

For this reader, and perhaps for most lawyers, Mr. Yarmolinsky's collection of cases will at least have shifted the burden of going forward to the proponents of the present standard.

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THE UNIVERSITY TEACHING OF SOCIAL SCIENCES: LAW. Report Prepared by Charles Eisenmann¹ for the International Committee of Comparative Law. Paris: UNESCO. 1954. Pp. 133. \$1.00.

Professor Charles Eisenmann's essay on the aims and nature of legal education is the redeeming feature of this otherwise pedestrian report. Eleven countries are briefly surveyed in order to provide a picture of organized instruction in the law. The criteria of selection are unexplained. The countries: Belgium, Egypt, France, Germany, India, Lebanon, Mexico, Sweden, United Kingdom, United States, Yugoslavia.

The primary distinction in the mind of Professor Eisenmann and presumably in the minds of his principal collaborators is between systems of instruction "for purely practical ends" and for scientific purposes. Law teaching for practical purposes is said to have the following characteristics: "[I]t will be concerned only with the law of [the home] . . . state . . ."; "its whole attention will be turned to . . . problems . . . concerning the treatment or solution of concrete cases in the light of the general state of the rules of national law. . ."; "the intellectual qualities which it will mainly seek to develop . . . will be those of deductive reasoning, the greatest importance being assigned to deductive logic." (pp. 23-24)

Professor Eisenmann gives a tactful and incisive refutation of the idea that the work of a lawyer consists of the deductive application of a system of exhaustive and univocal legislative rules to the "facts" of cases. He underlines the point that no national system is wholly isolated from other systems, and emphasizes the fact that practical requirements call for acquainting the bar with "common and commercial law, as well as the judicial organization and procedure, of foreign countries." (p. 27) Foreign systems of public law are of much practical concern to "diplomats, employees of the national ministry of foreign affairs, and senior or intermediate officials in all government departments dealing with the international handling of their particular business." (p. 28) Furthermore, this consideration applies in "countries where a high proportion of politicians consists of men with legal training or where, to all intents and purposes, all politicians come from the legal profession." (p. 28) Practical grounds also justify the inclusion of public international law since "questions connected therewith may arise when a case is being heard before a national court . . ." (p. 28) Finally, it is argued that "this 'practical' type of legal education may, without suffering distortion, extend to the study of obsolete legal systems," including of course the history of the national system. (p. 28)

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When he examines the teaching of law for scientific purposes Professor Eisenmann takes a position that, he believes, "departs from traditional and current practice . . ." (p. 29) He characterizes law as "the whole field of what is 'juridical.'" "Moreover the science of law, in its full and ideal sense, can only exist in virtue of a knowledge of every phenomenon and problem connected with the subject as thus defined." (p. 29) He draws the following sweeping inferences relating to the "sciences of law":

Rationally speaking, the expression 'science of law' denotes, first of all, the whole [*sic*] body of knowledge connected with law, indiscriminately unitemized; in that sense, it covers and combines the entire group of different disciplines dealing with the phenomena and problems of law. If, in practice, it has been and still is almost wholly monopolized by one of those disciplines, treating of only one branch of the relevant problems and knowledge, there are probably historical reasons for this; the discipline in question was the first to be instituted, and was for long the only one taught; not until much later did most of the disciplines concerned with other problems begin to be taken up systematically or to make any headway. But today, possibly, this monopoly is simply a survival of the past, no longer reflecting the present position or modern ideas. In that case, conclusions drawn by rational analysis should not be obscured by mere conventionality of language. . . . [I]t is far better to describe as 'legal science' the discipline usually termed 'science of law', and to keep the term 'science' or 'science of law' for the broader group to which, logically, it applies . . . (p. 30)

In expounding the scientific objective, Professor Eisenmann examines the approaches that are concerned, respectively, with what "must" be law and what "is" law, and with the gradation between "legislation" and the application of legislation. His view is that problems of legislation come within the scope of the science of law, and he rejects the claim that "the science of law comprises solely the analysis of the rules of positive law . . ." (p. 53)

The option that lies open to the organizers of legal education, then, is this: "which — 'practical' teaching or 'scientific' teaching — corresponds best to the idea of higher university education?" (p. 55) The proposition is underlined that practical and scientific teaching are not entirely different. On the contrary, scientific teaching maintains the first "but completes it by incorporating it into a larger and more diversified unit." (p. 55) Hence the conclusion is that teaching "for purely practical purposes" cannot be accepted as university teaching in the true sense.

