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Legal Education and Public Administration

By Ralph F. Fuchs, Indiana University

LAWYERS, LAW SCHOOLS AND THE PUBLIC SERVICE, BY ESTHER LUCILE BROWN. Russell Sage Foundation, 1948. Pp. 258. \$3.00.

DR. BROWN'S provocative book is of significance for several areas of contemporary education in addition to the law school world to which it is primarily directed. Those engaged in teaching government, business, economics, or social work will find this study important for two reasons aside from its account of legal education, in which they also have an interest. These are the book's implications for education in their own fields and its assumptions regarding the role of lawyers in government as related to the work of other professional personnel.

The author is courteous, even deferential, to lawyers and law teachers. She gives credit to the accomplishments of the bar and of American law schools. Her criticisms and affirmative suggestions are drawn quite largely from lawyers and law teachers themselves and, except for her eloquent concluding plea for an adequate over-all program for contemporary legal education, do not go beyond bringing together the best thought in the schools whose work she is appraising. Yet, throughout, she subjects that thought and the performance of the schools to a discerning critical judgment; weaves together an account of recent developments, accompanied by a commentary upon them, which is unique; and in effect frames an indictment of legal education as generally practiced in the United States which it will be difficult to answer.

The adverse judgments contained in the book are not left entirely to inference. A sentence likely to knock the ordinary law professor out of his chair appears, for example, in the midst of a discussion of the law schools' lack of concern with history and with the law of other countries: "Any person who pays prolonged visits to law schools is likely to come to feel that they are cut off in time and space." (p. 146) This sentence follows shortly after the observation that "the law school is largely closed to the university." (p. 118) Dr. Brown

speaks with authority. This book is her second on the legal profession and legal education¹ and is the final product of a search for information that, starting with knowledge of professional education in other fields² but without prior specialized acquaintance with law or legal education, has carried her into many law schools for first-hand observation. In the course of her present inquiry she visited twenty-three law schools throughout the country where experimentation appeared to be in progress. She has penetrated realistically to some of the most vital issues.

The judgment of the book is clear: legal education today is doing a largely inadequate job when measured by social need, despite hopeful progress in a variety of directions, because of continued preoccupation with the legal doctrines that filter through the appellate decisions upon which study centers. In part, those engaged in training lawyers have wanted to do better; but despite the attention which is given to modern, nonjudicial developments in such courses as legislation and administrative law, the schools have not as yet produced knowledge and skills on the part of their graduates which are adequate for coping with the problems of the present social order. They have taken inadequate account of the expanding role of government and of the numerous effects which that has had upon the work of lawyers. These conclusions are reached with specific reference to the work of government lawyers, but with explicit recognition that members of the bar in private practice, having relationships to government and to community problems, are equally in need of the more adequate professional training which Dr. Brown envisages. Her comments do not contemplate a division of legal education into separate courses for public service and for the private practice of law.

Early in her book Dr. Brown outlines accurately, although in sketchy fashion, the role

¹ Its predecessor is *Lawyers and the Promotion of Justice* (Russell Sage Foundation, 1938).

² Dr. Brown's previous studies of professions for the Russell Sage Foundation dealt with social work, engineering, nursing, and medicine.

which is played by lawyers in government, especially the federal government, today. Her inquiry into this subject was carried on in the same searching manner as her investigation of the law schools. Visits to government offices; interviews with lawyers there who consented to be questioned; stray bits of writing to be found in little used sources, sometimes unpublished—these yielded the raw material for her account of what goes on. Fragmentary as it necessarily is, this account is in many ways the best summary in print of what the legal fraternity does in government agencies, although it attempts no such articulation of the place of lawyers in administration as Fritz Morstein Marx's recent article,³ to which Dr. Brown refers frequently. The author sets out the classification of federal legal jobs, gives an account of the actual functions of the law offices of several agencies, and includes a shrewd estimate of the various types of lawyers in the federal service: political appointees, "top flight career men," permanent career attorneys, and temporary government lawyers. She makes some acute observations upon the life cycles of government agencies as they start fresh, come to maturity, and fall into old age, and upon the consequences of this metamorphosis for the legal work that goes on in them.

