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Book Reviews

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The Contradictions of Liberal Thought

Knowledge and Politics. By Roberto Mangabeira Unger. *New York: The Free Press,* 1975. Pp. ix, 336. $12.95.

Reviewed by Karsten Harries†

Roberto Mangabeira Unger's *Knowledge and Politics*[1] has its origin in perplexity: working on some problems of legal theory Unger discovered that the solutions offered were not only inadequate, but led in incompatible directions. The "house of reason" in which he had been working proved to be "a prison-house of paradox whose rooms did not connect and whose passageways led nowhere."[2]

These difficulties were not peculiar to legal theory, Unger concluded, but had their foundation in a style of thought dominant in all social disciplines. The style of thought could be shown to rest on just a few premises, "as powerful in their hold over the mind as they are unacknowledged and forgotten,"[3] which Unger calls "the liberal doctrine." This doctrine, he tries to show, rules out an adequate understanding of self or society.

While attacks on the liberal position are as old as that position itself, Unger insists that earlier critiques suffered from their partiality and were unable to free themselves from their origin in liberal thought. Liberal doctrine presumes that a whole can be understood as the sum of its parts ("the principle of analysis"). Unger instead demands "total criticism," which insists that a whole be treated as an indivisible unity ("the principle of totality"). Such criticism has been made urgent by social changes that liberal thought can neither comprehend nor guide.

How are the principles of liberal doctrine linked? How can liberal doctrine be both an indivisible unity and "a prison-house of paradox"? Unger knows that neither the unity nor the paradox can be "of a for-

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1. R. UNGER, KNOWLEDGE AND POLITICS (1975) [hereinafter cited by page number only].
2. P. 3.
3. *Id.*

mal logical sort."[4] While he does speak of entailment and contradiction, such analogies are a "crutch to be cast off as soon as we start to walk."[5] To show liberalism's unity demands a mode of explanation that stands beyond the boundaries of formal logic and causality.[6] The explanation must overcome the related separation between the order of ideas and the order of events, since that separation does not allow for adequate interpretation of the phenomena of consciousness and culture. The unity of a successful work of art cannot be explained in terms of causality or logical necessity, but calls for "a method of appositeness or symbolic interpretation."[7] Only such interpretation can do justice to meaningful wholes. Somewhat as one might speak of the "theme" of a work of art, Unger speaks of the liberal doctrine as the animating center of modern society, as a "hidden framework of ideas," a " 'deep structure' " which determines "[t]he opportunities for thought available to us within a given vision of the world."[8]

But can criticism ever become total? As Unger is aware, to the extent that what is accepted as sense is determined by the position to be criticized, total criticism must be considered nonsense. It is meaningful only if a tension exists between the position criticized and our humanity, only if the critic is able to articulate what already has a claim on those whom he would address. In apparent accord, Unger thus points out that "[m]uch in modern thought is irreconcilable with liberal principles."[9] Only "[b]ecause we are men as well as liberals" can we meaningfully criticize the liberal doctrine.[10] Yet this suggests that we should understand the liberal doctrine as part of a larger whole and analyze its place in that whole. There is thus contradiction in Unger's own position. For as the principle of totality is tempered with the principle of analysis, total criticism must turn into partial criticism. Just this Unger wants to avoid.

"The principle of analysis is the eternal enemy of revolution,"[11] he contends, for it renders the attempt to criticize and change society as a whole incomprehensible and thus dismisses it. Yet with at least as much justification one can claim that the principle of *totality* is the enemy of revolution. For if society is to be viewed as an all-encompassing indivisible whole, the demand that it be changed cannot be

4. P. 13.
5. P. 15.
6. *Id.*
7. P. 107. *See* p. 108.
8. Pp. 8-9.
9. P. 8.
10. P. 198.
11. P. 48.

understood by members of that society. The call for total revolution is necessarily empty and ineffective. Fortunately *Knowledge and Politics* is not an exercise in total criticism, but offers us a challenging partial critique of premises we too often take for granted.

