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### Book Review. Lawyers in Politics: A Study in Professional Convergence by H. Eulau and J. D. Sprague

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country."<sup>34</sup> To this reviewer, the most important reason why Hamilton should have as firm a place in the hearts of his countrymen as Jefferson is that he was as emphatic a constitutionalist as Jefferson. We should venerate Hamilton not so much because we must become accustomed "to thinking in terms of a progressive industrial society served by an energetic national government . . . of a sovereign Union," but rather because he helped to create "the liberating Constitution."<sup>35</sup> Hamilton and Jefferson may have disagreed on the means for achieving free government in these United States. They enthusiastically agreed that free government should be established for the sake of the individual's life, liberty, and property.

GOTTFRIED DIETZE\*

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## Noted

LAWYERS IN POLITICS: A STUDY IN PROFESSIONAL CONVERGENCE. By Heinz Eulau and John D. Sprague. Indianapolis-New York: The Bobbs-Merrill Co. 1964. xi + 164 pages. \$5.00.

The long-observed prominence of lawyers in American politics has led to many assumptions and apprehensions about the roles they play in our legislative institutions. *Lawyers in Politics*, which could be more aptly entitled "Lawyers as Legislators," is the first comprehensive application of behavioral methodology to study the affinity between law and politics.<sup>1</sup> Its importance lies in the theoretical explanation the authors offer for their findings and the implications it contains for the law school's role in the education of future legislators. And, by delineating the influence of lawyers and nonlawyers in state legislatures, the authors provide empirical evidence for determining whether the lawyer is a proper subject for the criticism leveled against state legislatures.

The authors challenge the common assumption that "the mere fact that lawyers are highly visible in politics is . . . by itself proof that their

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34. P. 254.

35. *Ibid.*

\* LL.B. 1948, Dr. Jur. 1949, University of Heidelberg; A.M. 1951, Ph.D. 1952, Princeton University; S.J.D. 1961, University of Virginia. Professor of Political Science, The Johns Hopkins University.

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1. Legislatures in the states of California, New Jersey, Ohio, and Tennessee were analyzed on the basis of data collected in a more comprehensive study of the four legislatures, published as WAHLKE, EULAU, BUCHANAN & FERGUSON, *THE LEGISLATIVE SYSTEM* (1962).

presence makes a difference in the functioning of political institutions."<sup>2</sup> To the contrary they conclude that "Lawyer-politicians do not differ much from politicians who are not lawyers."<sup>3</sup> Lawyers and nonlawyers are equally adept in learning the written and unwritten rules under which the legislature operates. They are similarly adept in acquiring skills such as mediation ability, one of the hallmarks of an effective legislator.<sup>4</sup> Thus, both become "socialized" into the political culture.

The lawyer's "socialization" occurs because law and politics are convergent professions. "Professional convergence" is a conceptual tool which is used to describe distinct social institutions, such as the professions of law and politics, which perform similar yet different functions. In the case of law and politics, "similar development over time has resulted in acquisition of similar properties and similar relationships between properties."<sup>5</sup> For example, because the average client is ignorant of the law, the lawyer must often act independently of the client's judgment. Similarly, "unable to give instructions in an ever more complex society, the political client must increasingly depend on the representative for correct decisions based on his own appraisal of the problem at hand."<sup>6</sup>

The authors' conclusion that "the more law and politics converge as professions, the less distinct will be the particular kind of contribution the lawyer-politician is likely to make to politics as a lawyer"<sup>7</sup> casts doubt on the common assertion that a legal education is per se a justification for the lawyer's widespread participation in the legislative process. The authors point out, although they fail to stress, that because of their legal education lawyers do make valuable contributions to legislatures which cannot be made by nonlawyers. The authors minimize these contributions because they are impressed with the influence of factors other than legal education on the lawyer's political career and behavior.

The conventional explanation for the lawyer's political interest is that "legal study leads to interest and activity in public affairs."<sup>8</sup> However, the authors find that the lawyer's interest is more often caused by factors such as the family.<sup>9</sup> An early interest in pursuing a political career is often acquired through parents and relatives interested in politics. The person having this early interest will often enter law school

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2. P. 16. See Gold, *Lawyers in Politics: An Empirical Exploration of Biographical Data on State Legislators*, 4 PACIFIC SOCIOLOGICAL REV. 84 (1961).

3. P. 122.

4. P. 104. The authors identified the "broker" role in the legislature and found that differences between lawyers and nonlawyers "do not seem to stem from their divergent occupational backgrounds."

5. P. 128.

6. Pp. 136-37.

7. P. 145.

8. P. 54.

9. P. 59.

because he believes it to be the best stepping-stone to public office. The authors also find that although lawyers are more active than nonlawyers in our political parties, they are least influenced by them. Lawyers tend "consistently [to] name themselves more often as sponsors of their legislative career than do nonlawyers." As one lawyer put it, "Nobody told me to run. . . . It was a long-planned thing."<sup>10</sup>

A legal education provides an aspiring legislator with a degree of accessibility to political channels and availability for public office not enjoyed by nonlawyers and thus facilitates his entry into politics. The lawyer's prevalence in law enforcement offices gives him a monopoly on the traditional springboards to public office. The nature of his profession enables him to serve as a state legislator, a notoriously low-paying position,<sup>11</sup> with less risk of financial hardship than the nonlawyer faces. The relatively slow-changing body of basic legal principles and the lawyer's control over the type and volume of work he handles facilitate combining private practice with a legislative career. Further, the lawyer is relatively assured of a profitable future after he leaves the legislature. This availability makes existing financial security less of a prerequisite for the lawyer desiring to run for public office than for the nonlawyer.

