

SOME COMMENTS ON PROFESSOR MAX RHEINSTEIN'S REVIEW

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PROFESSOR Rheinstein is not alone in his contention that the collective portrait of German lawyers which emerges from my inquiry is essentially negative. At times I have thought so myself. An English reviewer, after stressing the need for reconsideration of the stereotyped image of the lawyer in post-Dickensian terms, expressed hope that the findings of such a study in England would not be as depressing as many of those in the present book.¹

Perhaps there is a misunderstanding. I believe that it is possible to collect similarly disturbing data from almost any person or group in Germany, the United States, England, or elsewhere. We are conditioned to live with a set of accepted values and impressions. The material in the book deviates from these cultural expectations, and is likely to be viewed as being devastating, depressing or generally negative. However, persons whom I deeply respect for their intellectual and moral integrity not infrequently express thoughts in an informal, casual fashion that they would hardly voice after more careful deliberation or in writing. I recall statements of this kind by American lawyers and legal scholars, which were sometimes of shocking content and hard to believe if reduced to writing. Yet I know the persons are responsible and respected members of their professions.

Since writing the book I have often listened to conversations on what may be called a secondary level, somewhat detached from their more obvious content. Our culture demands that this level of communication remain unnoticed, or if noticed not remembered, or if remembered not restated. I have also become increasingly aware of my own casual statements, which would become disturbing if subjected to close examination. In other words, today I am inclined to believe that the interviews, which were used in my book as mere illustrations of a general phenomenon, are not necessarily depressing or negative, but more or less a normal expression of human nature. Their frightening appearance might in fact be a reaction to the unfamiliar and to a phase of human nature that is not meant to be observed in our culture. Indeed the taboo may be strong enough to interfere even with the observation of foreign cultures.

A related source of distraction may occur if one limits the significance of the data to Germany or to German lawyers. I am hopeful that eventually studies of this kind will result in a greater willingness to accept ourselves for what we are, including those spheres of our personalities which we tend to hide. I am not sure whether I succeed in conveying these notions in my book. Perhaps my efforts are comparable to the notes of the anthropologist. In the case of my book the observational notes relate primarily to basic psychological

My gratitude goes to Professor Rheinstein and to the editors of the *YALE LAW JOURNAL* for inviting me to comment on his review. My reactions are to be understood as an informal exchange of ideas in the friendly spirit of scholarship.

1. Book Review, 108 *SOL. J.* 837 (1964).

factors, and the institutional aspects of German culture are more on the periphery. Actually, I am largely describing American lawyers by way of inference. At least I have American lawyers very much in mind, and reference to German lawyers is increasingly deemphasized toward the concluding chapters.

The comparisons with the American scene are, of course, unsupported by my data, and are not meant to be more than mere suggestions in my book. However, we have parallel studies in the United States, some of them highly quantified, which support this profile of the legal profession. An empirical study of individual practitioners in Chicago, later verified by a large scale research project in New York, has devoted one full chapter to what is called "The Anatomy of Dissatisfaction."² A thoughtful reviewer of this study raised the question whether or not lawyers in law firms achieve greater personal satisfaction in their activities than do solo practitioners.³ Soon thereafter a study of Wall Street lawyers provided a partial answer. It pointed out the discontent of lawyers with their legal practice and their clients,⁴ preoccupation with status and seniority,⁵ and apparent contempt of monetary values, finances in general, and property.⁶ In fact, this study of the Wall Street lawyer, as far as professional perspectives are concerned, closely approximates my collective portrait of German lawyers, sometimes in minute detail.⁷

Professor Rheinstein's comparisons between Germans and our American Southerners in regard to manifestations of collective guilt are well taken and perhaps to be considered in this context. Gunnar Myrdal has described this problem in his *American Dilemma*.⁸ A recent content analysis of *The Alabama Lawyer*, official organ of the Alabama State Bar, extending over a period of ten years, provided a shocking profile of ranting discontent, parochial orientation, and apparent low level of professional performance.⁹ It is conceivable that my views of American lawyers and of the United States have been influenced by my experiences in the South.

However, many of the traits in my collective portrait of lawyers are rooted in ethnocentrism, and I have observed this orientation in American lawyers

2. CARLIN, *LAWYERS ON THEIR OWN — A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO* 168-205 (1962); Carlin, *Current Research in the Sociology of the Legal Profession* (mimeographed materials, Bureau of Applied Social Research, Columbia University, 1962).