Unger's statement of the liberal doctrine provides a simple but illuminating model. Liberalism's "unreflective view" of mind and society can be reduced, Unger tries to show, to six principles which form a coherent whole. Three are principles of liberal psychology; three are principles of liberal political theory. As the view is sketched for us, it owes more to Hobbes than to any other thinker, although Locke, Montesquieu, Rousseau, and Kant also have to be mentioned.

Fundamental to liberal psychology is "the principle of reason and desire." The self is bifurcated into understanding, reason, or thought on the one hand, and desire, feeling, or sentiment on the other. From this bifurcation follows the separation of fact and value, description and evaluation. The second principle, an extension of the first, states that "desires are arbitrary from the perspective of the understanding."[12] Reason is limited to what is, so there can be no truly practical reason. Given this principle of liberal psychology, "practical reason" must degenerate into technical reason: we can dispute only about means, not about ends. The third principle of liberal psychology is the already mentioned "principle of analysis," that a whole can be understood as the sum of its parts. Unger tries to demonstrate that liberal psychology is inevitably caught in the contradiction or "antinomy" of reason and desire. "Schizophrenia brings to light the hidden truth of the moral condition liberal psychology describes."[13] Corresponding to the two elements of the self, liberalism is said to have developed both "a morality of reason" and "a morality of desire."

But how, given Unger's statement of the first principle of liberal psychology, can there be a morality of reason at all? Kant's ethical theory may well be "the purest example of the morality of reason,"[14] but Unger's first principle does not allow for it. Given that principle, reason cannot oppose categorical imperatives to natural inclinations; it cannot promote substantive ends, not even the end of freedom, but only serve desire. Unger admits as much: "The idea of practical reason took a long time to be abandoned by the moderns, but it is certainly incompatible with the premises of liberal psychology."[15]

This leaves the morality of desire. Unger objects that this morality

12. P. 42.
13. P. 58.
14. P. 51.
15. P. 50.

is paradoxical in that it posits *satisfaction* as the aim of desire and yet understands man as a being which cannot be except as *desiring;* thus it condemns him to an impossible task. But must the morality of desire be tied to an ethics that "canonizes contentment," a kind of being at one with oneself which is denied to us by our temporality?[16] In Plato's *Gorgias,* Callicles disputes this, and Nietzsche has shown the strength of Callicles's position.

The morality of desire does not deny the importance of reason altogether. Yet Unger argues that although liberal psychology "allows reason a subsidiary role in planning the satisfaction of the appetites," this is not enough to ensure the possibility of an ordering of desires.[17] But could reason not discover such an order as an empirical fact? One could argue that the very existence of society presupposes considerable agreement concerning the order of desires. The morality of desire need not abandon us "to our random and changing appetites."[18]

Three principles of liberal political theory are said to correspond to these three psychological principles. The "principle of reason and desire" has its analogue in the "principle of rules and values." The "principle of arbitrary value" is reflected in a "principle of subjective value." The "principle of analysis" is met by the "principle of individualism."

The liberal doctrine demands legal formalism. The need for rules, according to the liberal position, "arises from the undying enmity and the demands of collaboration that mark social life."[19] The conflict of subjective values requires the establishment of an artificial and formal order of impersonal rules or laws which can bridle man's egoism, and yet is supported by that egoism. The social contract is to be both the instrument of man's self-love and its remedy. Legislation and adjudication must be free from individual bias. "In its strictest version, the formalist theory of adjudication states that the legal system will dictate a single, correct solution in every case. It is as if it were possible to deduce correct judgments from the laws by an automatic process. The regime of legal justice can therefore be established through a technique of adjudication that can disregard the 'policies' or 'purposes' of the law."[20]

But the ambiguity of words and situations, an ambiguity which is the more pronounced the less a society is held together by a shared

16. Pp. 52-53.
17. P. 52.
18. P. 54.
19. P. 68.
20. P. 92.

sense of value, denies what formalism requires. The problem is not solved when we give up formalism for a theory which holds that the judge must consider the point of the law. "In the absence of a procedure for policy decision, the judge will inescapably impose his own subjective preferences, or someone else's, on the litigants."[21] A neat separation between the sphere of law and that of subjective value thus cannot be maintained, for legislation and adjudication are the work of concrete persons. This is the antinomy of rule and values; a system of laws or rules "can neither dispense with a consideration of values in the process of adjudication, nor be made consistent with such a consideration."[22] The subjectivity of values cannot be reconciled with the demanded neutrality and formality of the law.

