

## The Professional Ideals of the Lawyer: A Study in Legal Ethics (Book Review)

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## BOOK REVIEWS

THE PROFESSIONAL IDEALS OF THE LAWYER—A Study in Legal Ethics: Henry Wynans Jessup, M.A., J.D. 1926. New York, G. A. Jennings Co., Inc.

Conditions at the bar are bad. We are told so by professors at the law school and leaders of the bar. Are they as bad as they were a century ago? De Witt Clinton, in "An Introductory Discourse" delivered before the Literary and Philosophical Society of New York on May 4, 1814, said:

A periodical writer, who published in 1752, estimated the number of families in this city to be two thousand, and the number of physicians to be forty; which would make one physician for every fifty families; and he further stated that he could show, by "probable arguments, that more lives are destroyed in this city by pretended physicians, than by all other causes whatever." Nor was the profession of the law on a more respectable footing. As there was no distinction of degrees, the attorney and the counsellor were blended together; and the profession was disgraced by the admission of men not only of the meanest abilities, but of the lowest employments.

In 1786, the citizens of Braintree, Massachusetts, in town meeting, solemnly resolved:

We humbly request that there may be such Laws compiled as may crush or at least put a proper check or restraint on that order of Gentlemen denominated Lawyers the completion of whose modern conduct appears to us to tend rather to the destruction than the preservation of this Commonwealth.

About this time Dedham instructed its legislative representatives to endeavor that such regulations be introduced into our Courts of Law, and that such restraints be laid on the order of lawyers as that we may have recourse to the Laws and find our security and not our ruin in them

and if

such a measure should appear impracticable, you are to endeavor that the order of Lawyers be totally abolished \* \* \*

Benjamin Austin (Honestus) published occasionally in The Independent Chronicle, in the year 1786, "Observations on The Pernicious Practice of the Law." In 1814 these were republished "at the request of a number of respectable citizens." Honestus says:

I am far from abolishing any "order" wherein real learning can any way be promoted; the present practice of the law cannot come within this idea, it being in no way a stimulus to promote that knowledge which can benefit society; it consists more in the sly art of sophistry, than in the genuine principles of fair and unequivocal arguments. The sentiments of the law are too generally studied with a view to pervert them by false glosses and plausible cavils—In short, they are too often read by this "order" with a design to warp them to their own purposes and private emolument.

So if conditions today are bad, they are only relatively bad. They are very much better than they were a century ago or even a decade ago. Standards for admission to the bar are higher and we know more about the ethics of the bar. Thanks to the effective work of bar associations throughout the country, we have an intelligent appreciation of the elements that enter into the decision of ethical problems daily confronting the lawyer. More than good character is required—understanding of the nature of his obligations and of the principles that are involved in the decision of ethical problems.

The outstanding laboratory in which experimentation has been carried on for fifteen years is the Committee on Professional Ethics of the New York County Lawyers' Association, of which Henry Wynans Jessup has been a leading member. This group was born of the movement originated by Dr. Felix Adler, at whose suggestion there was formed, in 1908, a "group of lawyers, who meet \* \* \* to discuss among themselves the practical questions that come under their observation, where the application of principles of ethics to actual situations becomes necessary or advisable." Through the efforts of Mr. Boston, who was a member of the "Lawyers' Group," the Committee on Professional Ethics of the New York County Lawyers' Association, of which he was chairman, was in 1912 empowered, "when consulted, to advise inquirers respecting questions of proper professional conduct. \* \* \* "

Through the work of this committee, through his work in the American Bar Association and his work in the New York State Bar Association, Mr. Jessup can truly be regarded as an expert on the subject of professional ethics. His book is most timely. The recent resignation of a member of the Committee on Character and Fitness in the Second Department, based, as it is, upon statements highly controversial concerning the fitness of men now applying for admission to the bar, nevertheless, like a searchlight, concentrates attention upon a selected spot. Whether we agree with him or not, we all agree that applicants for admission to the bar must show qualification not merely in knowledge of the law and intellectual equipment, but must possess the essential moral character requisite for the incumbent of this high office. But, as we have said, character alone is not sufficient. Knowledge of the principles and of their application to given sets of facts is essential. Here is a book which can be put in the hands of the student, which can be used in the classroom, which enables him to answer the problems as they arise, and which will prepare him for his important tasks as his legal training prepares him in that branch of his education. The thorough reference lists and appendices constitute a compendium of practically all the available data on the subject. The book, moreover, is interesting. Based on his experience as a member of the Committee on Professional Ethics, Mr. Jessup pursues the method of hypothetical question and answer. The Moot Court questions in Part II to be resolved by discussion and the legal questions to be looked up (Part IV) are both provocative of thought and further study on the part of the law student. The treatment is dignified, practical and cultural. In these days, when the tendency is to commercialize the profession and its opportunities, a book of this sort is not only timely but invaluable.

In thus praising the author's work, the reviewer must confess to bias. First, he knows the author and knows his standing and his efficiency through intimate contact in the same field. Second, the author has already put the

reviewer in his debt by most complimentary and flattering references to the reviewer's own work. Nevertheless, the reviewer insists that this is a fair critique of Mr. Jessup's book.

JULIUS HENRY COHEN.

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CASES ON EQUITY. A one volume edition by Professor Cook of the Yale Law School.

With the evolution of the modern case book, one may well reflect whether the early English case has been dethroned from its lofty position in the world of legal education. It may not yet be a shattered idol, but the signs that it is tottering are many. It will always be with us as the rock upon which much of our law was buildd, but once supplanted by the modern case, it will no longer wield the masterful influence that it had in the past. It might be rash to say it has outlived its usefulness and it may be heretical to say that it quietly passed away with the last generation of law teachers, but if it has, who will there be to mourn at its bier? In its day it has received its meed of adulation from great teachers and great judges, and it has found its resting place in the case books of an earlier day. And perhaps it is just as well. Hoary with age, speaking in the hardly understandable tongue of centuries ago, part Latin of doubtful quality, part English, long obsolete, nearly always obscure in its meaning and facts, let it rest in peace with a tribute to its historical and cultural value. How could it be expected to resist the avalanche of decisions that have come down within the last century and a quarter? For so many of these have been phrased in clear, lucid language, oftentimes with some pretensions to literary style, with an ample statement of facts and frequently an exposition of the historical and philosophical significance of the point under discussion, that beside them many an early case appears like a curio of uncertain value. It may arouse a polite curiosity in the law student, or even perhaps amuse him, but as the vehicle of transmitting legal knowledge, it is interesting chiefly because of its respectable past. Equity and real property were its fertile fields. Was any case book on Equity complete that did not revel in cases decided centuries ago with modern cases interpolated here and there to give it the appearance of a well balanced book. But after all, this was quite in accord with the best traditions of the law teachers and quite consonant with their methods.

Professor Cook in the preface to one of his earlier volumes of cases on Equity suggests that the present generation of law teachers now treat their subjects in a different spirit from that of their elders, notably Keener and Ames. In those books he abandoned the historical method of approach which was so familiar to law students of a generation ago. He has continued the same plan in a one volume selection of Cases on Equity recently issued by him. The comparative advantage of Professor Cook's treatment of the subject as compared with the old order is so obvious that it needs no apologist. One of the younger men in the teaching of law, his earlier books indicate a definite and forceful purpose of breaking away from what has been the orthodox and eminently proper plan of preparing a selection of cases on equitable jurisprudence. There will be few or none to quarrel with him, for unless one is blind to the rapidly changing phases of the social and economical structure, he must realize that a present-day survey of any field of the law must embrace many situations and