

Taking Ideals Seriously: The Case for a Lawyers' Public Interest Movement. Edited by Robert L. Ellis. Washington, D.C.: Equal Justice Foundation. 1981. Pp. 168. \$6.95 (paperback).

In Brooklyn, a poor person wanting a divorce has to wait from twelve to eighteen months simply to get an interview with a government paid attorney. On Wall Street, three law firms representing large corporations employ more people than all of the public interest organizations nationwide that represent consumers, environmentalists and citizen groups. Such is the fare of *Taking Ideals Seriously: The Case for a Lawyers' Public Interest Movement*, a collection of twenty-one short, readable and eyebrow-raising essays by Ralph Nader and other well known activists, edited by Robert L. Ellis and published by the Equal Justice Foundation (EJF).

Launched by Nader in 1977, the Foundation's lawyers and law students who "take their ideals seriously" employ this collection as a proselytizing tool in advocating structural change in the legal system. EJF maintains a national office in Washington, D.C. where it coordinates activities regionally at several prestigious law schools. All of the Foundation's projects focus on the goal of increasing access to the legal system for traditionally under-represented portions of the population. One such project has been the preservation of the Legal Services Corporation (LSC), the subject of one essay. Recently, EJF has been waging an intensive campaign to prevent President Reagan from disintegrating LSC from within by appointing directors who have been openly hostile to the very concept of legal services for the poor.

Although the goal of access to the legal system is evident throughout the book, the fundamental importance of access for the minority community is treated as a matter of coincidence by the essayists. The essays do not distinguish between the inability of non-whites to gain any substantial foothold in the legal system and the general plight of the underrepresented.

Organized into two parts, "The Problem" and "Working for Solutions," the book begins with Philip Stern's "The Maldistribution of Legal Resources." This essay serves as a implied footnote to all of the other essays in the collection and indicates the focus on economic, as opposed to racial, discrimination. The reader learns, for instance, that the United States Department of Justice budget was only 10% of the 24 billion dollars spent by corporations for lawyer services in 1977, and that only a part of its budget was used to fight corporate crime which causes damage estimated at 44 billion dollars per year.

Performing legal services in prodigious amounts on behalf of corporations are the lawyers of the organized bar. While becoming more openly receptive to women, the legal profession remains essentially closed to most ethnic minorities. There are few minority students enrolled in law schools and entry into the profession poses yet another hurdle. During the 1970's, on a national level, three-fourths of white applicants passed bar examinations but only half that many blacks taking the examinations passed. Despite the filing of racial bias suits aimed at ending discrimination by bar examiners in more than ten states, strong institutional biases in the judiciary and large law firms persist.

The hypothesis put forward by Jerold Auerbach in "The Failure of the

Organized Bar to Support the Public Interest” is that a cause and effect relationship exists between the barriers to minorities in entering the profession and the minority community’s comparative inability to retain lawyers’ services. “[E]lite lawyers [have] promulgated and defended a set of professional values that served the interests of the ethnic, social and economic groups to which they and their clients belong.”¹ However, the detailing of corporate misconduct elsewhere in the collection belies this simple theory of causation linking underrepresentation in the legal profession with unequal access to legal services. Whether or not minority enrollment in law schools is proportionate to the general minority population, law schools presumably will continue to feed many of their graduates into large corporate practices because that is where the jobs are. Perhaps law school placement offices, criticized for funneling students into large firms without exploring alternative, social justice-oriented opportunities with them, need to be racially integrated just as much as the student population. However, it remains unclear how a racially balanced profession can be expected to ameliorate the problems attributed to corporate misdoings.

The essayists who follow plead that the law itself presents barriers to access to legal services. Even though ethnic minorities are often the primary victims of these barriers, the legal analyses are written in an almost color-blind fashion. A case that challenged racially discriminatory zoning laws² is offered for the purpose of assailing the Supreme Court’s narrow concept of standing. In “Rights Without Remedies: The Burger Court Takes the Federal Government Out of the Business of Protecting Federal Rights,” cases involving a discriminatory pattern of bail setting and sentencing³ and discrimination in the employment context⁴ receive cold, analytical treatment. Other essays decry encroachments on the remedial powers of the comparatively more enlightened federal courts without illuminating the underlying danger to the hard won gains in the civil rights movement. *Brown v. Board of Education*⁵ is called forth not to examine the historical course of racial segregation and discrimination, but merely to illustrate the legal strategy known as “test case” litigation.

