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BOOK REVIEWS

Lobbying and the Law. By Edgar Lane. Berkeley: University of California Press, 1964. Pp. 224. \$6.50.

To all but the most politically naive there should be nothing startling about the fact that the laws enacted in the legislative halls of this country, both federal and state, are to a great extent the result of actions of political interest groups. This is not to imply that such a condition is an undesirable aspect of our legislative process since it is inherent in the very nature of a democracy that the government should be an instrument to which men can come with their needs and interests. That such interests will be conflicting and not necessarily advantageous to all groups or to the public as a whole does not alter the fact that the government in a free society must be accessible and responsive to the diverse interests of its people. But it does give rise to one of the fundamental functions and problems of government—that of maintaining an optimum distance between private interest and public power, and converting the interests and needs of private individuals and groups into public policy. *Lobbying and the Law*, by Edgar Lane, is concerned with one aspect of this basic problem and the part that it has played in the political structure of our state legislatures.

The manner and methods by which individuals and groups have sought to prompt or prevent the exercise of governmental power are countless and range from direct person-to-person persuasion, through appearances before legislative committees and administrative agencies, to public relations and educational programs in the broadest sense. Indeed, such obvious acts as voting for particular candidates or issues, writing letters to legislators or to magazines and newspapers, or contributing to political parties are very effective means by which all citizens can directly and indirectly shape the making of public policy. Somewhere in this wide range of activity are those acts which are included in the concept of the term “lobbying”—a word which is extremely difficult to define with any precision and which gives rise to varied and conflicting connotations, but which is generally understood to characterize those reasonably substantial and direct private efforts by men or groups of men to

influence legislative action. While lobbying involves the exercise of one of the most valuable rights of a free society and is recognized as an honorable means by which men can communicate their needs to the government, it, like any other right, has been and can be an instrument of political abuse and corruption. Over the years the legislatures of most of the states as well as Congress have enacted laws for its regulation. The author of *Lobbying and the Law* explores in detail the origin and requirements of the state laws and how they operate in order to determine where the regulation of lobbying fits into the political process of the states and what it accomplishes there.

For the most part the state laws for the regulation of lobbying are based on the simple premise that if given access to the facts about a situation the public and the government will take whatever action is proper and necessary. This disclosure principle is, of course, by no means unique, but is firmly entrenched in our democratic system and is the underlying theory behind the federal and state laws regulating the issuance of securities, the ownership of news media, and the reporting of campaign expenditures, as well as many other areas. Disclosure laws as such do not prevent anyone from doing anything; thus, most state laws, aside from the obvious prohibition of outright bribery and extortion, do not prohibit or restrict lobbying but require persons engaging in such activities to disclose certain facts considered to be pertinent. Typical of such disclosure laws is that passed by the North Carolina General Assembly in 1933,¹ which defines lobbying to be the activities of

every person, corporation or association which employs any person to act as counsel or agent to promote or oppose in any manner the passage by the General Assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the State, or to act in any manner as a legislative counsel or agent in connection with any such legislation²

In essence, it requires those persons covered by the statute to report the following information which is made available as a matter of public record: the name and the address of the employer and agent, the date of employment, the length of time that the employment is to continue, the subject matter of legislation to which the em-

¹ N.C. GEN. STAT. §§ 120-40 to -47 (1964).

² N.C. GEN. STAT. § 120-40 (1964).

ployment relates, and a detailed statement of all expenses paid or incurred by such persons in connection with promoting or opposing in any manner the passage by the General Assembly of any legislation. Violation of the provisions of the act constitutes a misdemeanor punishable by a fine of not less than fifty dollars or more than 1,000 dollars and up to two years imprisonment. A related statute enacted in 1947³ requires similar registration of persons or organizations that are "principally engaged in the activity or business of influencing public opinion and/or legislation in the State"⁴ The statute does not apply to periodicals or news media nor to political candidates.