Dr. Brown finds that lawyers participate constantly in the formulation of policy in the executive branch, not only as occupants of high administrative positions to which some have risen, but as chief law officers forming part of agency high commands and, interstitially, in the strictly professional work that goes on at all levels of the governmental legal hierarchy. The participation in policy making in which government lawyers necessarily engage as they "facilitate"⁴ the work of their agencies in a definitely professional capacity would alone justify Dr. Brown's conclusions; but, in addition, she accepts as a future fact, not less than a present one, the assumption from time to time of over-all policy functions by chief law officers and the elevation of lawyers to high administrative posts. Instances are referred to, notably the practice in the Department of the Interior at one stage, in which

the final review of questions of policy before action by the chief administrator occurs in the office of the chief legal adviser. Where there is an informal directorate, including the chief law officer, in effect managing the affairs of an agency, the functions of the several participants are not kept distinct. Professional problems merge into general policy questions and the participants take part in discussion and decision on a substantially equal plane.

Formally, of course, the legal department of the government as a whole or of a governmental agency is a staff service which, in its advisory capacity, functions as an adjunct to the executive or administrative head. If it engages in litigation or the conduct of administrative proceedings, such as hearings, by which the public business is dispatched, it supposedly executes, rather than makes, policy. But an advisory opinion upon a doubtful legal problem is likely to turn upon policy considerations, however the matter may be put in words, rather than upon the dictation of legal formulas; and litigation is often a tool for the attainment of ends, as well as a means of making "the law" effective, as Dr. Brown observes. In addition, lawyers sometimes take part in the councils which formulate policy at lower levels as well as at higher.⁵ Hence, throughout, their work often ceases to be mainly an adjunct to the conduct of an agency and becomes part of its directing statesmanship. While the lawyer, like other specialists with whom he works, makes a distinct contribution to the common enterprise, it is obviously necessary for him to envisage as a whole the problems that arise and to lend his total wisdom, such as it may be, to their solution.

The implications of these facts for legal education are discussed in the concluding two-thirds of Dr. Brown's book, against a background of description of existing practice in the schools. These pages contain the best account so far published—although it is necessarily incomplete—of the scattered, forward-looking experiments that have emerged in legal education during the past twenty-five years. The author, although she speaks at one

³"The Lawyer's Role in Public Administration," 55 *Yale Law Journal* 498 (1946).

⁴*Ibid.*, p. 507.

⁵Dr. Brown illustrates the interprofessional teamwork which takes place at lower levels of government, as well as at the higher levels, by examples in the work of the Office of Price Administration.

point of evaluating these experiments (p. 95), seems for the most part to regard it as beyond her province to do so and is content to record them for their suggestive value, because of their purpose. The specific developments which, in the author's judgment, should take place in legal education include the following: curricular revision to accommodate new subject matter; organization of subject matter according to contemporary "functional" categories, instead of mainly along doctrinal lines; inclusion of the social studies other than law itself in the training of lawyers, whether by means of requirements for prelegal training or through inclusion of social science material in the professional curriculum;⁶ devotion of greatly increased attention in law schools to legislation and to policy formation in the executive branch of government; orientation of law study with reference to history and the law of other countries; and inclusion of training in research, other than law book research, in the work of law students. The provision of means to bring about these developments calls for bold, purposeful planning and a multiplication of funds devoted to legal education.

It does not follow that training for governmental policy formation is exclusively or even primarily the province of legal education. Administrative management, economic analysis, social work, and the various branches of physical science and engineering likewise have their participants in the process of formulating policy, at least within administrative agencies. The training schools in these fields are under a duty similar to that of law schools to produce personnel equipped to decide national and international, state, and local governmental issues. This duty in relation to government has its counterpart, moreover, in relation to business, labor, and social service organiza-

⁶ One of Dr. Brown's most telling passages relates to the manner in which, with minor exceptions, the law schools have allowed the matter of increased attention to the social studies to go by default. Admitting the need, they have, nevertheless, (1) failed to require prelegal work in these subjects in the belief that they are not properly taught for professional legal purposes at the college level, (2) adhered to the belief that law teachers are not equipped to teach them, and (3) avoided the addition of social scientists to their own faculties. This is a state of affairs which requires "careful consideration on the highest policy-making level of the university." (p. 129.)

tions of all kinds, which are equally vital to the public and in which the members of various professions work cooperatively. Hence Dr. Brown's judgments upon legal education also have their application elsewhere.

