

many specific problems of internal organization and finance common to both forms are then considered: powers of directors, dividends, treasury stock, stock transfer, to mention only a few.

One might question the aptness of some of Mr. DuBois' light touches. Thus in referring to a report of the Attorney General adverse to a petition for incorporation, he says, "Pounds, shillings, and pence were marshaled with vehemence to show the lack of merit in the Warmley enterprise, and use was thus made of the factual approach, that great intellectual discovery of the Coolidge era."⁵ Nor are the implications of the following passage entirely clear: "One of the most interesting problems in the history of every human institution is the position of the minority, the salt of the earth, who do not choose to conform to the dictates of the majority."⁶ But in general the book is lucid and readable and the conclusions seem cautiously drawn.

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Cases and Materials on the Legal Profession. By Elliott E. Cheatham. Chicago: The Foundation Press, Inc., 1938. Pp. xviii, 558.

Ordinarily, a review of a casebook on legal ethics should begin with an apology. That none is offered in this instance is due to the belief that the present casebook on the subject is unique, and that it is significant for the struggle currently taking place in the field of legal education. It is assumed that any effort made toward clarification of the problems involved therein should have, and will receive, the attention and consideration of the legal profession and, especially, of law teachers, whether teaching the subject of legal ethics or not.

The year 1921 marks an important stage in the movement by which law school education has succeeded in practically eliminating all other methods of legal education. In that year the American Bar Association adopted certain requirements which it insisted be met before it gave its stamp of approval to any form of legal education. Two of these requirements were (1) that this education should consist of three years study in a law school meeting specified standards, and (2) that this be preceded by two years study in a college. The action so taken and the subsequent efforts to get the resulting program of legal education adopted gave vigorous impetus to the movement then already taking place among law schools along similar lines, and today some eighty law schools, graduating the majority of the lawyers being admitted to the bar, meet these requirements or more.

These developments were but evidences, and a product, of a persistent public dissatisfaction with the legal profession of the country that dated back, at least, as far as the beginning of the present century. By the early twenties, criticism was widespread that the legal profession was losing its former leadership, that it was blind to the current problems of the day, and that it failed to correct, and even actively opposed correction, of abuses and defects in its own field.

Those sponsoring the adoption of the requirements of the American Bar Association believed that two years spent in the study of the sciences, of the literature of our culture and of the arts would develop a broad cultural background that would provide a proper basis for the later study of law, and that the later training in law would then

⁵ P. 31.

⁶ Pp. 302-3.

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be received and understood in the light of the background so obtained. It was hoped that, as a result, a legal profession would develop in the course of time of which it could no longer be said that it lacked leadership or understanding.

Adequate time has since elapsed for evidences of the development of such a bar to appear. Yet, today, criticism of the bar by the public generally is even more vigorous than it was in 1921, and it is directed along the same lines. Praise is rarely heard except from the profession itself. As in 1921 the charges are that the bar lacks leadership, that it is reactionary, that it fails to recognize vital social problems demanding its consideration or the significance of its own functions, and that it continues to ignore, and even defend, vital defects and abuses in the administration of justice.

Judged by this criticism, the program of legal education, so vigorously and hopefully urged by the American Bar Association, and so willingly accepted by the law schools, has failed in one of its major purposes. It is not denied that better technicians have been produced, but the complaint is that, outside the technical field of law, lawyers continue to be as ignorant, as limited in vision, and as obstructive as they have been in the past.

With its own product being so roundly condemned, the law schools of the country have more recently become conscious of the possibility that they, the law schools, might be chargeable with the responsibility for having produced such a bar. They are considering seriously whether they have been giving anything more than a tradesman's training, conducted along "cook book" lines; and there are evidences that they are beginning to reach the conclusion that these accusations against them, implicit in the criticisms of the legal profession, are true and that they must recast their methods of education if they are to develop the qualities in their graduates that the public demands.

The result has been a variety of suggestions and experiments as to the needed changes that cannot be discussed here. They may be characterized as demonstrating a complete state of confusion and uncertainty on the part of the law schools on both the formulation of the objective to be achieved and the methods of attaining it.