I find convincing Unger's statement of this "antinomy" of rules and values and his suggestion that only a shared sense of value might soften it sufficiently to allow for the liberal solution to the problem of social order. If Unger is right, only a total transformation of liberal society could bring about such a sense of shared values; liberalism is unable to furnish a consensus which is based on more than a precarious convergence of individual interests. But are we not entitled to assume certain general inclinations? Even Hobbes takes for granted that, atomized as they are, persons share certain ends; only this allows man to escape from the state of war. Unger does not place sufficient emphasis on the extent to which the liberal position rests on the assumption that certain values are shared. Admittedly this does not furnish the demanded "stable, authoritative Archimedean point,"[23] nor does it eliminate the tension between the formality of the law and subjective value; liberalism presupposes a certain tolerance for precariousness and imperfection.

Unger finds a key to the unity of the liberal position in its denial of intelligible essences.[24] Given that denial, order cannot simply be discovered by examining concrete particulars. To the liberal it is the artificial order of convention, language, and theory that becomes all important,[25] although restriction is placed on arbitrariness by the

21. P. 95.
22. P. 91.
23. P. 102.
24. The doctrine that there are no intelligible essences is the ultimate basis of the principle of subjective value. The theory of intelligible essences states that there are a limited number of classes of things in the world, that each thing has characteristics that determine the class to which it belongs, and that these characteristics can be known directly by the mind.
P. 79.
25. If there are no intelligible essences, how do we go about classifying facts and situations, especially social facts and social situations? Because facts have no intrinsic

demand for formal generality. But the requirement of formal generality is an incomplete surrogate for the doctrine of intelligible essences;[26] it is not sufficient to guarantee that a particular law is not arbitrary or arbitrarily applied, just as it cannot guarantee that a particular theory is true—a point which Unger develops in his discussion of "the antinomy of theory and fact."[27] Liberalism, he suggests, must tend towards scepticism.

But is the affirmation of intelligible essences or of objective values truly incompatible with liberal political thought? To raise this question is to question the unity of Unger's six principles. Unger argues that opposition to objective values is central to liberal political theory, for "[i]f we were able to perceive such values, they would become the true foundation of the social order."[28] Is it not possible to maintain that there *are* given values, but that they are known only with difficulty, or that our pride does not let these values become effective? In either case we could not count on their perception to furnish the principles of social order. To do so would be to confuse persons with angels. Critics of liberal political thought have overlooked too often what is right in the traditional view of man as essentially fallen. To accept the political theory of liberalism one does not have to accept the principle of subjective value or what Unger terms liberal psychology.

Criticism should lead to reconstruction. For Unger the direction which reconstruction must take is indicated by the inadequacies of the criticized position. Its tensions point toward an ideal of a way of life more integrated than liberalism allows. Unger finds further hints of such an existence in religious worship, art, and love, which, fleeting and incomplete, "need to be completed by a transformation of society that extends to the whole of life what they achieve in a limited sphere of existence."[29] Surely the reality of the socialist state and the gradual evolution of the welfare-corporate state, with growing emphasis on solidarity and community, betray a weakening of the liberal vision with its emphasis on the individual. Unger, however, rightly insists that a negation of liberalism which would sacrifice the individual to the community would be as one-sided as liberalism itself. The ideal of

identity, everything depends on the names we give them. . . .

. . . .

. . . Properly understood, the system of public rules is itself a language. Every rule is addressed to a category of persons and acts, and marks its addressees off from others.

P. 80.

26. P. 34.
27. Pp. 31-36.
28. P. 76.
29. P. 231.

the self should strive for a balance between individual and community.

