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*The Personality of Lawyers: A Comparative Study of Subjective Factors in Law, Based on Interviews with German Lawyers*, by Walter O. Weyrauch (1964)

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# BOOKS

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## BOOK REVIEWS

THE PERSONALITY OF LAWYERS: A COMPARATIVE STUDY OF SUBJECTIVE FACTORS IN LAW, BASED ON INTERVIEWS WITH GERMAN LAWYERS. By Walter O. Weyrauch.<sup>1</sup> New Haven and London: Yale University Press, 1964. Pp. xvii, 316. \$7.50.

The practice of law, like that of medicine, ministry or pedagogy, is in the care of skilled specialists who, because of prolonged training, continued commitment to expertise and social responsibility, are called "professionals." This characterization does not exhaust the catalogue of criteria that distinguish a professional from members of other occupations, but it is sufficient to pinpoint a central problem of professional life. The problem is essentially this: precisely because he has had the advantage of specialized training and experience, the doctor, the pastor, the teacher or the lawyer is the stronger partner in the relationship with patient, communicant, student or client. He controls the interpersonal situation with regard to the person who comes to him for help. Our conventional use of the word "help" seems to confirm the asymmetrical nature of the relationship, and out of recognition of this asymmetry arises the particular obligation of the professional not to exploit the relationship for his own purposes. To harness the problem, the professions have developed codes of ethics which define, among other things, what is to be considered proper conduct in the practitioner's relationship with his clientele.

But are the social restraints imposed on the professional sufficient to offset the power imbalance in the relationship between himself and his client? A great deal of the variance in professional conduct can be explained on the level of social analysis, that is, in terms of professional roles and rules. But there remains an area of conduct which cannot be explained in terms of social roles alone, and where analysis on the deeper level of personality is in order. If the professional's relationship with his client is to be successful—successful in the sense that the client derives from the contact those satisfactions which it is reasonable for him to expect—it is also likely to depend on the degree of self-

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awareness and self-knowledge which the practitioner brings into the situation. Such self-awareness and self-knowledge, in turn, are likely to be functions of what is loosely called a man's personality.

While some practitioners in any profession seem to have a personality especially suited to the performance of professional tasks, others may only approximate desirable personality characteristics, and still others may be altogether devoid of them. Of course, if every member of a profession had just the right personality, there would be little reason for concern and even less incentive for personality study. But as many practitioners may not have and probably do not have suitable personality traits, the study of the personalities of professionals should be high on the agenda of a profession's self-scrutiny. Admittedly, there are persons with personality characteristics that make them palpably unfit for a given type of professional work, but these people are—hopefully—eliminated early in the course of their educational preparation. In any case, there undoubtedly remain enough practitioners whose effectiveness could be greatly improved by self-conscious insight into and control over personality characteristics which interfere with professional functions.

If I understand the intent of Professor Weyrauch's study of the personalities of (German) lawyers correctly, it has two major objectives: first, to discover just what the personalities of his subjects are—a diagnostic objective; and second, to formulate desirable traits which, if internalized, would contribute to shaping the lawyer's personality in support of a "wide distribution of democratic values among all persons" (p. 279)—a prescriptive objective.

In some respects, these two objectives are interdependent. For the evaluation of *given* personality characteristics is predicated on a standard which would define *desirable* characteristics. If such a standard were agreed upon, the task of diagnosis would be greatly facilitated. But it is not. In particular, there seem to be two viewpoints that are diametrically opposed. On the one hand, there are those—I would think they are the vast majority of practicing psychiatrists or psychoanalysts—whose standard of the normal personality is defined for them by the culture in which they live, or, more correctly, by the culture as they perceive and interpret it. On the other hand, there are those who take the view that the culture itself may be or is sick, and that it cannot provide, therefore, a desirable standard for assessing personality traits. The task of this second group, then, is twofold: first, to postulate a set

of desirable cultural values, and second, to construct an image of the healthy personality, that is, the kind of personality conducive to the creation and maintenance of the preferred cultural value system.

The main difficulty with the first viewpoint is that it is largely tautological. The construct of an ongoing culture, whatever it is (authoritarian, democratic, anomic, anal, etc.), is derived from some distribution (mean, median, mode) of the personalities found in the culture and becomes an empirical type. The normal personality is the personality that comes closest to the culture construct. Pathology is defined as deviation from the construct. But as the culture construct is itself a distributive or exaggerated model, it is self-fulfilling. Normal persons are those whom the culture defines as normal.

