Review of "The Personality of Lawyers: A Comparative Study of Subjective Factors in Law, Based on Interviews with German Lawyers"

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of Canada to Bill C-122, an Act to amend the Canada Evidence Act. It deals with privileged communications in the priest–penitent relationship and the physician–patient relationship. While to be commended as a step forward, in the light of The Right to Silence and many sound decisions, statutes, and literature on the subject, Bill C-122 fails to give adequate protection to the clergyman and those who confide in him.

Catholic Ecclesiastical Tribunal

Toronto


Among the many books and articles appearing recently on the legal profession this is surely the most ideosyncratic. The author is a former German attorney who is currently teaching at the College of Law of the University of Florida. In the late fifties he went back to Germany and had about 130 interviews, mostly with German lawyers, differing widely in length and content. On the basis of these interviews, supplemented by his experience as a participant in two legal cultures, he proposes to explore the following problems:

Assuming a society that places emphasis on class stratification in whatever form, it may be one of the functions of lawyers, and perhaps of law, to counteract social change, thus protecting the prevailing distribution of enlightenment, skills, respect, affection, rectitude, wealth, power, and well-being among the privileged strata of society. [Reference is made here to the development of these value categories by McDougal and Lasswell.] The lawyers' personality characteristics, with allowance for deviant cases, may conform to this social function of maintaining the status quo in the distribution of social values. The ultimate question is whether these propositions, if sufficiently verified, are desirable, both from the standpoints of emotional balance within the legal profession and of democratic development of society as a whole.

The treatment of these problems is decidedly the work of an amateur. My fundamental objections concern the methods employed. Here the author has set up an elaborate system of defences in advance. Indeed, nearly one-fifth of the body of the text is devoted to considerations of methodology. He argues that though his evidence may not be sufficient to prove any hypothesis it may be good enough to generate hypotheses. He submits that possible bias of the observer, deriving, for instance, from ambivalences about the two national cultures in which he has lived, can be counteracted by constant self-awareness during the interviews and their analysis. He makes frequent references to the work of his mentor H. D. Lasswell and to procedures of psychoanalysts and anthropologists to justify his particular ways of gathering and interpreting the data.

It is true that the rigour of research methods can be relaxed if the aim is to create hypotheses rather than to test them. Still, as long as any empirical research was undertaken, it would have been wise to follow some customary procedures. The author would probably have gained more useful materials if the selection of the sample had been guided more by explicit consideration of who would be strategic informers rather than by letting former professional associations determine the selection of half of the sample. He states that to counteract possible distortions in the selection of the sample he frequently
chose his interview partners "by chance," that is, after "accidentally" meeting an acquaintance or a stranger an interview was arranged. Of course, this selection "by chance" is the exact opposite of what is technically called a random selection where all measures are taken to avoid any connection between the principle of selection and the substance of the research hypotheses. Use of a guideline for the interviews would have ensured that all items considered relevant were covered; it also would have made the data comparable. As it is, very little control was exercised by the interviewer, and the excerpts used in the text sound often more like fragments of everyday conversation among professionals than of interviews in any technical sense. The author refers in this context to the method of free association used in psychoanalysis, but he fails to consider that many features of the psychiatric "interview" are determined by therapeutic as well as diagnostic purposes.

The analysis of the data is, throughout the book, hampered by the inadequacies of data-gathering. For instance, for reasons of confidentiality the information is given in bits and pieces with various degrees of identification of the subjects in terms of other related characteristics. This makes it extremely difficult to explore the interrelations of various characteristics, attitudes, and behaviour patterns. If intensive case studies were impossible because of considerations of confidentiality, the size of the sample would have allowed cross-tabulations, provided the interview data had been made comparable. Selecting the sample largely on the basis of former professional connections and the principle of waiting to see what would arise in an interview led to awkward consequences. Much of the material centres on points related to the interviewer-author which are only marginally or indirectly relevant to the main themes of the study. Other topics such as attitudes towards income and economic life, themes that are prominent in the analysis, were apparently only touched upon in most interviews. To argue that in psychiatric interviews, too, the relation between "subject" and interviewer looms large, that here, too, inferences are drawn from silence and avoidance of themes again overlooks the very particular character of the psychiatric doctor-patient relationship.