Unger does not claim originality for his doctrine of the self. Quite the contrary: "All the great thinkers of Europe have contributed to its development, for it is the theoretical expression of that more basic insight into humanity no theory has managed to destroy."[30] Central to Unger's position is the assumption that there is "a unitary human nature"; this nature should not be thought of as a timeless essence; rather it "changes and develops in history." It is this nature which "constitutes the final basis of moral judgment in the absence of objective values and in the silence of revelation."[31]

Man belongs to nature, yet transcends it as consciousness; he belongs to society, yet is separated from it as an individual. Liberalism has emphasized the moment of separation, while its communitarian critics have emphasized integration. The ideal sketched by Unger tries to do justice to both separation and integration. Thus he looks for a "natural harmony" which will give us a sense of being a part of nature while standing apart from it. Love, art, and worship are inadequate representations of this harmony; the main device for joining the human and the natural is work. But, finally, tension must remain: the gap between culture and nature cannot be closed. It is a mistaken insistence on the possibility of such closure which Unger sees as "[p]erhaps the main vice in the Hegelian-Marxist theory of work."[32]

Unger's ideal similarly demands "a way in which union with the others would foster rather than diminish the sense of [one's] own individual being."[33] Personal love has a superior analogue in the idea of a community of shared purpose, whose members would find meaning in work that served an ideal of universal significance.

How is this to be realized? Unger's "theory of organic groups" offers hints rather than specific instructions. Philosophy, he points out, cannot take the place of political prudence. In present social reality, any attempt to realize the ideal of a purposive community is condemned to the utopian or revolutionary fringe of society and cannot transform the established order. "Until the problems of domination created by the hegemony of class and role are solved in the society at large, no alternative to the principle of subjective value can be found."[34] The required solution can only be political; it demands "the attack on imperialism in international relations, the subversion of the principle of class within the nation-state, and the confinement of the principle

30. Pp. 198-99.
31. P. 221.
32. P. 212.
33. P. 217.
34. Pp. 251-52.

of role or merit through democracy internal to the bureaucratic institutions."[35]

Unger knows that the ideal which he has posited is in one sense incoherent—"the different elements of the communitarian ideal ultimately conflict."[36] The gap between man and nature, between individuality and sociability, between infinite longing and the finitude of life cannot be closed.[37] The antinomies of liberal thought have their counterpart in "the dilemmas of communitarian politics." One wonders why these dilemmas should not lead to a critique of the communitarian ideal to parallel the critique of liberalism.

Unger admits that his ideal cannot be realized; rather it is offered as a "regulative ideal." He grants that it may be impossible to strike a balance which would reduce the tensions of human existence,[38] and that it might "turn out that there is no unitary human nature" of the kind he describes.[39] In that case "the premises of liberal thought would become all the more true and the political acceptance of the subjectivity of values all the more indispensable a guarantee of individual autonomy."[40] Unger's critique of liberalism rests on a faith which accepts "a correspondence between being and goodness,"[41] a faith which lets him conclude with an appeal to God, whom men require "to complete the change of the world by carrying them into His presence and giving them what, left to themselves, they would always lack."[42]

For this reader such an ending reinforces serious doubts concerning Unger's critique of the liberal position. The idea of a union that could reconcile the tensions marking human existence is elsewhere said by Unger to be contradictory. But God *is* that idea. The goal of man's striving is shrouded in paradox; the attempt to find a way out of the "antinomies" of liberal thought posits a goal which is contradictory. Liberalism escapes contradiction only because it recognizes and does not try to eliminate the tensions between role and person, public and private, state and society, but seeks to ensure their uneasy balance. Liberalism may warrant a partial critique, but hardly total criticism. Unger's insistence on the latter is informed by an ideal of wholeness and integration which, though it has haunted man, is incompatible with human reality. The attempt to approximate this ideal must threaten the individual and alienate man from himself.

35. P. 252.
36. P. 260.
37. P. 290.
38. P. 287.
39. P. 248.
40. *Id.*
41. *Id.*
42. P. 294.

The Profession Unwhigged

American Lawyers in a Changing Society, 1776-1876. By Maxwell Bloomfield. *Cambridge, Massachusetts: Harvard University Press,* 1976. Pp. ix, 397. $15.00.