The difficulty with the second viewpoint—and Professor Weyrauch's study falls into this category—is that in postulating a desirable set of values to be internalized before a personality can be described as healthy, an almost unbridgeable gap occurs between what is real and what is preferred in personality. If one inspects—from the perspective of what a healthy person should be—what one finds in reality, the resultant picture looks grim indeed, and if the picture is drawn as a collective profile by methods which tend to select and exaggerate particular traits, the picture looks not just grim but dismal.

Now, the negative picture itself, as it emerges from Professor Weyrauch's study, for instance, does not bother me as such and as much as it may be bothering others, especially members of the legal fraternity. What bothers me is the implicit process of infinite regression to which *any* criticism of the profile must necessarily lead. If the criticism comes from the legal profession, it *must* be interpreted as some sort of irrational defense mechanism—lawyers are not willing (or able?) to see the culture for what it is; they are not willing (or able?) to see themselves for what they really are; or they distort (unconsciously?) their self-images to make themselves comfortable in what is really a detestable cultural environment.

This is not to say that I reject the notion, quite well articulated by Professor Weyrauch, that professionals seem particularly resistant to analysis of the relationship between their institutional roles and their personalities. But it cannot be simply ascribed to psychological defensiveness. Rather, it is probably due in large part to the institutional role requirement that the professional, in his interpersonal relations, maintain sufficient social distance from the client, lest his objectivity

be impaired and his impartiality in dealing with clients be jeopardized. Why, indeed, should personality have anything to do with the doctor's technical skills, the minister's oratorical clarity, or the lawyer's knowledge of the law and court procedure? I am not defending these questions (for they are ill-conceived, though often asked). I merely want to suggest that while much human behavior is personality-related and should certainly be studied from the perspective of personality, a much greater variance in behavior can be explained (and more economically) by reference to institutionally-prescribed roles and rules which are followed quite irrespective of particular personality dynamics.

It is necessary, at this point, to say something more than the problem perhaps warrants about Professor Weyrauch's methods of inquiry and interpretation, largely because he himself devotes 63 out of 282 pages to methodology. And I shall not touch on methodological matters that are not immediately germane. Professor Weyrauch went to Germany and talked with some 130 persons, including 34 attorneys, 32 judges, 19 law professors, 18 government lawyers and state attorneys, 6 house counsels or business lawyers, 4 law students, and 17 laymen. The latter included two legislators and four housewives married to lawyers. The rest of the laymen are not clearly identified. In choosing the sample, Professor Weyrauch sought to avoid the "common danger of distortion resulting from a one-sided selection of an elite sample" as well as the danger of selecting "eccentric lawyers and cranks" which might "facilitate a manufactured conclusion of the emotional instability of lawyers" (p. 35). He continues: "To counteract these dangers lawyers were frequently chosen by chance. The interviewer accidentally met an acquaintance on the streets or at some social occasion and engaged him in a conversation that eventually led to the interview. In other instances, mere chance led to a spontaneous interview with a stranger" (p. 35).

Of the total sample, 63 were subjected to longer interviews than the rest. As to the length of the interviews, we learn that "intensity and content of the interviews varied from case to case. Some subjects were interviewed for hours, in a few instances for days, others for shorter periods. Sometimes a casual conversation of a few minutes was incorporated in the research because it was pertinent" (p. 35). The interviews are said to have been conducted by the method of free association: "The line of associations was left to the subjects, the interviewer

merely encouraging their flow of thoughts. This process proved capable of yielding data of surprising content and depth. Indeed, the method of stimulating free association was later adopted as the main strategy of interviewing" (p. 41).

This must suffice as a summary of the author's methods, though he makes a great many other observations. Now, the issue I want to discuss is whether, given the goal of constructing a collective profile of the legal profession, these methods are adequate and appropriate. First, the sample. As quantitative evaluation was not the object of the research, the smallness of the sample is not objectionable as such. What is objectionable, however, is the way in which respondents and informants were chosen (and, moreover, it is never clear just who is quoted, and whether the quotations come from a conversation of a "few minutes" or from interviews carried on "for days"). We are told they were selected "by chance" or "accidentally." But, in fact, the sample was anything but random. Evidently anticipating this criticism, Professor Weyrauch writes:

Of course this method does not preclude distortion by the unconscious preferences of the author, for instance, because of his choices of contacts and the type of his past law practice. However, the numerous professional contacts of the author while practicing law in Germany did not always depend on his volition. They were frequently initiated in the compulsory context of threatened or pending litigation. These diversified past contacts were sufficiently alive to be utilized in the interview situation (p. 35).