There is no doubt that “public interest” law is a concept broad enough to encompass “civil rights” law. The NAACP Legal Defense and Education Fund, the Center for Law and Social Policy and the National Resources Defense Council, to name but a prominent few, can each be described by the catch-all phrase “public interest group.” The essay “The Accomplishments of Public Interest Law” points out that these “public interests groups” and others are responsible for making improvements in the areas of health, environment, equality of opportunity and consumer protection. It is to provide

1. Auerbach, *The Failure of the Organized Bar to Support the Public Interest*, in TAKING IDEALS SERIOUSLY: THE CASE FOR A LAWYERS’ PUBLIC INTEREST MOVEMENT 16 (R. Ellis ed. 1981). [Hereinafter all articles cited refer to essays within the reviewed text].

2. *Warth v. Seldin*, 422 U.S. 490 (1975), discussed by R. Ellis in *Do Not Pass Go*, 35-9.

3. *O’Shea v. Littleton*, 414 U.S. 488 (1974), discussed by A. Morrison in *Rights Without Remedies: The Burger Court Takes the Federal Government Out of the Business of Protecting Federal Rights*, 42.

4. *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975), discussed by Morrison, *supra* note 3, at 44.

5. 347 U.S. 483 (1954), discussed by M. Meltzer & P. Schrag in *Public Interest Law — Some Practical Aspects*, 142.

such public interest efforts with a stabilized funding mechanism essential to their continuation that EJP devotes its own particular energies. EJP requires its lawyer members to "tithe" a small percentage of their salaries (usually 1%), allowing them to begin fulfilling their ethical duty as lawyers to improve the legal system.⁶ Since the public interest organizations share complementary, if not common, goals, the book's emphasis on the similarity of the obstacles facing them may explain why the particular evils attacked by each individual group are glossed over. Perhaps the editor had to downplay the very different nature of the problems addressed in order to present a unified "case for a lawyers' public interest movement."

Also lending unity to the collection is the essayists' consistently critical attitude towards corporations. Those who have chosen not to lambaste corporations do not come to the defense of corporate practices either. Corporations receive much of the blame for keeping in place the structural barriers of the law (legal requirements for standing, class actions, federal jurisdiction, etc.) through their sponsorship of continuing educational programs for federal judges and assaults on legislatures through lobbyists and political action committee campaign contributions. The insidiousness of the corporate influence is allegedly magnified by the collapse of shareholder democracy as decried in a recent report of the Securities and Exchange Commission, resulting in corporations that resemble government-like autocracies. Nader, in his essay, encourages the private bar to support public interest work, reminding lawyers that "a license to practice law is not a license to run a private business."⁷

The most common approach to solving the problems delineated in the first part of the book takes the form, "Let's rewrite the law to say . . ." For example, one author argues for increased citizen participation in agency proceedings through provisions for intervenor funding. "Justice without Judges," advocates arbitration, mediation, and centers for dispute resolution as ways for citizens to participate in the legal process. Another author audaciously proposes that alternative methods be tested, including protests and demonstrations, individual therapy and self-help.⁸

Perhaps the greatest shortcoming of the collection is that it leads the reader to ask about the relationship between wealth and inequality, but nowhere addresses or even articulates the question. In a highly informative and entertaining way, the essayists manage to skirt the question just as blithely as they skip around the issue of racism when speaking of illegal discrimination. The result is that the reader never finds out what the justification is for a public interest movement. Why, in a democracy where we elect representatives to legislate in our interest, are legal crusaders needed to protect us from our chosen leaders? At best, the book hints at an incomplete, simplistic answer: large corporations have a pervasive, often negative effect on the general well-being of the nation and, by virtue of their wealth and influence, are able to exert considerable pressure on the legislatures and

6. Model Code of Professional Responsibility Canon 8 (1974) discussed by S. Kellock in *A Wholesale Approach to Law Reform*, 118.

7. R. Nader, *For the Preservation of the Public Interest*, 131.

8. E. Cahn & J. Cahn, *Moving into the Eighties: Confronting the Deficiencies of the Legal System from a "Consumer" Perspective*, 166.

courts to blockade citizen efforts to effectively regulate or successfully sue them.

Anti-capitalist sentiment permeates the patchwork of solutions proposed as the antidotes to corporations that refuse to behave. Rather than presenting "the case for a lawyers' public interest movement" as the subtitle proclaims, *Taking Ideals Seriously* can be viewed as bashfully presenting the antecedent to the argument for a socialist state. To propose tactics such as demonstrations and self-help without distinguishing between activities that may be lawful but outside the channels of the legal system and that conduct which is illegal, is to flirt with the idea of revolution.

Nevertheless, the book provides considerable information and insight and is no less valuable for provoking the reader to ask questions that may be beyond the scope of inquiry and to draw conclusions that, perhaps, were unintended.

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