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The Rise of the Legal Profession in America by Anton-Hermann Chroust

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Two remarks should at once be made concerning these volumes of history. First of all, they are just that: history. Second, they do not attempt to penetrate the myriad philosophical theories which have gone into the development of America's judicial system. Although Mr. Chroust. Norman: University of Oklahoma Press, 1965. 2 vols. Pp. in the philosophy of history in general, or legal history in particular, his modesty in the foreword fails to indicate the enormous amount of research which went into the production of these two volumes. The compilation of data concerning the shifting movements in political perspectives, reflected in the development of lawyers and jurisprudence, is certainly worth the effort Mr. Chroust has obviously made.

The volumes document the difficulties in training, in transplanting sophisticated legal developments, and in motivating Americans to raise the legal profession above the amateurism which pervaded it in the early years. That there was little or no training either for lawyers or judges should certainly be remembered from sixth grade history. However, Mr. Chroust makes the point emphatic when he shows that our country's general lack of cultural development was fully shared by the legal profession. It should be pointed out that, commensurate with the large number of footnotes present in his volumes, Mr. Chroust has developed more than the superficial, or commonly known, factual data.

Mr. Chroust marshals evidence that the colonies possessed many lawyers prior to the Revolution, but his conclusion that the state of the art was lower than amateur is overdrawn. The voluminous number of cases cited would lead even the layman to a different conclusion. Perhaps the author believed that, after the long period during which primary sources have been available for legal scholars to study and evaluate the colonial experience his interpretation of a more affirmative role for the early American lawyer might not stand the analysis of his peers. Whatever his rationale, these volumes stand dedicated to two aspects of the American legal profession and, consequently, American jurisprudence in evolution: (1) a definitive account of the movement

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1 Mr. Chroust carries impressive credentials for such a work. He received his L.L.B. (1928), L.L.M. (1928), and J.U.D. (1929) from the University of Erlangen; a Ph.D. (1931) from the University of Munich; and a S.J.D. (1933) from Harvard, where he worked under Roscoe Pound. Mr. Chroust, a professor of law at Notre Dame since 1946, has taught such subjects as Legal History, Roman Law, Jurisprudence, and History of the Legal Profession. He is presently on leave at Yale Law School as Research Scholar in Residence.

2 But see Commers, Book Review, 3 AM. J. LEGAL HIST. 201 (1966).
from an abysmal lack of education in the profession through a myriad of philosophical and ideological absorptions; and in comparison, (2) the profession's modern transition to depth in both training and conceptualization. The conclusion is quite clear: the vicissitudes of political theories as they emerged in the American tradition were not an essential ingredient in the evolution of the legal profession. The legal profession grew rather from a highly tenuous and essentially subjective decision-making process into a highly selective, professional art.

In some ways Professor Chroust has deceived us, for the value of his two volumes covering the length and breadth of the American legal profession lies not with the factual data contained in them, but in his between-the-lines rendering of the emergence of a genuine and distinctly American tradition and philosophy of law. Indeed, it is ironic that Mr. Chroust should indict the early, fundamentally private law schools as offering courses which were of "an encyclopedic nature." The facts recounted in describing these abortive attempts to found law schools, together with the account of early attempts by state legislatures to promulgate laws concerning the legal profession, are sufficient to show an eventual commitment to development of the law as a scholarly profession. Although Mr. Chroust shows the inadequacy of training during the formative period (between 1765 and 1840), he rightly confers upon that era the title of the "golden age" of American law. This period provided the basis upon which fundamentally non-American legal traditions were applied to a political tradition which was uniquely American. The "golden age" also germinated the practices which linked the legal profession inextricably with the emerging court system. One would be hard pressed to evaluate which influenced the other more, but it is evident that Marshall, Webster, and Clay were not isolated developments of genius outside the court system and its counterpart, the legal profession.

3 Vol. II, p. 288. It is interesting to note that the Law Department of the University of Transylvania, Lexington, Kentucky, was established in 1799 and thrived at various stages until 1906. Professor John Wright of Transylvania College, in an unpublished manuscript, recounts the history of the Law Department and gives us an early example of departure from the "encyclopedic" type of curriculum mentioned by Professor Chroust:

In the fall of 1831, the evangelistic Dr. Charles Caldwell found another outlet for his talents in the Law Department, offering at that time a course which he entitled "Medical Jurisprudence." It is doubtful whether Judge Mayes (head of the Law Department) was overjoyed by the addition of this bearded eccentric to the staff, and he may well have viewed with considerable skepticism the value of such a course as "Medical Jurisprudence." Yet, the ticket for the course was only a modest

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The reviewers of Mr. Chroust's work have treated it from various perspectives. Professor Thomas L. Shaffer at Notre Dame, a former student of Professor Chroust, gives perhaps the most detailed and readable summary of what Chroust has to say. Professor William W. Blume at Hastings descriptively compares it with Charles Warren's well-known history of the American Bar written in 1911, as does Mr. M. A. Misuraca, who also compares Chroust's work against Pound's *The Lawyer From Antiquity to Modern Times* (1953). James Dreher at South Carolina has more Chroust-like enthusiasm for the role of the American lawyer. And the only non-lawyer, Donald Commers, a professor of government and international studies at Notre Dame, in an extensive review explains what he feels to be the favorable hypotheses which Chroust is making about the legal profession. Commers then sets about using his own erudition to show Chroust's hypotheses have not been substantiated. Mr. Commers is obviously not a lover of lawyers.

In conclusion, one poses the question: what is the real value of Mr. Chroust's two volumes? Has he merely made an historical contribution to deepen the understanding of political and legal perspectives as they emerged and culminated in a uniquely American tradition, or, on the contrary, has Mr. Chroust gone further and placed the legal profession in its proper perspectives, *i.e.*, as it has emerged in particular disciplines of political science, law, and history? It is apparent that the latter is true, for Mr. Chroust has indeed made a valuable contribution to a deeper understanding of the ebb and flow of our legal profession—the case studies and documentations on the rise of law colleges alone is a monumental project in itself. He has also grasped the significance of, and rejected, an old myth that the legal profession was always and is today "legal." In the final analysis, these volumes should be read by all students of law and history whose knowledge too often has been the result of only speculative theorizing.

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$10 compared with the regular $25, and the course was not required for graduation.


4 41 Notre Dame Law. 122 (1965).

5 64 Mich. L. Rev. 654 (1966). Professor Blume points out that he was told much that had to be omitted in the process of publishing the works.


8 3 Am. J. Legal Hist. 201 (1966).