Of course, faulty procedures do not necessarily result in faulty hypotheses, especially if other sources are available, such as the author's professional experience in the German Bar. For example, the generalization that German lawyers show a characteristic lack of open interest in wealth and economic matters seems sound, but to infer this from the fact that these subjects very often did not come up in the course of the interviews is stretching the analogy to psychiatric interviews rather far.

The tentative conclusions the author reaches can be indicated by a selective summary. German lawyers, especially those in government employment, tend to be sceptical towards a social-science approach to the study of law in action. They show great dissatisfaction with legal education and the level of skills in the various segments of the profession. They are very concerned with formal status and tend to shy away from economic criteria of ranking, while they show great concern with economic security. Their attitudes to the United States, to ethnic minorities such as Jews and Negroes as well as to their own country are tense and ambivalent, a fact that is interpreted in terms of the German past. Their perspectives on law tend to be polarized between a strong commitment to the legal system as a system of rational rules independent of the people involved in its application, and fairly extreme forms of scepticism about justice, with a pragmatic group, stressing intuition, in the middle. The emphasis on the rational and logical structure of the legal system is quite
compatible with a great deal of leeway for discretionary use of judicial power rather unhampered by formal rules. Correspondingly, attorneys and politicians, aware of this situation, attempt to manipulate judicial decision-making, either by recruitment and selection (politicians) or by strategies of evasion (attorneys). “The interviews on power processes indicate the existence in Germany of a coercive, stratified society, in which the legal profession has specific functions. Decisions on all levels seem to be based on almost capricious discretion, with standards often left obscure, while outwardly an appearance of orderly proceedings is maintained” (239ff.). The legal profession, then, seems to exercise a considerable amount of discretionary power, but it is not seen as the seat of really decisive power in society; rather it executes the intentions of a power elite. “The main strategy of this anonymous power elite presumably is to balance a minimum of formal power with a maximum of effective control. Members of this elite will shy away from publicity, higher offices, and responsibilities, leaving these to others, in particular to professional politicians and lawyers” (243). Finally, the personality structure of lawyers fits into this picture. Insecurity and compulsiveness are asserted to be frequent and are interpreted as consequences of both recruitment patterns and career experiences.

Many of these tentative findings, the author suggests, are not restricted to the German legal profession or to the German upper middle classes, but may be endemic in the legal profession in general. For this he offers, however, no more evidence than some parallel observations of an American psychiatrist and his own impressions.

If the whole book is an effort in creating hypotheses and developing suggestions for research, one would have liked to find more discussion of alternative interpretations of the data and alternative explanations of the tentative generalizations reached. The author could have made much more use of theoretical and empirical studies of the professions, of political process, of power and stratification, to name only a few relevant fields of study. Sometimes he falls into an error which is typical of a lack of background in social theory: a pattern deviant from the most official norms is interpreted as virtually lacking all normative restraint. Another tendency that mars the analysis is also a consequence of somewhat haphazard reference to theoretical work in the social sciences: discussions of personality structure imperceptibly change over into conclusions about societal structure and vice versa without due consideration of the difference in level of analysis.

In an important sense the above critique is too harsh. I said that this book should be considered the work of an amateur. The earlier meaning of that word, one who is intensely concerned and emotionally involved in his subject, is as fitting here as the current meaning. Stripped of all its technicalities this book may be seen as a personal document, as a picture of the German legal profession developed on the basis of the rich personal experience of a former member. The picture is given in a cosmopolitan perspective, intelligently interpreted, and critically evaluated. Seen in this way, one may still object to certain interpretations, but the picture presented is interesting, always stimulating, often very perceptive, and the book can stand comparison with any production of this type.

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