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New Directions in Legal Education

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BOOK REVIEW

NEW DIRECTIONS IN LEGAL EDUCATION. By Herbert L. Packer and Thomas Ehrlich. New York: McGraw-Hill. 1972. Pp. 384. $10.00.

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> The life of the law has not been logic, it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even judges share with their fellow men, have a good deal more to do than the syllogism in determining the rules by which men are governed.
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> Holmes, The Common Law, 1881, p. 1

One of the distinguishing characteristics of a profession is that, supposedly, it provides machinery through which it may undergo self-examination, self-evaluation by its members and peers. Such is that attempt by the two authors, one a professor of law and the other the Dean of Stanford Law School assisted by a student of Yale Law School. The work consists of a collection of reports concerning legal education. More pointedly, it addresses itself to innovations in legal education. A rich bibliography complements the study covering the gamut of articles, books and similar studies. However, lacking is an adequate table of contents. The sources of the collections of works stem from a report by Alfred Z. Reed in 1921 avowedly influenced by a similar report on the medical profession and the former Dean of Stanford Law School, Bayless Manning.[1] Structurally it presents chronological, comparative and interdisciplinary approaches in examining legal education. The purpose of the book "is an analysis of recent developments and future trends in the legal profession and of some consequences for legal education."[2] It is divided into four parts. The first part's title is the same as the book, "New Directions in Legal Education." What this segment of materials is concerned with is reflected in the title. With over 325,000 lawyers in the United States and a large enrollment of students in law school in addition to a plethora of law school applicants, this study comes to grips with problems posed by these numbers. The two authors, who incidentally compiled the

[1] Time, October 5, 1970, p. 69.
[2] New Directions in Legal Education, p. iv.

first part, suggest, for further inquiry the expansion of new and old fields of law, e.g., criminal law, problems of poverty, of consumer environmental law, redistributing local governmental units. The reader is made aware that specialization is increasing as well as a need for paraprofessionals to alleviate some of the burdensome and tedious work of some attorneys. Since there is a superfluous number of applicants to law schools with inadequate financial support, plans are recommended whereby this deficiency may be eradicated. Also explored are the credibility of clinical education and the interdisciplinary approach. Proposals are presented concerning the duration of legal study, i.e., the requirement for the first degree in law. Some legal academicians joined by the authors are advocating that two years would be sufficient to acquire satisfactory skills. Interestingly enough, Bayless Manning has already established such a program at Stanford Law School, in addition to a few other schools including Columbia University which admit undergraduates upon completion of their junior year.

The "Carrington Report" by Professor Paul D. Carrington of the University of Michigan Law School constitutes Part II. This report was published in 1971 and subsequently presented before the American Association of Law Schools' 1971 Annual Meeting. The goals of legal education are re-examined and re-evaluated. The slight modification is the discussion on the interrelation of career goals and certain psychological and emotional traits thought to be requisites for a generalist degree in law. Professor Carrington outlines three types of curricula: the standardized, advanced and open. Within each of these he analyzes the goals, admission and graduation requirements, and types of instruction. To buttress his conclusion, a report in 1920 by Alfred Z. Reed entitled "Training For The Public Profession" follows. Here the reader is supplied with a brief history of legal education in the United States up to the date of the report. It starts out with the Jeffersonian ideal of a law school, and moves through the Litchfield School, culminating with the pervasive influence of the "Harvard structure" under Joseph Storey and Christopher Langdell. Other points discussed during these periods were: bar admission requirements, the influence of political philosophy upon organization of the legal profession, the relation of public profession of law to governmental organization, and the evil effect of combining radically different types of preparation with theory of a unitary bar. Inclusive in this part is a review of the Reed Report by Preble Stolz, also presented before the AALS Annual Meeting in 1971. This review is incomplete. Stolz notes: "One thing Reed learned about lawyers and legal education in the 1920's was that they cared not

at all about the history of legal education."[3] He also thinks this "splendid indifference" lingers into the 70's. Stolz thinks highly of Reed's study emphasizing the point that it was a conscientious attempt to understand the history of legal education and its potential role in changing the shape of legal education. The overall theme and thrust of Reed's study is endorsed by Stolz. An interesting account in the review is the revelation of the Committee on Legal Education of the ABA and the AALS's successful attempt to promote and raise the standards for admission to the bar. Stolz's review is saturated with the exposure of great issues confronting each organization during the tenures of various presidents of the associations. One should note the comparison of the ABA with the AMA and see how the latter's self-evaluation report influenced the drafters of the bar requirements. There was much reporting of internecine power struggles within and between the ABA and the AALS. Stolz points out that Reed was assigned the task to examine the world of legal education and not its effectiveness.[4] At that time it was thought that law schools should train students to learn "fundamental principles," i.e., specific fields of law, thus disagreeing with Langdell's belief that there were only a few principles of law which could be extracted by studying cases.