The foregoing background makes it easier to understand that the author of the book under consideration is undertaking to present something more than another casebook in legal ethics, and that the other objectives he has in mind are far more significant.

In his preface, the author states that the book has three purposes. The first is, "to give an understanding of the legal profession as an institution, and to encourage an appraisal of its work and organization in the light of its social functions and of the conditions under which it operates." The second is, "to foster the development of a sense of professional responsibility, which may result in effective and decent representation of clients and, at the same time, in aid in the readjustment of the profession to the changing needs of society." The author believes that this can be achieved as a concomitant of the first. The third purpose of the book is "to acquaint the young lawyer with his privileges and duties . . . in order that errors due to ignorance may be avoided."

It is evident that the author has brought this casebook forward in response to the current agitation in the law schools and that it is intended to develop in the student a realization of the broader implications of his later professional life. Whether it is likely to succeed or not can best be judged by a glance at the material offered by which this result is to be brought about.

Chapter I begins with a description of the English legal profession and its organization (4 pages) and a comparison with the American scene (1 page). Following this is material dealing with the typical American lawyer of the past (2 pages), the present metropolitan office lawyer (5 pages) and the lawyer in the small community (1 page). Observations are then added on the changed character of the present day lawyer's functions and criticisms in the way he has performed them (13 pages). The chapter concludes with bar surveys and what they have shown (5 pages).

Chapter II takes up first the meaning underlying the concept of the practice of law as a *profession* (5 pages). Probably with specific application of this meaning in mind, the author then presents material in some detail on unauthorized practice of law (17 pages), together with arguments for permitting some forms of this (3 pages) and the considerations involved in limiting legal practice to lawyers (2 pages). The status of corporation counsel and law partnerships is next presented (5 pages) and a query is raised as to the justification for prohibiting corporations and associations, profit and non-profit, from practicing law for their clients or members (14 pages). The chapter closes with the problem of furnishing legal services to persons of limited means with material for comparison on the similar problem as to medical care (5 pages).

Chapter III deals with the nature and methods of enforcing the standards of the legal profession. The author presents material on the relation of these standards to the general field of ethics (3 pages), the ultimate bases on which the legal profession must be judged (5 pages) and the various sources from which the specific rules of legal ethics derive (2 pages). That conflicts may arise from the different relationships of the lawyer is indicated (2 pages). The major part of the chapter is taken up with the methods of enforcement. These include: (1) legal means such as denial of fees, granting of new trials, personal liability and disciplinary proceedings (19 pages); (2) pressure of professional opinion in which is included a discussion of bar organization, the status of canons of ethics, and bar committees on professional ethics (20 pages); (3) pressure of public opinion including the baneful effect of modern (or recent past) business psychology (3 pages); and (4) the individual sense of right and wrong (3 pages). One may question whether the material of this chapter might not better have been postponed until after some consideration of specific rules of legal ethics. Until the student has some specific knowledge of these rules, it seems rather out of order to consider methods of enforcing them. Of course there is nothing to prevent a user of the book from conducting his course in another order.

Chapter IV begins with the lawyer's practical problem of getting business. This involves the prohibition against advertising, solicitation, ambulance chasing and the like. Arguments that have been made for these practices and suggested remedies for the evils they represent are included (26 pages). This is succeeded by comments on the credulity of lawyers with respect to their client's causes (2 pages) and the duty to accept cases of the poor and those on the side of the unpopular (3 pages). The typical and usual problems of conflicting interests are then presented (21 pages). Included, also, is a discussion of abuses in corporate reorganizations resulting from a disregard of the accepted ethical principles involved. The closing material of the chapter deals with the duty of a lawyer to reject an unjust cause (9 pages).

Chapter V, after pointing out the importance of resorting to compromise and settlement (1 page), takes up the nature and function of a trial (6 pages), the lawyer's place in it (9 pages) and the claims and defenses he may ethically present (5 pages). Under the heading, "Measure of Zeal of the Lawyer," appears a variety of items such as the

duty to actively protect the clients' interests, dealing with witnesses, concealment or non-disclosure to the court, appeals to prejudice, and the like, problems typical of the usual ethics course (42 pages).