How do such disclosure laws work and what have they accomplished? Although the laws vary from state to state in their requirements and operation, Mr. Lane finds that for the most part they are subject to the same basis short-comings, and he is critical of such laws in almost every facet. Even in their origins, he contends, these statutes were hastily enacted by "embarrassed or compromised legislatures" in response to charges and allegations that they were too easily yielding to particular interests. Our own North Carolina statute, he says, was enacted mainly to "quiet the insistent voice of the *Raleigh News and Observer*."⁵ Furthermore, from a textual standpoint, the statutes lack precision, scope, and clear direction and do not furnish any guide or standard of ethics for either the legislators or the lobbyists. Where lobbying now primarily consists of activities of political interest groups the statutes are primarily aimed at individual lobbyists; where lobbying is now directed toward many levels and activities of government other than the legislature, especially the administrative agencies, these statutes confine themselves almost solely to legislative lobbying; and where modern lobbying techniques are mainly in the form of indirect political persuasion the disclosure statutes reach only personal confrontation. A lack of vigorous and positive enforcement and administration, as well as a failure of the information derived from the disclosure requirements to be disseminated to the public, has further caused these laws to fall far short of their ultimate end. In short, the author finds that the state disclosure laws as they are written, ad-

³ N.C. GEN. STAT. §§ 120-48 to -55 (1964).

⁴ N.C. GEN. STAT. § 120-48 (1964).

⁵ LANE, LOBBYING AND THE LAW 40 (1964).

ministered, and reacted to by the public are simply unable to cope with the complexity of modern politics.

Any critical analysis of the states' efforts to regulate lobbying are meaningless, however, unless it is first determined exactly what dangers are to be eliminated and what goals are to be accomplished by such regulation. Except for the obvious necessity of discouraging and prohibiting corruption and dishonesty, the answer to this inquiry involves the application of fundamental political theory and ideas; there would be many and wide differences of opinion as to the answer. Does lobbying as such, in its modern and complex form of group political activity, really pose any serious threat to our democratic and representative system of government? And even if it does, is there any realistic alternative to the disclosure principle for its control which would not in itself weaken our democratic process? Mr. Lane, who is an Assistant Professor of Political Science at the University of California, delves into this problem, and although by no means will all readers of his book agree with his conclusions, his views will be thought-provoking to those interested in this aspect of political science.

Lobbying and the Law, in presenting a thorough and informed appraisal of the state regulation of lobbying, is indeed a valuable contribution to the literature about a most important facet of our political system.

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The Disinherited and the Law. By Dagobert D. Runes. New York: Philosophical Library, 1964. Pp. 79. \$3.00.

This is a bad book. If it arouses any interest at all, it will be in those who are concerned with what a certain type of literate man-in-the-street thinks about a random sample of politico-legal issues.

Mr. Runes is agitated about a variety of topics, each of which is treated in a highly emotional fashion. The book is filled with injunctions about what should be done concerning such diverse matters as adultery, Communists, drug addiction, Nazis, hate peddlers (in general), poverty, professional killers, retributive punishment, and the seduction of old men by "eager Lolitas." Most questions are

treated with a simplistic finality which, I expect, will be found offensive by most readers of the *Review*.

On the difficult matter of the role of precedent in the law, for example, Mr. Runes concludes, after a (*one*) brief paragraph: "Law by precedent is a lingering shadow of feudalistic darkness and medieval superstition."¹

The book consists of nineteen chapters (in seventy-five pages) and "A Note to You!", a final series of calls to action. Each of the chapters treats of a more or less specific topic, generally introduced by a statement of the author's position on the question, which statement is followed by the marshalling of "evidence." Perhaps I can best reveal the kind of book this is by examining a few of its arguments.