This may all be true, but it does not make the sample any more acceptable for the purpose of a collective profile. Combined with the author's loose use of quasi-quantitative terms like "few," "some," "many," "frequently," "often," and so on, we are left guessing about the size and quality of the bricks out of which the house is constructed.

The arbitrariness of the sample and the evidently equally arbitrary length of the interviews are confounded by the method of interviewing. Since writing the book, Professor Weyrauch has conceded, in a reply to a review by Professor Max Rheinstein, that "in the present research the interviews were not entirely non-directive. 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."<sup>2</sup> This, I daresay, is something of an understatement. From what I can

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<sup>2</sup> Weyrauch, *Some Comments on Professor Max Rheinstein's Review*, 74 *YALE L.J.* 1335, 1337 (1965).

reconstruct out of the bits and pieces of conversation reported in the book, Professor Weyrauch played an active, in fact often aggressive, part in the interviews, a part that is counter to the benevolent, supportive role of the psychiatrist in the therapeutic situation.

Possibly, the technique of "adversary interviewing," if it can be called so, can produce some interesting material that more passive interviewing might not elicit. But if it is useful in reearch on the psychology or sociology of the legal profession or on legal behavior, it deserves careful scrutiny. It may well be an appropriate method of conversing with lawyers, accustomed as they are to the discovery of truth through adversary procedures. Whether "truth" comes out of this system is not the issue here, but it might well tell us something about the mental stance and the behavioral style—I purposefully avoid using the term *personality*—of lawyers.

Finally, Professor Weyrauch goes to great length in defending his interviewing method by rejecting the method of more structured interviewing as inappropriate in the case of an elite not conditioned, as Americans are, to polling. German lawyers, he believes, would react with hostility to questionnaires and object "because it puts lawyers on a level with other persons and exposes them to comparison with anonymous individuals with whom they may not wish to be identified, even in the most indirect form" (p. 52). I can only refer to my own experience. In the past year I interviewed, with the aid of local assistants, 97 Austrian politicians. The interviews averaged an hour and a half and consisted of open-ended, though structured, questions. Not only did we have the full cooperation of the respondents who did not object to being interviewed in a standardized manner, but their cooperation was facilitated by their knowing that all other respondents were interviewed in exactly the same manner. In fact, we were complimented for our objective approach to the interview situation. The group, by the way, included lawyers and other professionals with law degrees. I cannot believe that German lawyers would be very different from this Austrian sample.

I mention all of these methodological problems because they are relevant to the question of just how a collective profile can be constructed. I would argue that even if one had a genuinely random sample of lawyers, and even if the respondents were interviewed in a systematic fashion—in other words, if one would impose rather stringent conditions on research—the construction of a collective profile is a

most hazardous enterprise, as the more grotesque descriptions of "national character" a few years back have shown. In short, if this kind of research is worthwhile, and I think it is, I would plead for distributive data which permit us to inspect the raw materials before some kind of summary statement is attempted.

Just as it is of questionable scientific merit to characterize a whole people as "authoritarian" or "democratic," so it is rather dubious to characterize a whole profession as "obsessional" or "compulsive." Yet, this is just what Professor Weyrauch does. Let me quote from his evaluation in the chapter entitled "The Mental Health of Lawyers." After admitting the difficulty of sorting out compulsive from normal individuals and leaving unanswered the question of the positive functions of compulsiveness, Professor Weyrauch continues:

It appears, though, that lawyers *as a group* show signs of anxiety and compulsiveness with high frequency. . . . Contrary to their professional manner, many of the subjects were inhibited and timid in private contacts. It is probable that they had made efforts since their early years to cope with a felt inadequacy. From the various alternatives originally available to them, at least as far as German conditions were concerned, the one of asserting their manhood by founding a family early and standing on their own feet was evidently thought to be least desirable. Instead, they may have attempted to solve their problems by choosing law as a profession, the immediate consequence of which was to prolong adolescence. The many years of study gave, for instance, excuses not to marry and to stay with the parents or with a widowed mother (p. 265). (Emphasis added and footnote omitted).