Reviewed by Jerold S. Auerbach†

It is difficult to conceptualize a formative era of American law, a veritable Golden Age, in which the legal profession itself reached a nadir. So it was, however, according to the conventional if contradictory canons of 19th-century American legal history. Nation-building and economic growth between the Revolution and the Civil War required enormous legal energy and creativity. By 1820, according to Charles M. Haar's account in *The Golden Age of American Law,* "the essential task of clearing and preparing the ground for legal institutions had been completed, and a period of intense legal development began which lasted until approximately 1860. . . . Subsequent generations were to put the finishing touches to the structure . . . but it was the men of this era who laid the foundation and erected the framework."[1]

It sounds plausible. But the simultaneous demise of the legal profession under the impact of Jacksonian democracy, as related by Roscoe Pound and Anton-Hermann Chroust, just does not fit. It strains credulity to believe that such an extraordinarily creative era was also a period of professional decadence. After 1830, we are told, professional standards fell with the influx of large numbers of lawyers "unfit by character, culture, or training to become members of a learned profession."[2] The result, according to Chroust (echoing Pound), was "the deterioration of the American bar."[3]

Not until Morton J. Horwitz illuminated the ideological conservatism of American legal historiography could any sense be made of the disparity between the rise of law and the decline of lawyers. Horwitz showed how historians had absorbed the self-serving categories of the legal profession, which measured the stature of the bar by criteria of

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1. Haar, *Introduction* to THE GOLDEN AGE OF AMERICAN LAW at vi (C. Haar ed. 1965).
2. II A. CHROUST, THE RISE OF THE LEGAL PROFESSION IN AMERICA 286 (1965).
3. *Id. See* R. POUND, THE FORMATIVE ERA OF AMERICAN LAW 6-8 (1938).

craftsmanship and technical training, rather than by democratic access and professional service.[4] Within this dubious framework, the status of the bar increased as it restricted access and maintained the aura of law as a mysterious science. With elitism, privilege, and status ideologically intertwined, democratization—as Pound and his disciples concluded—inevitably meant deterioration.

The Whiggish bias of 19th-century legal history has now been dealt a fatal blow by Professor Maxwell Bloomfield of Catholic University. His *American Lawyers in a Changing Society, 1776-1876*[5] examines the conventional wisdom, finds it wanting, and offers a convincing alternative interpretation. Bloomfield's volume consists of biographical and thematic essays whose focus is "the interaction between law, lawyers, and American society."[6] The subjects of the biographical chapters include Peter Van Schaack, a Loyalist attorney; William Sampson, an Irish immigrant lawyer prominent in the codification movement; and John Mercer Langston, a black lawyer who was the first dean of Howard Law School. Among the thematic essays, those on "Antilawyer Sentiment in the Early Republic" and "Upgrading the Professional Image" are the gems of the book. They sparkle with insights that illuminate the subtle relationships between the legal profession and American society during the first century of our national life.

Bloomfield traces the persistent tension between lawyers and society as the colonies evolved from orthodox communitarian enclaves, founded on egalitarian or Biblical precepts (both of which were hostile to a professional class of lawyers), into complex, heterodox societies in which morality yielded to law—and to lawyers. The lawyer became a mistrusted symbol of the constraints of civilization, the member of a privileged group removed from popular control. Alternatives to legal professionalism were explored: arbitration without professional pleaders or adversary proceedings; and socialization, which accepted a professional bar but insisted upon state control of it in the public interest. But the cry against professional privilege, Bloomfield suggests, came less from the propertyless masses than from those who wanted to preserve their property against the high costs and delays of litigation. A middle-class public, committed to competition and mobility, was "unwilling to forego the advantages of an in-

4. Horwitz, *The Conservative Tradition in the Writing of American Legal History*, 17 AM. J. LEGAL HIST. 275 (1973).

5. M. BLOOMFIELD, AMERICAN LAWYERS IN A CHANGING SOCIETY, 1776-1876 (1976) [hereinafter cited by page number only].

6. P. viii.

dividualistic legal system in favor of some more equitable communitarian experiment."[7] Even so, Massachusetts and Pennsylvania encouraged arbitration, and nonlawyers were appointed to various state benches. One lay judge in New Hampshire even had the temerity to instruct a jury: "[G]entlemen, it is not law that we want, but justice."[8]