In a chapter called "Laws, Famous and Infamous," Mr. Runes describes a number of cases in which, he believes, people have been wrongly punished by the law. A woman in South Africa was jailed because she encouraged the visit of a Negro childhood companion; a Jew in Kiev was jailed because he sold a self-made Hebrew prayer book; a couple in Communist China were executed because they withheld their child from the state. Given only this much information about the cases (Mr. Runes documents nothing he says) most readers will probably agree that these are indeed instances of injustice, that the laws which were enforced are bad laws. But in the midst of this sample of cases appears the following:

A man in Naples, an unemployed dock worker, received a jail sentence for stealing a side of beef from a butcher shop. It was a week before Christmas, and he had lost his job. His meager check from the unemployment office would not be forthcoming for some time. He was a good man and of good faith and had a houseful of children and an ailing wife, and he stole a side of beef because when he looked at the beef he did not see the watchful butcher or the hustling customers. All he saw was the gleam of cheer in the eyes of his children and the smile of happiness on the face of his wife, if they could once again sit around the table with a great meal before them. His failing was not that he had disrespect for order or disregard for his Naples, but that he had such great love for his family and a deep wish to do well by them. It is his love that made him err. Is he a criminal? There never was crime in his heart.²

¹ RUNES, *THE DISINHERITED AND THE LAW* 77 (1964).

² *Id.* at 12-13.

It should be mentioned in passing that the emotionalism of the above paragraph is characteristic of Mr. Runes's tone throughout the book. But more important is the question of the relevance of this example to the others. Is the point here supposed to be the same as in those others? That would certainly be extraordinary. For those are cases in which (it is implied) an injustice occurs because of the enforcement of a bad law. The conclusion here would then be that laws against stealing are bad laws. Or perhaps the point is only that such laws should not be enforced when the thief is especially destitute. Factors of this kind, *i.e.*, mitigating circumstances, *are* often taken into account in the application of the law. But if this *is* the point the example is out of place with the others. Finally, it may be that Mr. Runes is merely arguing that good thieves, "with no crime in their hearts," should not be punished. I suggest that there is no way of knowing exactly what Mr. Runes intends by this illustration. Its inclusion is a consequence of his often manifested preference of rhetoric to reasoned argument.

In a chapter called "Judges in the Dock," Mr. Runes distinguishes from both statutory and common law, what he calls functional law. This last is the object of his attack. It has, he says, "been forever brought into play, especially by cunning usurpers of power . . ."³ However, it soon becomes apparent that Mr. Runes fails to use the expression "functional law" in anything like a univocal way. Rather it comes to stand for almost any practice of which he disapproves.

He begins by saying that functional law is an "involved system of interpreting existing statutes."⁴ And, an example of its employment, of which he disapproves, is revealed by the following:

[O]ur Declaration of Independence proclaimed that all men are born free and equal. Still, some of the very men responsible for setting down this magnificent principle, upon returning to their home states in the South, promptly developed the functional law of explanation that freedom and equality did not apply to black people living as slaves, because slaves were not really "men."⁵

Of this passage it must be said that "functional law" is used in a way we would expect, given Mr. Runes's definition. That is, what

³ *Id.* at 6.

⁴ *Ibid.*

⁵ *Ibid.*

is involved in the case he describes is the *interpretation* of a word, *i.e.*, "men." Of course, even here all is not well. For Mr. Runes said that functional law is a system of interpreting existing statutes—and the principle enunciated in the Declaration of Independence is manifestly not a statute. But notice the second example:

As long ago as 1870 the Fifteenth Amendment to the Constitution stated: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude." Still, the functional law of interpretation can eliminate the black citizen by merely adding a few detailed requirements for voting, such as payment of an unobtainable poll tax or a circuitous literacy test which only persons of the examiner's choice can pass.⁶

This is certainly *not* a case of functional law, as Mr. Runes has defined that expression. For the prevention of Negroes from voting is, on Mr. Runes's account, *not* accomplished by interpreting the existing law. It is accomplished by adding new provisions to that law. A legal theorist who fails to distinguish such radically different phenomena cannot be expected to say much of interest on the genuinely subtle problems of legal philosophy. And indeed, on the exceedingly difficult issues generally discussed under the heading of "Civil Rights," Mr. Runes, instead of ratiocination, offers us only a barrage of emotion:

Every thinking person is aware that the legalistic functionalism practiced in the South is in open contradiction to the Constitution and the Bill of Rights. But so great is the veneration for any legal proposition that even the obnoxious perversion of scheming functioneers is met with respect rather than disdain. Instead of cutting through the pretentious functional verbosity of those pseudo-pundits, the duly invested federal officers forever grope for other judicial tricks to outflank the obvious judicial connivers. Why do those who have the power and duty to enforce a good law attempt to sneak its majesty through some dark loophole, instead of marching it proudly through the wide-open gate of public enforcement?⁷

That men of good will may disagree on this question appears not to have occurred to Mr. Runes. I imagine that those (whatever their stand) who have thought seriously about the issue will look with disdain on Mr. Runes's embarrassing display.

