL PROCEDURE FROM ARREST TO APPEAL. By Lester Bernhardt Orfield. New York University Press, 1947; pp. xxxi, 614 (incl. index).

Professor Orfield has produced a book which is both scholarly and stimulating—an enviable achievement. It is his second contribution to the Judicial Administration Series, which is published under the auspices of the National Conference of Judicial Councils, his first work in that series having been "Criminal Appeals in America."

The present volume does not purport to be a textbook; still less is it a "hornbook" or an attempted restatement. True, it does contain sound statements of existing law relating to criminal procedure; it also contains short presentations of the historical development of some of the more important phases of that procedure, both in England and the United States, and affords frequent opportunity for highly interesting comparisons of existing American procedure with existing English and Continental procedures. But its purpose and achievement go beyond all these things.

An impressive amount of research has quite obviously gone into the writing of this book. Its great importance and usefulness, however, lie in the successful and attractive manner in which that research has been turned to account, for it has been used as a springboard for the attainment of the author's real goals, which are to wake up the legal profession, particularly those of its members who feel they are *not* concerned with criminal procedure, to an awareness of

the crying need for reform in the law relating to that procedure, and secondarily to present the carefully considered recommendations of the author and others with respect to specific needed reforms.

The first of these goals is based upon the expressed conviction that "The initiation of criminal procedural reforms is primarily the function and duty of lawyers." Not only is this because lawyers are better equipped to recognize the need for reform and to devise procedures which will fulfill such need constitutionally, but also because lawyers have a peculiar responsibility in the administration of justice, and the welfare of the public and the reputation of the bar depend upon the energetic discharge of that responsibility Any lawyer who feels our criminal procedure is up-to-date, or adequate for contemporary social needs, will be shaken from his complacency by this book—to his own advantage.

The second goal is achieved against a background of wide study of criminal procedure in theory and in action. The book is full of facts based upon the experience of police departments and prosecuting officials and the findings of crime surveys. The author's recommendations deal mainly with matters where such facts have fully demonstrated a genuine need for change, although there are other recommendations designed either to perform the function of "a stitch in time" or to round out a rational and simplified system. In the main, though by no means invariably the author's recommendations follow closely those of the American Law Institute as expressed in its suggested Code of Criminal Procedure. One of the valuable features of the book, however, is its wealth of comparisons of common law, Federal rules, state codes and decisions, the A. L. I. Code, various Uniform Laws, English and Continental laws, and the ideas of innumerable investigators and scholars.

"Criminal Procedure from Arrest to Appeal" is not a treatise on criminal procedure; it is an education in criminal procedure. Yet the author never strives to exhaust a topic; a point is never labored; the text is not overburdened with references or with mere weight of learning; the author says, concisely and persuasively what he wants to say and lets it go at that, although the footnotes constitute a valuable bibliography on each topic. It is a book to read and enjoy as well as to consider thoughtfully It brings up questions about which many "civil" lawyers have few accurate notions, including such things as detention without arrest, frisking, the flaws in existing remedies for illegal arrest, the third degree, shopping for bail, the abolition of the grand jury, difficulties created by the use of radio cars by the police, the effect of *nolle prosequi* and *nolo contendere*, the writ of *coram nobis* (of special interest to Kentucky practitioners in view of its recent revival in that state), and many others.

The book has already been quoted by the Supreme Court of the United States.* This reviewer adopted the book for classroom use and found it had a remarkably stimulating effect upon freshmen law students. The effect will be still greater upon experienced lawyers interested in the vital role of law in our society.

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*In *Von Moltke* v. *Gillies*, —U.S.—, 68 Sup. Ct. 316, 321 (1948).