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Book Review: Lawyers and Their Work

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BOOK REVIEW

LAWYERS AND THEIR WORK. BY QUINTON JOHNSTONE AND DAN HOPSON, JR. New York: Bobbs-Merrill Co. 1967. Pp. x, 604. \$10.00

There has never been a time when the claims on the legal profession have been as intensive and as insistent as they are in the present hour. There is such demand for new rules and new precepts as answers to every human need that it would seem all society's ills might be translatable into action for law. Just as the substantive law is being broadened to soothe every human abrasion, so also the procedural rules have been expanded to require that lawyers make their services available to an ever increasing segment of the population. The result is a crisis in the legal profession reflected in debate, argument, and tension among lawyers about what and how much positive laws and lawyers can do. In allocating lawyers' resources of time and talent, the question arises whether there are other techniques, devices, and institutional arrangements that would permit the legal profession to serve better its own needs and those of society.

Professors Johnstone and Hopson of the Yale Law School have made a significant contribution to this discussion. They have described the anatomy of the legal profession by the gathering and analysis of empirical data much as was done by others in describing the anatomy of legal education¹ and the anatomy of law students.² Those who have practiced law for a livelihood, served in the usual committee assignments of local, state, and national bar associations, worked on legislative recommendations, and provided legal services in community and civic work will find no real surprises in the descriptive material. What is new lore for many of us are the detailed description of what the authors call the alternatives for providing legal services and the description of the legal profession in England.

As alternatives for providing legal services the authors first describe the institutional arrangements which lawyers use to preserve the monopoly of an identifiable and separate legal profession. Generally, this monopoly is preserved through prohibitions imposed to prevent nonlicensed persons from practicing law. The authors point out, however, that these prohibitions are subject to certain important exceptions: the right of lay persons—including corporations and government agencies—to do their own legal work and the right of lay businesses to perform legal services incidental to the normal functions of the servicing businesses concerned. Of particular significance against the background of increasing lay activity in the law is the Supreme Court case *Brotherhood of R.R. Trainmen v. Virginia State Bar*,³ in which the Court upheld the right of a union to recommend to its members employment of lawyers with whom the union cooperated to assemble evidence and whose fees the union influenced.

¹ ASSOCIATION OF AMERICAN LAW SCHOOLS, ANATOMY OF MODERN LEGAL EDUCATION (1961).

² WARKOV, LAWYERS IN THE MAKING (1965).

³ 377 U.S. 1 (1964).

The authors describe the expanding institution of the corporate legal department, assuming, as it has, greater responsibilities for the corporate operation—responsibilities which had been delegated in a prior day to private law firms.

Other inroads on the traditional forms of private practice are described as the big plant title insurer and the architect. The massive wave of new construction has created within the construction industry various techniques and institutional arrangements for clearing titles to land and construction of improvements on land outside the usual ambit of responsibility of lawyers and courts. Thus, conflict-settling and decision-making must be done swiftly so that money, men, and materiel may be applied effectively and economically to the completion of the construction project. Special forms and documentation have evolved which make lawyers' participation unnecessary or of minimal importance. As other occupational groups develop standardized forms, they too may become more independent of lawyers. The authors do not express alarm about this situation, for they point out that standardized procedures and documents provide a necessary economy and efficiency.

Of unusual interest is the description and explanation of the operation of the legal profession in England. To American lawyers who become starry-eyed about the independence of the English legal profession with the barrister-solicitor split, the authors make clear that there are shortcomings which support the arguments for fusion of the two branches of the profession. The authors also describe in detail the work of unadmitted personnel in English law offices. This practice is quite different from that of the American system; however, due to recruitment difficulties the managing clerk system in the solicitors' offices is disappearing and some arrangement similar to lawyer associates in American firms may have to be developed. Barristers' clerks are faring better, but a fusion of the profession could affect their fortunes adversely.

There is also a chapter on the Law Society, its efforts at law reform and its effectiveness in disciplining the profession in England.

The authors make some meaningful and far-reaching proposals for change in the American system:

(1) Channel work which can be more effectively disposed of on a mass volume basis to law offices that will handle it on that basis. The authors believe that such mass disposition can be so beneficial that drastic modifications should be made in bringing clients and lawyers together for this purpose.

(2) Improve law office efficiency by using subprofessionals and clerks as in the English system, by using common services and facilities, and by referring business to specialists whenever appropriate, such specialists to be designated by some sort of certification as in the field of medicine.

(3) Lift restraints on lay competition to permit lay groups to do lawyer-like tasks.

(4) Improve the quality of lawyer services in government, provide

liaison committees between bar associations and government, and eliminate unnecessary lawyer service.

(5) Improve the quality of continuing legal education and provide for certification of specialties.

(6) Tighten bar admission standards and apply more rigorous inspection of marginal law schools.

(7) Revise the canons of ethics and provide for tighter enforcement.

(8) Provide the means to induce better lawyers into fields needing their services.

(9) Collect and analyze data about the legal profession so that better information can be disseminated about the profession and its needs.

The authors also propose changes in the English system:

(1) Fuse barristers and solicitors.

(2) Improve legal education.

(3) Improve recruitment methods relating to lay clerks.

(4) Improve the professional association structure.

(5) Improve legal aid methods.

This is an excellent book and portrays the American and English legal professions most admirably. Writing such as this with its concrete proposals for reform is of great benefit. The authors are to be commended for their excellent handling of a mass of empirical data.

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