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Book Review. Brown, E. L., Lawyers and the Promotion of Justice

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This book introduces us intimately to the Islamic point of view and the spirit of the whole system.

The remarkable feature of Islamic law, that attracts the interest of all who look into it, is its development exclusively by treatises and opinions. This feature, to be sure, marked also the Roman law (up to the later Imperial era) and the Hindu law. But the total absence of development by statute and decree, in a highly developed system spread out over a dozen kingdoms, is unique, and must excite the curiosity and wonder of all who have dipped into comparative law.

And another singular feature—unparalleled, we believe, in any other system—is the dependence in modern Islamic courts on jurists who composed their works a thousand years ago. These leading jurists, who founded schools, have of course been succeeded by commentators after commentators. But even commentators of five and six hundred years ago are still quoted textually as authorities for a decision of today, based on a continuous tradition. This cannot be paralleled in any European country (except perhaps occasionally in English real property law).

One occasionally finds a statement in some modern European treatise on Mohammedanism that its law has been static and that it has failed to respond to social changes. Nevertheless, at the Hague International Congress of Comparative Law, in 1937, we listened, in the Oriental section, to a lively debate between jurists from Persia, Egypt and Algeria, on the liability in Islamic law of the father of a family for injury caused by the unruly scion in the use of the family automobile!

We shall welcome the second volume of Judge Tyan's valuable work, which will deal with the varied powers of the *kadi* and with the other minor and special jurisdictions having some share in the administration of justice.

JOHN H. WIGMORE†

LAWYERS AND THE PROMOTION OF JUSTICE, by Esther Lucile Brown.
Russell Sage Foundation, New York, 1938. Pp. 302. \$1.00.

Aristotle thought that justice was the greatest of all virtues. Yet it is possible to spend three years in the study of law in this country without ever hearing the word! In a world of swift and drastic change, political and legal institutions are endangered, and

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a sense of insecurity spreads. A conscientious and capable legal profession is needed perhaps more than ever before in the history of this country. But can anyone draw encouragement from the actual condition of the Bar? Much of the current widespread criticism of the Bar results from recognition of the disparity which exists between the high standards that ought to prevail in the performance of legal services and the actual practices of numerous members of the profession. If the profession is as astute as the public imagines, it will read Dr. Brown's splendid book. She has gathered together widely separated materials and has packed the book with information that all members of the Bar should have.

Dr. Brown writes of many subjects: rather briefly of the history of the Bar in this country; much more fully, of legal education. Thus: in 1890 there were 61 law schools in this country; in 1936 there were 190.¹ About 65 schools are part-time, and most of these are proprietary and commercial.

The ease of securing a legal education in an approved law school is so apparent that the well-worn argument that "a Lincoln may be kept from the Bar" is hardly tenable today. Yet states persist in admitting persons who have attended inferior schools, and even some who have not attended any law school. Surely this demonstrates that something is seriously wrong either with bar admission examinations or with the law schools. Perhaps a partial explanation is found in the fact that of those attending approved law schools, far too many devote considerable time to non-academic affairs—frequently to outside employment. In view of the enormous sums spent for education more or less indiscriminately, it would seem that scholarships and loans should be available for the abler students.

The author criticizes the typical law school curriculum chiefly because of its centering almost entirely upon the case-method of instruction and because the content of legal education is almost exclusively vocational, technical and narrow. She argues especially for greater attention to the social sciences. New trends in legal education, especially the four-year curriculum, and various plans of apprenticeship, both during and after graduation, are discussed.

Of equal importance are the standards for admission, and their administration. As to the appointment of bar examiners,

1. Cf. 133 medical schools in 1890 and 77 in 1936; 4,486 law students in 1890 and 40,218 in 1936; 15,404 medical students in 1890, and 22,564 in 1936. The peak for law students was 1928-29 when there were almost 49,000.

much progress has been made in recent years. Thus the author writes:

"In general the highest appellate tribunal has the right of appointment, although in nine states the recent movement to replace judicial by professional control, through the establishment of a 'self-governing bar,' has succeeded in making the bar itself responsible for the appointment of examiners."²

As for the examinations themselves, the questions asked frequently reflect the legal education of a quarter of a century ago. Moreover, they are apt to test memory rather than understanding of law and ability to reason as a lawyer. The National Conference of Bar Examiners is doing work in this connection which should be more generally known, and the recent report of the Committee on Legal Education and Admission of the Louisiana State Bar Association is very encouraging.

There is brief discussion of the various National Associations: the American Bar Association, National Lawyers Guild, Association of American Law Schools, National Conference of Bar Examiners, and American Judicature Society—all doing important work.