It is evident that Professor Eisenmann has made a valiant attempt to clarify an integrative conception of legal education, and that he is making every effort to carry conviction to colleagues whose conception of the field is more traditional and circumscribed. Within the terms of reference of UNESCO this may be something of a tour de force. It is pertinent to recall, however, that one of the stated aims of the report is to influence the organization of legal studies in the countries of Africa and the East where there are opportunities for "fresh starts" in the

shaping of an emerging legal profession. (p. 10) What is the most fruitful point of departure for a program of this character?

I submit that the key question to be answered in planning educational programs is what role persons "learned in the law" are supposed to play in the life of the community during the years ahead. As with all problems of decision, this is a matter of clarifying the goal values and objectives to be pursued in the light of expectations about what future developments will be if no new policies are introduced, or if alternative policies designed to maximize net value realizations are put into effect. Inferences about the future will depend upon available information about historical trends and upon the state of scientific knowledge to date. An adviser of those who make policy affecting the institutions of legal instruction will have individual views in which are reflected the impact of past circumstances and his own originality. Obviously an adviser who wants to influence policy will take into full account the value goals and specific interpretations of those who take immediate or eventual steps affecting the structure of legal education. What working assumptions are to be made concerning the system of public order and the roles to be performed by professional groups whose principal capital is their knowledge of the authoritative and probably controlling prescriptions of a body politic?

It is quite impossible to deal relevantly with the issues at stake unless assumptions are made about the fundamental orientation of those who engage in the making of authoritative and controlling decisions in the emerging body politic. If we assume that the overriding goal calls for the attainment of a society in which human dignity is realized in theory and fact we are likely to create a different system of legal instruction than if we take it for granted that the overriding objective is the aggrandizement of a ruling few. Where the conception of human dignity is the professed ideal, systems of legal education are profoundly affected by the specific interpretations given to the idea; hence it is essential to consider what specific interpretations will in all probability prevail in the shaping and sharing of such values as wealth, respect, enlightenment, skill, rectitude, affection, well-being, and power.

Working hypotheses about future lines of development call for estimates of the speed and scope of industrialization; the transformation of the class structure of society; the degree of effective democratic participation through various authoritative forms; the probable recruitment of the higher decision-making positions from among persons heavily or lightly indoctrinated with particular sacred or secular ideologies; the scope of monopoly and competition in the market and in the forums of public enlightenment; the degree of freedom or subordination to the elites of foreign powers (with specifiable policies); and so on through the institutional components of the system of public order.

Beginning with hypotheses of this character it is practicable to foresee, and perhaps to influence by clarification or persuasion, the role of the lawyer in a given body politic. It is possible to foresee and to affect decision makers; and especially to predict which perspectives and opera-

tional techniques they are likely to possess, or which would be the desirable means of effectuating the goals of the preferred system of public order. A policy maker who is concerned with legal studies must make up his mind which perspectives and operational techniques of the emerging elite are to be defined as "legal knowledge and skill" and which are to be called by other names. Will the planner define "skill in diplomatic negotiation" or in "mediation" and "conciliation" as "legal"? If so, what are the requisite qualities of character, and what methods of appraisal will ensure that the most appropriate individuals are chosen to exercise these functions or to receive special instruction designed to improve their effectiveness?