The tendency to turn out specialists whose vision, skills, and understanding do not extend beyond their particular provinces seems strong in many branches of professional education, if one may judge by their product. The personnel man who, with the greatest good will, applies his techniques in blissful ignorance of the functions of those whom he aids in hiring, firing, and managing; the devotee of administrative management who follows dogmas with regard to organizational structure; the economist who adheres to theoretical norms without reference to the facts of life; the engineer or architect who plans in traditional ways without adequate reference to utilization; the medical man who fails to envisage human beings adequately as more than physical organisms—these are familiar figures inside and outside of government. Law and legal education, whatever else may be said of them, at least deal of necessity with a varied subject matter, as broad as life itself. Perhaps this factor, along with a certain unconscious absorption of logical methods of analyzing problems and of skill in effecting human adjustments, accounts for the success lawyers appear to have had, despite the inadequacy of legal education, in making their weight effective in common councils and in rising to positions of over-all direction of policy.

Dr. Brown is right. The reforms she advocates for legal education are necessary. It is also true that inertia and narrow traditionalism account in part for the failure of law schools to respond more promptly and effectively to the need that exists. The penury that the universities have practiced in relation to their law schools, which the author so roundly condemns, is also in part responsible. In addition, however, the reason lies in a determination on the part of law teachers not to sacrifice the benefits of clean, rigorous thought, even though it deals with limited materials, for the sake of a catholicity which may prove thin as well as broad and lead to superficial, as well as wide-ranging, judgments. The present materi-

als of law study at least reflect reality; and before more scattered data can be used effectively they must be placed in assimilable form. An enormous amount of hard work will have to be done before new values can be served adequately by methods of teaching and of learning that weave together effectively the enormously complex subject matter to which attention must be given. Dr. Brown's book should stimulate effort in this direction in many quarters where it is not now being exerted and should induce a sense of urgency to accompany the prevailing caution in quarters where experiments are under way.

If the same needs exist in all areas of professional education, cooperative measures may help to meet them. If students in each field cannot be trained to participate in all the arts or become familiar with all the sciences, they can perhaps learn to draw upon one another's knowledge and skills, thus avoiding superficiality while gaining in appreciation and depth of understanding. Dr. Brown points to

some faint beginnings in cooperation among professional schools and departments in the training of students, in which law schools have participated. Joint seminars at Yale, Harvard, Chicago, and Columbia and collaboration in legislative drafting at Minnesota and Nebraska are experiments that perhaps suggest the way to accomplish more effective solutions to common problems than can be achieved in isolation, both educationally and in the work of the professions. The division of labor, which the complexity of modern phenomena requires, demands as its counterpart the integration of specialized contributions. In a democracy this integration cannot come about by subjection to authoritarian leadership, but must be achieved cooperatively. The necessary techniques are difficult; but conceivably, in time, professional education may emerge as a unity composed of interrelated parts. If so, governmental administration, along with the conduct of other human affairs, will be immeasurably the gainer.

Make No Little Plans

By Coleman Woodbury, Urban Redevelopment Study

CITY AND REGIONAL PLANNING PAPERS, BY ALFRED BETTMAN. Harvard University Press, 1946. Pp. x, 294. \$4.50.

THE Bettman *Papers* give more clearly than any other recent book the spirit, rationale, and methods of a forward-looking branch of the orthodox school of American city planners. Selected carefully by editor Arthur Comey and prefaced by a warm tribute from Mr. Bettman's fellow leader of the bar, John Lord O'Brien, the *Papers* cover the period from 1916 to 1945 and, in the form of speeches, articles, law briefs, and legislative drafts, range over many of the subjects that have concerned a generation of planners and students of urban affairs: the nature of city planning, its place in the organization of municipal governments, the character and purpose of master plans, the legal justification and practical problems of zoning, housing, urban redevelopment, metropolitan planning, and the state as a planning unit.

This volume is by no means a systematic treatise nor, Allah be praised, a textbook. Mr. Bettman wrote and spoke on the current planning issues of the day. He wrote as a lawyer, as chairman of a large city planning commission, as a guide, counselor, and friend of planning agencies and officials all over the country. These agencies and officials were facing daily some of the toughest problems of their communities. And in addition to the substantive problems of a complex, growing public function, these officials, lest we forget, were bedeviled by widespread ignorance of the anatomy, economy and pathology of our urban centers, by confusion of purpose and philosophy about their communal life, by the intellectual timidity of many of those citizens who served on planning commissions, by inadequate budgets, and often by the distrust or outright opposition of administrative departments and political leaders.

These remarks on the genesis and setting of