Much valuable information is presented about the number of lawyers and their income. The tendency is for lawyers to concentrate in the cities; hence the greatest need for lawyers is in towns of from 2,000 to 5,000 in population. The Bar is probably overcrowded but recent studies in Wisconsin, New York and California show that this problem is not as serious as is generally imagined. Certainly there is no easy remedy. The author recommends: vocational guidance in high school and college to discourage all except very able students from entering law school; the raising of state regulations, so that only graduates of approved law schools could take the examination; higher standards for admission into law school; and lengthening of the period of legal education (it takes 9 years after high school to become a physician, in most states 5 years or less to become a lawyer). It may be argued that as many who wish it should be given a legal education for they would all profit thereby. If reliance could be placed upon the Bar Examiners to do their work properly, there would be much to support this view. But there would still be need to insist upon a high degree of competence for admission to the Bar. If this principal objective were assiduously cultivated, we might

then consider also the continental program of legal education for those who do not intend to practice law.

Lawyers' income, except for a small percentage, is low: in 1935, 1500 New York lawyers, about 10 per cent of that bar, qualified for relief under a pauper's oath. Investigations have shown that college training coincides with greater income. At the same time, it is certain that a vast portion of the general population goes without legal assistance. The poor do have legal aid societies in a number of cities, and this movement is growing. Equally significant are plans to extend legal services to those of moderate means who at present do not even begin to employ lawyers in the thousand and one small transactions they enter into. Among the various plans suggested, one especially worth considering is the organization of legal agencies by the Bar Associations, where young lawyers would be employed at fixed salaries; these agencies would be advertised by the collective Bar. This plan, it is argued, would not impair ethics, and would call attention to the widespread need for legal services, thus serving a large part of the population as well as the less fortunate members of the Bar.

Among weaknesses in the administration of justice which the author discusses are: delay in the courts; prohibitive expense of litigation; unethical practices and failure of bar associations to expel guilty members; lack of interest in the promotion of justice and lack of realization of the social responsibilities of the Bar. Various important movements are on foot to remedy all of these shortcomings. Most important is the work of the National Conference of Commissioners on Uniform State Laws, the American Law Institute, Judicial Councils, the New York and other Law Revision Commissions. New trends in law are signaled by the growth of Administrative Boards, Arbitration Bureaus, Legal Aid Societies, Public Defenders, Specialized Courts, Conciliation Tribunals, and the Integrated Bar (which many states have refused to adopt because of the possibilities of abuse).

The shortcomings of the Bar are many and serious. The blame cannot be centered in any one agency, but the law schools certainly cannot escape responsibility. Compare the education of Edward Livingston, for example, with that of present-day students, and ask if the schools which now seek to monopolize legal education are performing their functions as they should. There is no need to take an extremist position of any sort regarding curricula or length of study. It is possible to set objectives in the light of present needs and present knowledge, and to develop lawyers

who are not only equipped with thorough knowledge of the existing rules and the techniques of using them, but are also trained in legal history and legal philosophy so as to appreciate the basic functions of law and of the profession.³

This responsibility of the schools, to be sure, is shared by the Bar Examiners, and ultimately by the entire Bar. For so long as archaic questions are asked, so long as bar examinations remain largely memory tests, so long will legal education be narrow. For the pressure of vocationalism on the schools is too great to resist—without the collaboration, at least, of the leaders of the Bar. Failing such cooperation, the vicious circle will continue. Yet there are signs that here and there farsighted scholars and lawyers do exhibit the necessary courage. They will be the long-remembered pioneers in the vitally important movement to improve the Bar, to extend competent legal service to all members of the community who need it, and to attain a more adequate justice.

JEROME HALL*

COURT OVER CONSTITUTION: A STUDY OF JUDICIAL REVIEW AS AN INSTRUMENT OF POPULAR GOVERNMENT, by Edward S. Corwin. Princeton University Press, Princeton, 1938. Pp. xi, 273. \$2.50.

Professor Corwin might well have entitled this book "Court Over Use: A Study of the Constitution as a Springboard." The book so entitled would have made more explicit its dominant theme which seems to be that while the judges who make up our Supreme Court are supposed to be engaged in the mysterious task of interpreting the document, they are actually a branch of our popular government whose most important task since the Civil War, at least, has been to express approval or disapproval of legislation both national and state. It may be true that these judgments are expressed in terms more familiar to lawyers than to laymen and it may be that they are bound in a staggering number of volumes called U. S. Reports but Professor Corwin insists that the judgments howsoever expressed are none-the-less judgments of approval or disapproval akin to those that might be expressed by any group in a smoking room. This is not a new point

3. Especially significant developments have occurred at Columbia, which for some years has taught legal history to first year students, and now requires all third year students to take the course in Legal Philosophy.

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