It is, of course, possible — and in some systems of public order desirable — to restrict the definition of "legal skills" in such a manner that it is taken for granted that only a few members of the authoritative and controlling elite of the body politic will be "lawyers." In such a case, the problem of legal education is to create suitable means of selecting and training specialists for the purpose of performing certain advisory functions, such as anticipating the arguments to be put forward in transnational diplomatic negotiation among governmental or private parties. It may be decided that those who qualify as advisers on legal prescriptions will be disqualified from taking top roles in legislative and policy-executing functions. The "judging role," for instance, may be regarded as so crucial to the system of public order that it is exclusively reserved to those who have a broader than "legal" experience.

If it be assumed that the decision makers of the community should and can be elected or appointed from among persons who have "legal" skills, it is appropriate for a planner's definition of "legal perspectives and operational techniques" to be relatively broad. In a democratic body politic the proper aim of legal education then becomes the preparation of a large number of potential decision makers who are qualified to defend and extend the public order of a free society.

One daring alternative in a democratic or a democratizing polity is to extend the role of legal training to include civic education in its entirety; while planning to have a few highly specialized lawyers, legal instruction may be made a major emphasis from primary school through every level of general education. Instruction in "fair play" on the playground and in the home would be explicitly labeled "legal," and the members of the body politic would live in an ideologically unified world in which the settlement and prevention of disputes, as well as the articulation of common objectives, would be part of a continuous exercise in the acquisition and mastery of a basic orientation.

Essential to the programming of legal instruction is the rate at which the most specialized skill group is to be recruited. The matter is vital where societies are in rapid transition toward industrial forms of life. We have had many occasions to observe the personal and collective disorganization that results when schools and colleges succeed in transforming the sons and daughters of the peasantry or of the lesser nobility into a "white collar proletariat" with upward aspirations.

In many emerging societies a strategic task is the blending of the new state of affairs with "underlying" folk cultures. If legal education is to smooth the transition from "folk" to "civilization," full account must be taken of the law (or law equivalents) among native peoples. It may be wise to provide for off-campus "workshops" located among the Indian tribes (in Latin America) or the tribes of Africa. Instructional procedures may be aimed at familiarizing tribal leaders (and students) with the larger system that affects them, or at acquainting urban leaders and students with local life.

It is clear, I think, that when basic questions pertinent to legal education arise we cannot usefully condense the options into such categories as "practical" or "scientific." Pertinent criteria are diverse; they depend upon the aims and images of the future of the body politic whose problems of legal education are under consideration. Even the ancient terminology of jurisprudential discourse — the "dogmatic" or the "positive" — play subordinate roles in a comprehensive conception of the patterns of thought appropriate to the study or the guidance of decision processes. We accept the bare inventory provided in this report of some of the curricular arrangements in eleven countries as a useful though elementary contribution to the subject at hand. If, however, considerations of political expediency are of such importance that an agency like UNESCO cannot sponsor reports that deal expressly with the most significant questions of public order, and the place of lawyers therein, the inference is inescapable that other auspices are needed to cope with the questions nominally treated in the present publication.

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IL CONTRATTO. Problemi Fondamentali Trattati con il Metodo Comparativo e Casistico. By Gino Gorla.¹ Milan: Antonino Giuffrè. 1954. Vol. I: Lineamenti Generali. Pp. xiv, 529. Vol. II: Casistica e Problemi. Pp. xv, 663. Lire 7,000.

Professor Gorla's book is an exceptional work, both in its application of the comparative method and in its reliance on a rich collection of selected cases. It is a novel attempt to present to the students of civil-law countries a book very much on the pattern of the American case-book, with copious annotations and questions. On the other hand, those familiar with casebooks will also find the approach original, since the first volume of the work, a monographic discussion of the topic, refers to the cases in the second volume as illustrations of the ideas and conclusions expressed in the first. To this approach Professor Gorla brings his broad knowledge not only of several civil-law systems, with emphasis on Italian and French law, but of Anglo-American law, viewing each system in the light of its historical development. His method is thus comparative in the best sense of the word, drawing both terri-

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