3. Mazor, *Book Review*, 8 *UTAH L. REV.* 283, 286-87 (1963).

4. SMIGEL, *THE WALL STREET LAWYER* 15-16 n.30, 292-310 (1964).

5. *Id.* at 63-64, 228-34, 257.

6. *Id.* at 15-16 n.30, 211, 246 n.8, 304-05.

7. See Weyrauch, *Book Review*, 113 *U. PA. L. REV.* 478, 482-84 (1965). Professor Harrop A. Freeman has described a "model lawyer" on the basis of a quantified survey of American lawyers. See Freeman, *Tentative Report Summary — Counseling: A Study of Lawyers, Doctors and Clergymen*, in *LEGAL INTERVIEWING AND COUNSELING* 231, 234-39 (1964).

8. MYRDAL, *AN AMERICAN DILEMMA — THE NEGRO PROBLEM AND MODERN DEMOCRACY* 3-49 (20th anniversary ed. 1962).

9. Frankel, *The Alabama Lawyer, 1954-1964 — Has the Official Organ Atrophied?* 64 *COLUM. L. REV.* 1243 (1964).

outside of the South. It is possible to establish a cross-index to empirical studies of American lawyers that seems to bear this out.¹⁰ Authoritarian attitudes, ethnic prejudices, and deep discontent have been widely noted, regardless of what methods of research were employed or whether the lawyers concerned were located in the Midwest, in the East, or in the South. Incidentally, I have an impression that profound feelings of collective guilt, based in part on the dilemma of the Negro question, are a common American phenomenon, not confined to the South, even though most serious there. It is possible that this factor has an impact on American law, on the legal profession, and on American culture as a whole. Perhaps a word of caution is in order. It may be tempting to view these conditions as being depressing or negative. On the other hand, one also may view them as more or less normal human reactions to complex and protracted circumstances.

There are different schools of thought in psychoanalysis too, on whether a directive or nondirective approach yields more accurate data. My inclination is to believe that both approaches are valid, though I am not sure which develops the more objective data. Any person's "real personality" is probably complex and multifaceted. A shift from bitterness and facetiousness, upon a magic word of empathy being spoken, to a seemingly different and more positive level of communication may be a reflection of emotional ambivalence and overdetermination. There is nothing wrong in this, I believe. Unfortunately, we are somewhat stuck with a terminology that was primarily developed to describe the pathological. Yet most of this can also be found in persons who are commonly referred to as being "normal," and it is difficult indeed to describe this normalcy with the linguistic tools at hand, which seem always to carry a negative connotation.

In any event, in the present research the interviews were not entirely nondirective. I think this would have been almost impossible in conversations which extended over hours, and which were often carried on in a friendly and relaxed atmosphere. Thus I do not believe that encouragement and mutual appreciation were missing. Perhaps it is one of the paradoxes of an enlightenment process, such as an interview situation, that it requires a pattern of emotional identification between the participants, and the ultimate level of understanding reached may not be free of irrational elements.