While his legal education may have a relatively slight influence on the lawyer's decision to enter politics, it has a greater influence on certain aspects of his legislative performance, though perhaps not so great as is conventionally assumed. Historically, the lawyer's role as a state legislator has produced four common apprehensions. It has been feared that lawyers are overrepresented, that they conspire to seek legislation favorable to the interests of the legal profession, that they are conservative and thus give public policy a one-sided direction, and that their legal education fails to train them in the methods of observation and thinking necessary for effective policy making.<sup>12</sup> The authors argue that the claim of overrepresentation is not a meaningful criticism unless the second or third apprehensions can be statistically demonstrated. Statistics taken in the four states surveyed show, however, that lawyers do not tend to vote en masse against the rest of the legislature, nor are they any more or less conservative than nonlawyers.<sup>13</sup> The fourth apprehension is accepted by the authors, without evaluation, as a justifiable criticism.

The complaint that state legislators are not generally imaginative policy makers applies to lawyers and nonlawyers alike. However, certain aspects of legal education may impede the development of the lawyer's

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10. P. 68.

11. The authors found that base salaries ranged from \$375 per year in Tennessee to \$6,000 in California. Pp. 37-38.

12. Pp. 17-27.

13. Pp. 21, 26.

policy-making potential.<sup>14</sup> As the authors point out, "lawyers may be better fitted by training and practice than other men who get elected to public office,"<sup>15</sup> but this does not mean that they are the best policy makers. The authors imply that legal education fails to supply the lawyers with the skills of policy making. However, this reviewer believes that legal education provides the lawyer with the requisite skills, but that it fails to emphasize the application of traditional skills to policy making.

The lawyer enters the legislature with superior skills in the mechanics of legislation, such as appreciation for the meaning of words and an ability to translate policy into rules. However, law schools have been overly concerned with teaching the application of these skills to the settlement of private disputes. The skills involved in analyzing a statute in terms of its underlying policy can also be directed toward the formulation of public policy. Training which forces the lawyer to think problems through and to identify competing interests should equip him to state public policy in workable proposals instead of vague generalities. If the lawyer is properly trained to view rules in the context of the purposes they serve, he will be able to articulate public goals toward which all solutions must be oriented. By learning the history of the law he will acquire the ability to integrate his solution with those achieved in the past. His passion for facts will assist him in dealing with large masses of technical data in order to formulate the solution he believes most consistent with his and his constituents' overriding goals. While lawyer and nonlawyer alike can acquire these skills, the lawyer is best equipped to implement the policy by translating it into rules which can be easily understood by those charged with its administration.

To train the lawyer to make policy, it is necessary to expand the traditional law school curriculum. Problems which have traditionally been viewed as involving only the settlement of private disputes must also be viewed as ones of community welfare. For example, water law involves not only the adjudication of private rights, but also "the best use and conservation of our water resources in the interest of the consumer."<sup>16</sup>

The authors find that lawyers fail to make full use of their policy-making potential. They tend to gravitate to the traditional areas of legal expertise such as drafting bills and revising codes, as opposed to the more nonlegal areas of finance, conservation, welfare and transportation.<sup>17</sup>

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14. The best and most comprehensive discussion of the criticism is Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943).

15. P. 29.

16. Lasswell & McDougal, *supra* note 14, at 251. For an excellent example of a recent work indicating that law schools are adopting this principle see Comment, *Lake Tahoe: The Future of a National Asset—Land Use, Water, and Pollution*, 52 CALIF. L. REV. 563 (1964).

17. Pp. 111-17.

This is unfortunate because the lawyer, more than any other professional, must deal with the entire range of social problems; his concentration on limited areas represents wasted talent. It is also unfortunate because lawyers more than nonlawyers see the state legislature "as a way station on the route to possibly 'high office.'"<sup>18</sup> The state legislature is a training ground for national policy making and should provide the lawyer with the broadest possible range of experience.

Even if the lawyer is better equipped to handle legislative problems, his greater tendency to make a career out of politics does not necessarily result in a boon to the political system. At the outset of their study the authors speculated that

the long standing conception of the lawyer . . . is . . . [one] of a sense of public responsibility . . . . It is to be expected, therefore, that in volunteering comments about how they became legislators, lawyers would be more likely . . . to articulate what, for lack of a better term, were coded as "altruistic-contributive" objectives.<sup>19</sup>

However, statistics showed that lawyers tended to give more "selfish-exploitative" responses. Findings such as these always raise the question whether they can be regarded as more than a mere description of the results of a questionnaire given to a limited group. But if valid generalizations about the lawyer's legislative behavior can be drawn from them, perhaps it is true that the preponderance of lawyer-legislators impedes state legislatures from dealing more effectively with broad questions of public policy, for lawyers may tend to view a political career as an end in itself rather than as a means of public service.

A recent California Joint Senate-Assembly interim hearing on regional water plans<sup>20</sup> illustrates some of the criticisms suggested by *Lawyers in Politics*. A prominent state administrator, presenting arguments in support of regional planning as a solution to the state's water problems, was forced to spend the bulk of his time enlightening a leading lawyer-legislator on the following: (1) The fact that water rights can be condemned by federal and state agencies, (2) that water rights are no more and no less sacred than other property rights, and (3) the effect of regional planning on ten-acre farmers. These are valid considerations, but they should not obscure the legislator's perspective in dealing with complex problems, such as that involved in allocating water for some sixteen million people.

*Lawyers in Politics* is a contribution to both political science and law. It is of interest to all lawyers concerned with making the law a more

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18. P. 79.

19. P. 71.

20. Aug. 13-14, 1964.