Part Three is concerned with the materials of legal studies. In this section are two reports. The first one "The Materials of Law Study" (1951, 1955) by Brainerd Currie devotes a considerable effort to support the reorganization of law curriculum. It presents a study of the early movement toward the integration of law and social science. The report gives a panoramic view of the major emphases and patterns which prevailed throughout the different periods of legal education in the United States. Beginning with the creation of a professorship of law at William and Mary College in 1779 the reader is urged on through the Litchfield School five years later, then on through a welter of changes produced by the Langdell case method [Langdell did not originate the case method but he produced the first casebook] and Storey's influence. In 1926-28, the law faculty of Columbia University conducted a study of legal education with the goal of combining law with social studies, evidently influenced by Roscoe Pound's sociological jurisprudence. As a result of this study new courses were added to the Columbian Law School curriculum. Note the names of the courses: forms of business units, family and familial property, property (interests in land, conveyancing, future interests), crime and

[3] *Ibid.*, p. 96.
[4] *Ibid.*, p.

criminology (a separation of criminal procedure from substantive law), marketing, risk bearing, transportation. Now casebooks included more than cases, statutes but other social science materials. The author notes that, though "cases and materials" casebooks are used in law schools, there has been very little change from the old-type casebook. The report concludes with these topics: the relation between general education and the study of law, the European background influences, a history of legal education in the United States.

"The Materials of Law Study" by Lester J. Mazor was published in 1971. Mazor respects Currie's report and supports it in his own report. Admittedly handicapped by the lack of information about prior evaluative studies of this interdisciplinary approach, he concedes that little, if any, assistance is afforded even by the Journal of Legal Education. He notes also that the catalogs of law schools do not suggest the number of courses being taught on an interdisciplinary basis. However, the Directory of Law Teachers does reveal the paucity (3%) of law school professors holding the Ph.D. and those (10%) having Masters other than the LL.M. (Although there are schools which offer a combination of the J.D. and M.B.A., thus indicative of the interdisciplinary approach, such information is not conclusive. In a response to a questionnaire, law professors encourage students to take while studying law, courses preferably in economics, with sociology a close second.

The book concludes with "The Limits of Legal Realism. An Historical Perspective" a report by Calvin Woodard. Woodard believes the trend in law is toward secularization, i.e., making the law more of a "down to earth" instrument rather than a quasi-priestly aura as it once was and currently is in some circles. He portrays his views as to the positive (exalt the ideals of Justice) and negative (mystification of law, an inner-sanctum). No doubt Woodard favors the secularization approach as he concludes, "As law teachers we can insure at least that lawyers who are educated to be agents of justice and make of their subject what theology was to Newton's Ideal of the University."[5]

After reading this book and devoting considerable thought to its significance, the reviewer is prompted to indicate, in his estimation, the major drawbacks as well as the positive features of this study. Granted that lawyers are endowed by right to re-examine the goals of their profession this kind of self-scrutiny is equivalent to glancing at oneself in a mirror to visualize what one wants to see. The overwhelming majority of con-

[5] *Ibid.*, p. 384.

tributors are law professors and the evaluation of each has a built-in bias, a predilection to view legal education only as legal educators can. A note in point is that the general tone of all the reports does not seriously question or bring to task the profession's commitment to standards established in the Canons of Professional Ethics, adopted by the A.B.A.

Secondly, there is a general distrust, at best, an ambivalence toward clinical education. The authors (p. 46) suggest that such experiences are anti-intellectual, as if everything intellectual respectfully occurs in the classroom. Other professions (medical, teaching) have successfully incorporated these types of experiences as a necessary ingredient in their curricula. I am mindful there are schools which currently have legal aid clinics and extern programs with prosecutors.

Though the authors acknowledge the profession's inability to deal with the "inadequate representation of racial minorities and women in law schools" (p. xv), they endeavor to shift that responsibility to higher education as if this is a report on higher education. Some erstwhile commitments by the A.A.L.S., A.B.A., and some law schools encouraging Blacks to enter the legal profession occurred in the sixties, then why now the deemphasis? Carrington in the courses suggested as offered in the Open Curriculum (p. 121) subject matter materials for a course in Political Trials, the trial of Sacco-Vanzetti, Eichmann, The Chicago 8 for intensive investigation. Why the omission of the numerous trials of Black Panthers, Angela Davis, the RNA?

Possibly one could read into the materials that the programs as suggested are new trends, but as some of the reports such as the Reed Report (1921), Columbia Law Faculty Study (1926-28) leave one wondering about the freshness of these innovations.

On page 21 the tone of the chapter is responsive to the elite schools' reactions of malaise and discontent. These elite schools see the 25 pacesetting law schools, the criteria being the students' scores on the LSAT. (See *Saturday Review*, October 14, 1972, p. 71 as to the validity and significance of the LSAT.) To entrust the education of so many in the hands of so few as to the future trends of legal education does not project the democratic image nor suggest cures for a problem that was endemic to legal education superficially covered in these reports.

On the positive side one can see that there are some professors in the field of legal education cognizant of its shortcomings and the incessant need for improvement in some areas. If acquiring knowledge requires a relentless search for the truth, then these materials properly confront their task to

do what they purport. To admit imperfections is the first step toward perfections. Now the problem is implementation.

Overall the reports are directed toward some of the juglar veins, the real and mundane problems that have to be dealt with sooner or later, the sooner the better. Another factor to the report's credit is its readability. A layman, when reading this book will not be mystified nor burdened with the "whereas," "therefores," and "party of the first part" clauses. The information is presented to the reader in a non-esoteric form and style which could endear others interested in the legal education in the United States to join the reform movement. Finally, as these studies go, they are comprehensive in their survey of the problems. Admittedly there are some stones unturned, waters unchartered; however, the recommendations are practical and implementable. Legal education can survive these changes.

> A new heart also will I give you, and a new spirit will I put within you: and I will take away the stony heart out of your flesh, and I will give you an heart of flesh.
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> Ezekiel 36:26