I am sure that many readers will consider this statement as absurd. But even if we take Professor Weyrauch at his word that the study is "hypothesis-forming rather than hypothesis-testing" (pp. 4-5), one may question the validity of an evaluation such as this, given the methods of inquiry that were employed. I doubt very much that the *kind* of interviews conducted in this study can produce the *kind* of materials which are needed for the *kind* of interpretation that is sought. I am all the more flabbergasted because, in a moment of perhaps uncalled-for methodological candor, Professor Weyrauch informs us that:

Stereotyped answers, parochial attitudes, and techniques of evasion soon accumulated to a surprising extent. After about fifteen intensive interviews little new material was uncovered, although most subjects continued to be convinced of the uniqueness of their statements. The repetitive



flavor in many interviews and the resulting danger of boredom might have been fatal to the research but for the stimulation provided by a small circle of persons who showed genuine interest (p. 41). (Footnote omitted).

In other words, Professor Weyrauch's technique of interviewing was evidently not more successful than the technique of structured interviewing. What he complains about here is a common experience in more standardized interviewing, and we do not have any distributive data at all to judge for ourselves. But if Professor Weyrauch's subjects behaved this way, one wonders just what the merits of his interview technique are, and one has even more reason to wonder about the elaborate and intricate interpretation put on what, from a psychoanalytic viewpoint, are obviously poor results. If, after 15 interviews, the method of free association cannot produce more and new materials, it is hardly worth the time it takes to employ it. The point to be made is, of course, that Professor Weyrauch's method, as suggested earlier, was psychoanalytic in a very special sense, though it did not keep him from coming to rather extravagant conclusions about the psychic life of lawyers.

It is difficult to say something substantial about the substance of this book rather than about its methods, for one's appraisal of substance depends on one's appraisal of method. Another methodological observation must, therefore, be made. In order to protect the anonymity of his respondents, to "de-identify" them, Professor Weyrauch breaks his interviews down into isolated quotations. The quotations are organized according to certain value categories, such as enlightenment, skill, respect, affection, rectitude, well-being, wealth and power, derived from the work of Professor Harold D. Lasswell of the Yale Law School. This is quite skillfully done for the purposes of description and classification, but it is unfortunate for the purposes of interpretation and evaluation. Though the study claims to be "contextual" (p. 34), the quotations are presented out of the context from which they come. This may be legitimate to illustrate particular hypotheses, but it severely limits the substantive usefulness of the book. From the perspective of a collective profile, this extreme type of de-identification does not permit the reader to appraise either the incidence or quality of a given type of statement. Certainly, the study of personality involves more than the stringing together of out-of-context quotations from a set of very diverse conversations with a variety of persons quite

differently connected with the legal process. When, many years ago, Professor Lasswell suggested certain "political types" on the basis of depth materials of a psychoanalytic sort, he presented his data in context, that is, he summarized the material on any one individual *in toto*.<sup>3</sup> This is necessary because psychoanalysis permits a great variety of interpretations. In Lasswell's reports, the reader was in a position to judge for himself whether the analyst's interpretation was adequate and appropriate or not. This is quite impossible in the presentation of material by Professor Weyrauch.

Finally, a methodological comment about the comparisons between German and American lawyers to which Professor Weyrauch aspires. For anyone who takes comparison seriously as the single, most relevant approximation to the experimental design of natural science, Professor Weyrauch's comparisons are unacceptable. Take a statement like this:

An American psychiatrist with teaching experience in medical and law schools, after seeing the data, was struck by a similarity in the attitudes of lawyers in Germany and United States and their use of similar psychological defenses. The interviewer's personal observations of American law students, lawyers, and law professors over a period of more than ten years seem to bear this out (p. 278). (Footnote omitted.)