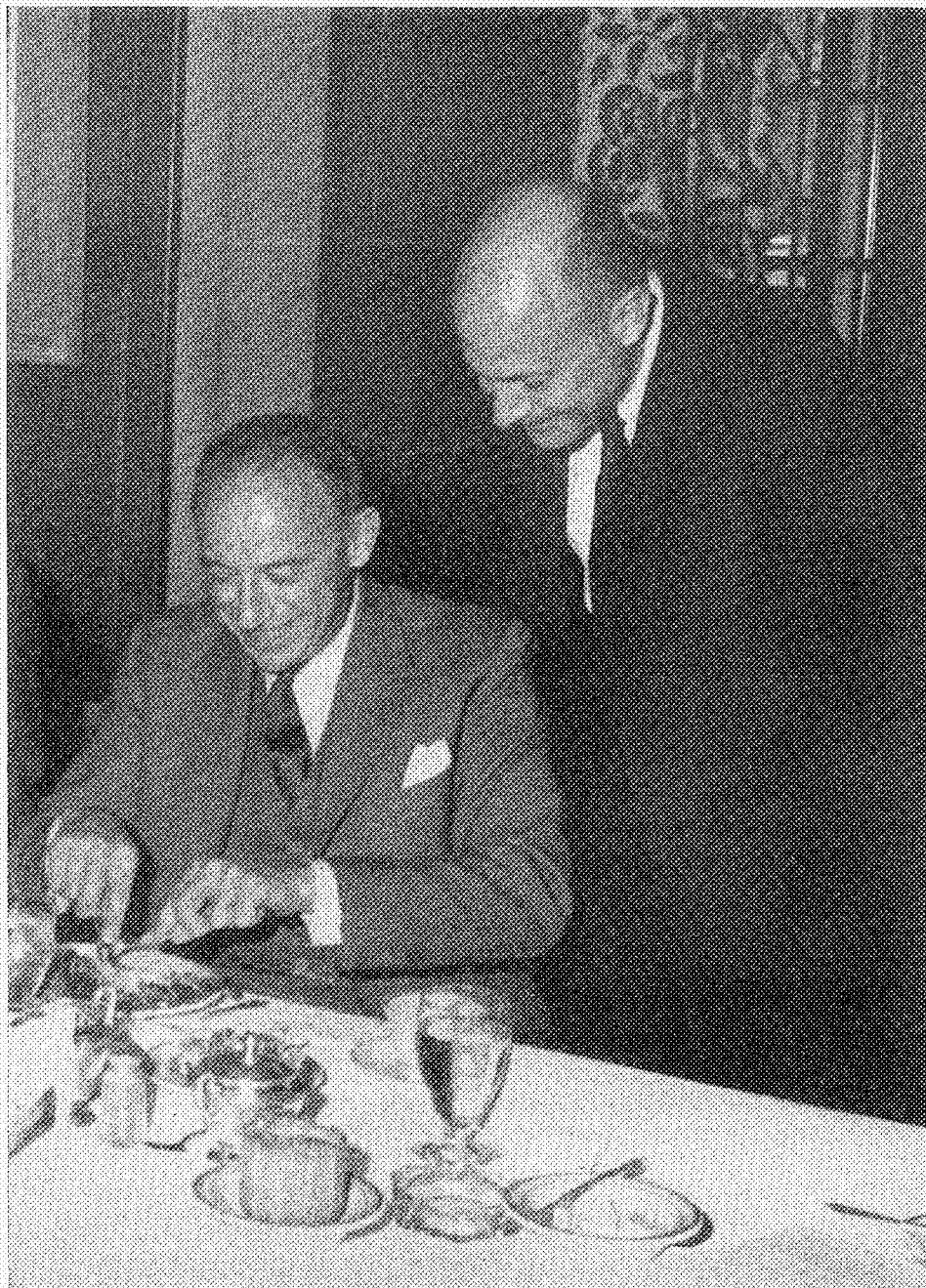
The German lawyer's social consciousness is highly developed, and the quality of German legal writing is excellent, as Professor Rheinstein has pointed out.¹¹ In fact, present conditions in Germany seem to favor an open discussion of taboo topics.¹² These conclusions, though, are taken from evi-

10. See Weyrauch, *supra* note 7, at 478 n.1, 482-84.

11. See Baade, *Social Science Evidence and the Federal Constitutional Court of West Germany*, 23 J. POLITICAL 421 (1961).

12. Professor Konrad Zweigert, Director of the Max-Planck-Institute of Foreign and International Private Law in Hamburg and former Justice of the Federal Constitutional Court in Karlsruhe, has recently discussed different types of taboos in Germany and their impact on law. See Zweigert, *Tabus in Deutschland — Über die bösen Kommunisten und die guten Sitten*, Die Zeit, Jan. 8, 1965, p. 8.

dence of the products of legal scholars in the universities and distinguished jurists of the highest courts. The materials unearthed in my book are not on this high level of consciousness. I am not so much concerned with quality and content of professional performance in Germany and the United States, but with submerged levels of the professional personality which may affect law as reflected in a process of decision. I may not have been too persuasive at this stage, the approach being novel and the results discomfoting. But perhaps my comments add some weight to the hypothesis that we may deal with professional characteristics largely in the unconscious sphere of the personality which have at least some cross-cultural significance.



The Journal is pleased to dedicate this issue to Eugene V. Rostow (seated), retiring Dean of the Law School, and Louis H. Pollak, his successor.