Chapter VI deals with various ethical problems that arise in the work of a lawyer in his office. After some rather brief and incomplete observations on the nature of this work (6 pages), and the non-legal factors that must be considered in advising clients (4 pages), the kind of advice or tactics that must not be indulged in, such as evasion or violation of court orders and laws, is presented (24 pages). Material on deceptions, trickery, and oppressive tactics conclude the chapter (10 pages).

Chapters VII and VIII consider the status and obligations of a prosecuting attorney and attorneys in government office or in the legislature, and the duties of private attorneys in dealing with government agencies (15 pages).

Chapter IX again returns to the typical problems of legal ethics. Points covered are the employment of counsel and its termination, the scope of the authority of counsel to act for his client in matters litigious and non-litigious, financial dealings with the client including fees, liability of an attorney for negligence and other misconduct, and, finally, the ethical considerations arising in non-professional activities. The material on the last question includes two brief excerpts on the lawyer in politics and as a leader. The chapter covers 67 pages.

The first part of Chapter X deals with the character and importance of the work of the different kinds of courts, the character and quality of judges, methods of selecting judges, and their tenure and retirement (26 pages). This is followed by the ethics involved in the relations between judges and lawyers, such as disrespectful conduct in court by the lawyer and public criticism by lawyers of judges (12 pages). The first part of the chapter contains little that is of assistance in giving a better understanding of the later.

The final chapter, XI, takes up improvements that are being made in the administration of justice. This is but fragmentary and incomplete. The author expressly does not undertake to present any adequate picture, but deals, primarily, with matters "not covered elsewhere in the curriculum." Included are the efforts of lawyers to bring about improvement (2 pages), rule making power of courts (2 pages), judicial councils and commissions (1 page), and the effectiveness of laymen as compared with lawyers in bringing about reform (1 page). Fuller treatment is given to bar admissions (12 pages), and legal education, including the objectives of such education, teaching methods and proposals for improvement (21 pages). The next eleven pages contain fragmentary material on professional attitudes, administrative commissions, conciliation, and references to material to be found elsewhere on improvements in procedure and organization of courts. The chapter, and the book, close with the problem of providing legal services to the poor and the agencies created to meet this problem (20 pages).

This résumé does not and cannot give an adequate picture of the excellence of the workmanship displayed. The material selected for inclusion displays a wide range of reading in many fields, excellent judgment in the choice of items to be included and a thorough understanding of the deeper issues underlying so many of the rules of ethics. It includes not only cases, canons and bar committee opinions but observations by eminent thinkers in the field. Numerous notes of the author distributed throughout the book contain provocative comments and queries raised by the author himself for others, and these should be exceedingly helpful in directing the student's mind to the fundamental issues involved in the material that precedes or follows them.

As a collection of material for use in a course in legal ethics this book represents an exceptionally fine product. By its intelligent use in such a course, students will gain a very substantial knowledge of the rules of legal ethics, and they will realize that these rules are not purely arbitrary. The more conscientious of them may also gain a suspicion that conditions in the legal profession and in the administration of justice are not as satisfactory as they should be, and a few may even be willing to accept the instructor's assurances that the reforms he urges are needed.

But with that the usefulness of this book ends. Its use in the law schools of today will not realize the more fundamental objectives that the author has in mind. It will make graduating students neither more intelligent nor more interested in anything outside of legal principles that will help them to advise a client or win a case.

Four reasons, all more or less interrelated, may be given for this conclusion. First, a perusal of the contents of the book will indicate that the major part of it, particularly Chapters III, IV, V, VI, and IX, is devoted primarily to consideration of the more or less technical rules of legal ethics as found in court decisions, bar committee opinions, canons of ethics and views of writers on the subject. Such material rarely contains more than bare unanalysed statements of what is considered appropriate modes of conduct based upon an unexpressed, or unperceived, ideal of a lawyer and his relations to his work. There isn't any doubt that lawyers should know of these rules. But knowledge of them does not help the student to gain a broader conception of his function in society as a lawyer, or any realistic understanding of the operation of the legal system or of the criticisms that are being made of it. To take a single example, the student may learn that it is a lawyer's duty to be respectful in court to a judge whom he regards as a scoundrel and an ignoramus. By the proper use of this casebook he should also see that such a rule furthers respect for law and order and judicial institutions. But how we get such judges, what can be done to prevent getting more of them, and the relation and function of the judge and the attorney to the administration of justice are problems he will not understand or even recognize by a study of the kind of material under discussion.