If they wanted justice, they got lawyers. Because professional privilege elicited bursts of public hostility, 19th-century attorneys found it necessary to upgrade their professional image. Again Bloomfield locates the source of criticism in demands of the bourgeoisie for expanded services and opportunity, not in the "sans-culotte radicalism" that Story, Kent, and their 20th-century progeny found perverse pleasure in discovering.[9] Indeed, it is Bloomfield's contention that complaints against professional privilege were quite reasonable. The lowering of educational requirements for admission to the bar was not evidence of anti-intellectualism or mobocracy, but "a reasoned assault upon the privileged position of upper-middle-class practitioners and their sons . . . ."[10] One result of the pressure for accessibility was a sustained effort to refurbish the professional image: "from a designing cryptopolitician into a benevolently neutral technocrat."[11] Consequently, the divorce of law from politics was the supreme achievement of legal mythology during the Jacksonian era.

In an imaginative exploration of the rehabilitation of lawyers in popular literature, Bloomfield demonstrates how the image of the lawyer was modified from intellectual elitism and social snobbery to a more comfortable democratic recasting that stressed rags-to-riches opportunity. Ultimately Lincoln was apotheosized within this new myth: he served as a model of the "uncultivated 'genius' who learned his lessons directly from the book of nature."[12] Bloomfield is properly attentive to the combination of economic egalitarianism and old-stock Americanism that assured professional access and upward mobility to poor, ambitious boys—as long as they were native-born Caucasians. Plucky heroes of Horatio Alger success stories were welcome if they came from southern Illinois and eastern Kentucky, but not if their national origins were in southern or eastern Europe.

7. P. 54.
8. P. 57.
9. P. 138.
10. P. 141.
11. P. 142.
12. P. 174. The legal career of Patrick Henry was sentimentalized in a similar way a few decades earlier. William Wirt's extremely popular biography of Henry, published in 1817, pictured him as a "romantic solitary" of the frontier in contrast to the tidewater gentlemen of the older Virginia bar. W. WIRT, SKETCHES OF THE LIFE AND CHARACTER OF PATRICK HENRY. (15th ed. 1959).

In the struggle between competing values of democracy and elitism, the codification movement of the early 19th-century figured prominently. Here Bloomfield is at his best in weaving the career of one lawyer, William Sampson, into a complex fabric of social change. Sampson, an Irish immigrant and outsider to the legal profession, was a prototype for 20th-century moderately liberal attorneys who took too seriously the promise of equal justice, confronted professional rigidity and hostility, and were driven to more radical positions. Sampson arrived in America in 1806, in time to encounter the hysteria of the Federalist bar over fugitives from the Irish struggle for independence. A state supreme court ruling made him the last alien to be admitted to the New York bar. His colleagues ostracized him; he was restricted to a foreign-born, impoverished clientele. Sampson felt increasingly constrained by the binding precedent-worship of common law judges. In a scathing critique, published in 1826, he called for legislative codification. Sampson, Bloomfield writes, was a 19th-century Luther, "called to purge the law of its superstitions and irrational features so that it might be reestablished on a basis of sound principles intelligible to the average man."[13] Law must cease to be a mysterious science comprehensible only to its priestly guardians; it must be tested by principles of reason, justice, and convenience.

Although Sampson was critical of judicial policymaking, he stopped short of the biting class consciousness of his Jeffersonian predecessors or Benthamite contemporaries. Sampson was a reformer who wanted to preserve the professional bar, yet encourage laymen to participate more directly in legal affairs that directly impinged upon their lives. Indeed Sampson, though subsequently vilified, demonstrated a pre-Jacksonian stage of consciousness. Within a decade after Sampson's essay was published, the common lawyer, no less than the common law, was under far sharper attack from Robert Rantoul and other Jacksonian egalitarians. Bloomfield provides glimpses of the exciting flux of legal and social change in that era, a subject that still awaits comprehensive historical exploration (and will begin to receive it with the forthcoming publication of Horwitz's study of 19th-century law, and the Daniel Webster legal papers edited by Alfred S. Konefsky). Bloomfield is sympathetic to the reform impulse, a "gradual and piecemeal" process which meandered "between legal traditionalism and the expanding needs of a modern democracy."[14] Whether this analytical framework is sufficient is a question that requires fuller

13. P. 77.
14. Pp. 87-88.

disclosure of the complex legal and social tapestry of the Jacksonian era. But Bloomfield has offered an important introduction to its symbols and subtle hues.