I don't think I need to comment on this use of comparison. Professor Weyrauch has conceded its inadequacy in his reply to Professor Rhein-stein: "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."<sup>4</sup>

All this is not to say that this is not a very suggestive book, even if it does not really say anything valid about "the personality of lawyers," as its title claims, or anything reliable about "a comparative study of subjective factors in law," as its subtitle alleges. For recorded here are the fragments of conversations with German lawyers about a great variety of topics, from legal education, legal practice, legal procedure, legal ethics, and so on, to observations about the status and prestige of lawyers, the differences between the systems of Anglo-American and Roman law, the economics of the legal profession, and sundry other matters. And it provides some insights into certain opinions, attitudes, orientations, perceptions, taboos, preferences, identifications, expecta-

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<sup>3</sup> LASSWELL, *POWER AND PERSONALITY* (1948); LASSWELL, *PSYCHOPATHOLOGY AND POLITICS* (1930).

<sup>4</sup> Weyrauch, *supra* note 2, at 1336.

tions and behavioral styles of *some* German lawyers. Unfortunately, because of its inadequate comparative framework, it is impossible to say whether these things are expressions of the German culture in particular or of the culture of the legal profession across national boundaries in general. In short, the question whether there is a culture of the legal profession transcending the frontiers of nation or legal system remains unanswered.

As a political scientist, I was particularly interested in Professor Weyrauch's evaluation of the lawyer's role in politics. As is well known, lawyers do play a highly visible role in American politics.<sup>5</sup> But again, because I think Professor Weyrauch is more intent on making a case for his psychoanalytic interpretation than on evaluating the role of the legal profession in politics, he is the prisoner of his approach. In a critical paragraph he writes, for instance: "Although in every power process lawyers will be found on both sides of the fence, it is likely that the more highly qualified will adhere to the side holding and defending an already existing power position" (pp. 280-81). This may be so, but Professor Weyrauch's estimate here is not based on inference from empirical data, but derived from his almost axiomatic position that lawyers, as a group, are characterized by compulsive personality traits. He writes:

Correspondingly on the American domestic level, lawyers will be prominent in the battle for states' rights, frequently resisting federal interference, stalling projects of wider than local scope, and advocating the status quo, irrespective of whether the matter is one of racial, religious, or social discrimination (p. 283).

The issue is not whether this conclusion is true or false in an empirical sense, but whether the data support the axiom that lawyers behave as they do because they have certain (obsessional or compulsive) personalities. I am not in a position to contradict Professor Weyrauch's diagnosis. I would only argue that, until all the facts are in, or at least more facts than we now have, it is hazardous to make such statements. Indeed, because they are familiar presuppositions about the behavior of lawyers, they deserve empirical investigation. It is my impression that lawyers have played equally prominent roles in the forefronts of revolutionary movements, from the French to the

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<sup>5</sup> See EULAU & SPRAGUE, *LAWYERS IN POLITICS: A STUDY IN PROFESSIONAL CONVERGENCE* (1964).

recent Cuban Revolution. What is needed, clearly, are comparative historical and sociological studies of lawyers in different societies.

In particular, we need studies of the legal profession that are cast in more sophisticated research designs, including, for purposes of scientific control, lawyers in politics, lawyers out of politics, and politicians who are not lawyers. Otherwise the data that are collected do not permit the falsification of hypotheses, regardless of whether these hypotheses are derived from psychoanalytic or any other set of axiomatic presuppositions.

HEINZ EULAU\*

THE USE OF EXPERTS BY INTERNATIONAL TRIBUNALS. By Gillian White. Syracuse: Syracuse University Press. 1965. Pp. xv, 259. \$8.95.

A perusal of the cover literature encasing the volume discloses that "Gillian White" in fact is Gillian *Mary* White. Our author proves to be not a venerable Justinian, but a common law Portia, a Barrister-at-Law of Gray's Inn, a Ph.D from the University of London and a Cambridge University Research Fellow.

The book is designed to fill a textual void discovered by the author when, for a corporate client, she undertook to research the law regarding the use of experts by international tribunals. It is the fourth volume to be published in the Procedural Aspects of International Law Series. Its scope is thus defined: "This study is restricted to the use of independent experts by international judicial tribunals" (p. 3). Although, on occasion, these "experts" may give oral testimony in court and possibly be subjected to oral examination by agents of the parties, their submissions are much more likely to be made in formal written reports to which the parties may add their written comments. Those with a common law background should distinguish such "experts" from "expert witnesses" in common law courts whether called by a party or by the court itself.

International tribunals possess implied rule-making authority and, unless expressly prevented by the terms of the organic statute of a permanent body, or a provision of the *compromis* submitting a cause

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