Second, the portion of the book not dealing with technical rules of ethics is too brief and incomplete to give any conception of the subjects dealt with. One need only refer to Chapter XI, or the limited material on selection of judges in Chapter X, or on the organization of the bar in Chapter III to realize the extent to which this is true. Nor does this material appear to be organized for the purpose of giving a better understanding of these subjects as such. Much of it is directed more toward giving a background for a better understanding of the purposes of the rules of ethics. Hence, this material is combined under the same heading or chapter with materials dealing with these rules.

This suggests the third reason for the conclusion reached by the writer. Underlying the book is the assumption that the objective to be achieved and demanded by the public is a problem of legal ethics. This assumption is shared, no doubt, by many in the teaching field and by leaders of the bar. It accounts for the recent deluge of casebooks on legal ethics and the demand of bar leaders that courses in legal ethics be taught in the law schools. The very naiveté of that assumption indicates the state of confusion prevalent among law schools and in the legal profession on the real problem involved to say nothing of the methods of meeting it. What the public is demanding is not primarily more upright conduct, though it places responsibility on the profession for the derelicts to be found in it. What is wanted and what the law schools will find it necessary to provide is a re-orientation of the point of view and of the basis of evaluation on

the part of the legal profession. Demand is being made that the legal profession abandon its exclusive concern with personal success in the business of practicing law and its accompanying neglect of the non-professional consequences, and that the work and success of the legal profession and of the courts and the legal system as a whole be measured, instead, in terms of their aims and purposes and justification as social institutions. Legal education with that ideal in mind must provide the material from which such evaluation can be made, and must insist that the student spend his time and his thought on this non-legal material as well as upon the legal. Legal ethics naturally comes within such a study, but no more so than corporations, criminal law, constitutional law, trusts, procedure, or other law school subjects. To think of the question only in germs of legal ethics is to miss the significance of the major problem.

Fourth, and finally, the book will find few schools where the atmosphere is favorable to the kind of reception the students must give the course if it is to accomplish anything more than developing a knowledge of the prevailing rules of ethics. Student points of view in the field of law are very largely influenced and molded by the dominant spirit of their law school. The newer approach that is now engaging the attention of law schools has not yet made itself felt to any degree in the daily work of the classrooms. The dominating purpose of practically all law schools is still to convey a legal knowledge and a technique that may be used in the lawyer's daily service to his client. This conforms perfectly with the principal reason for the students coming to the law school, to learn a respectable skill with which to earn a livelihood. With such mutual agreement between teacher and student, it is but natural that there should follow the current concentration on cases and casebooks, on principles and rules, and on the technique of applying them. It accounts, also, for the absence of any study of the broader implications involved in the law so learned, except for the discussions of them in the classroom, contributed by the instructor and received with proper somnambulant contempt by the students who lack the necessary background with which to appreciate or understand them. In such an atmosphere students will have scant interest or respect for an isolated course, especially one having to do with legal ethics that suggests to them the need for considering the public aspects of their future professional work and the criticisms being made of the profession in that regard. Against the solid opposition of the student body, such a course is not likely to make much headway.

In short, what is needed, if anything more than lip-service is to be rendered by the law schools to the public demand for a regenerated bar, is a revolution in their curriculum and in their outlook. An isolated course of the character contemplated by this casebook will not do the job.

These conclusions, reached with regret, are not meant to be taken as a condemnation of the author's work. It should not be necessary to repeat that it offers a brilliantly executed tool for courses in legal ethics, and a noble effort to accomplish the impossible. To demonstrate what cannot be done is often, as it is in this case, decidedly useful.

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Practice and Evidence before the U.S. Board of Tax Appeals. By Charles D. Hamel.
New York: Prentice-Hall, Inc., 1938. \$6.00.

Because of the great increase in tax litigation in recent years, the reported decisions of the United States Board of Tax Appeals have become of ever increasing importance.

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