Bloomfield is appropriately sensitive to the reciprocal pressures of bar and society upon each other. The profession, he concludes, could not be as autonomous as it desired; nor could advocates of democratization overcome the pervasive social values of individualism and mobility that blocked sweeping reform. A measure of leveling occurred; indeed, lowering the barriers to entry increased popular respect for the legal system (even if it diminished the self-respect of elite lawyers). By 1850, Bloomfield observes, a new equilibrium had emerged: "most nonpoor white Americans" had access to legal services.[15] Lawyers had articulated their now familiar (if highly dubious) claim that they served society merely by serving clients; and the bar was preoccupied with technical proficiency and process, rather than with broad social consequences. Bloomfield discovered occasional examples of professional service to the disadvantaged, especially in the Reconstruction experiments of the Freedmen's Bureau. But in the legal profession, as in the society it mirrored, there was "a vicious caste system."[16] Most practitioners "preferred private profit to social justice"; consequently, "the gap between private practice and public need steadily widened."[17]

Perhaps it truly was a formative era after all, for the bar as for law. Now, a century after Bloomfield's terminal date, the main outlines of the 19th-century professional culture—especially its elitist structure and restricted services—remain instantly recognizable because they are largely unchanged. If one merely adds to Bloomfield's picture the institutionalization of the case method, the proliferation of university law schools and corporate firms, and the power of professional associations, the 19th and 20th-century bars merge imperceptibly. Daniel Webster, serving (in historian Kent Newmyer's phrase) as "a broker between the capitalist interest group and the power of the state,"[18] would be quite comfortable on Wall Street.

If Bloomfield has touched many vital issues, his treatment of some of them is impeded by his commitment to a framework that is half biographical and half thematic. Too often the subjects of his biographical essays are only tenuously connected to the themes they are intended to illuminate. And some thematic chapters, especially on

15. P. 342.
16. P. 303.
17. P. 346.
18. Newmyer, *Daniel Webster as Tocqueville's Lawyer: The Dartmouth College Case Again*, 11 AM. J. LEGAL HIST. 146 (1967).

riot control in Philadelphia and family law, are only marginally related to the subject of the book. Even these essays, however, contain information and insight which make valuable contributions to the social history of the legal profession. Bloomfield's explorations of professional mythology and literary evidence are revealing. And he is sensitive to the ideological constraints of individualism and mobility upon the ability of the legal profession to discharge, or even recognize, its public responsibilities.

Analytically, Bloomfield stumbles only over the issue of class. At pains to deny that anti-lawyer sentiment in the early republic was any kind of Marxist class struggle, he subsequently concedes that law was indeed perceived as an instrument of class domination. Bloomfield seems most comfortable with those who rejected class interpretations; hence part of his attraction to Sampson, who "worked for reform *within* the legal profession."[19] Yet in his family law chapter, Bloomfield drops the mantle of moderation to state forthrightly that "the destitute lived by a different and contradictory set of rules. For those on relief the law was . . . an increasingly repressive agency of social control and regimentation. . . . The unhappy results of such a policy of class segregation are all too apparent a century later."[20] And it is the lawyer's commitment to profit, not justice, that permeates Bloomfield's conclusion.

Any modern reader knowledgeable about the contemporary legal profession will feel comfortable in Bloomfield's antebellum legal world. Although there is the occasionally nagging thought that a dose of present-mindedness enlivens the book, clearly it also enlightens these essays and provides a belated and welcome antidote to the Whiggery of Pound, Chroust, and other apologists for professional elitism. Bloomfield's perception of a profession set on its modern course more than a century ago is compelling—and just a bit chilling. He demonstrates how enduring are the values in American and professional history that have separated private practice from public need. Bloomfield has not written the definitive history of the early American bar, but his conclusions and especially his questions will provoke legal historians for some time to come.

19. P. 77.
20. P. 92.