⁶ *Id.* at 6-7.

⁷ *Id.* at 7.

To all this Mr. Runes adds a disturbing contempt for facts. In a chapter called "Fearful Justice" he says that

There is no doubt that those in the past and in the present who have proposed the most severe punishment in retaliation for offenses are in the right.

Fear of harsh or cruel consequences will deter many from overstepping regulations.⁸

Mr. Runes goes on to oppose harsh punishment. With that argument I shall not be concerned. My point is that in this chapter he says, or at least implies, that harsh punishment is in fact a deterrent. But thirty-three pages later, Mr. Runes informs us that "punishment may deter animals, not people . . ." ⁹ Of course, in neither case is any evidence brought to bear on the question of the deterrent effect of punishment. Mr. Runes contents himself with asserting what he believes to be suitable for the argument at hand. More annoying, though, is that his assertions are not even consistent with each other.

The rest of the book contains more of the same. Mr. Runes goes on and on unburdening himself in the inconsistent, rambling fashion I have described. *The Disinherited and the Law* contributes nothing to the understanding of the problems with which it deals. It is, in fact, little more than an exercise in tabloid writing, and students of the law will lose nothing by ignoring it.

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Wills and Administration of Estates in North Carolina. By Norman Adrian Wiggins. Atlanta: The Harrison Company, 1964. Pp. 1493. \$45.00.

Books, I believe, can be properly classified in two main categories, namely, "read-through" books and "read-from" books. Novels, short stories and such would fall in the first category; and encyclopedias, texts and the like in the latter category. If you open a "read-from" book at random and partake of the printed matter thereon, likely as not you have received a complete and accurate résumé of a given topic. Cheers for the "read-froms" for they keep most of the professions and many businesses up to date and well informed.

⁸ *Id.* at 24.

⁹ *Id.* at 57.

Wills and Administration of Estates in North Carolina is, without question or doubt, an exceptionally fine "read-from" book. Designed by gentle hands and nimble wit, it will enrich its reader. The reader is rewarded with clip and accurate statements of the law and its application to probate and fiduciary problems. Professor Wiggins, with deft insight into practical application of fiduciary law, gives the law as it now is, how it has been, and on occasion, being the scholar, how it perhaps should be.

The most encouraging feature of this text is the fact that the North Carolina law has been clearly set forth. Without falling victim of voluminous copy, Professor Wiggins has made an all out effort to touch on as many as possible of the practical problems and questions that confront the North Carolina Executor or Administrator. This volume is a must for the lawyer. It will also serve well the trust men of our state.

Professor Wiggins's treatment of the King's English is both deft and candid, which makes for easy and understandable reading. Detailed footnotes lead the reader to his case, treatise, or statutory reference, and enable the stouthearted to pursue his point into the legal archives with the sure knowledge that Professor Wiggins has been there before him.

The purpose of this book is to set down in one place a complete and annotated treatment of probate and fiduciary law as it applies in North Carolina. I read the entire book with the avowed purpose of defending the world against this intruder, only to find myself captivated, immersed and thoroughly converted, indeed a propounder. The professor has made good his intentions.

One final observation seems in order. Professor Wiggins, by this work, has demonstrated and does exhibit his ability as a scholar and student of the law. But, perhaps more important, his writing is keyed to the practical application of probate and fiduciary law. The reader will find himself enriched by the author's own practical and clinical experience as a lawyer, student, trust man, and teacher. *Wills and Administration of Estates in North Carolina* is indeed a fine text which will make a valuable and working edition to your law library.

R. F. CLODFELTER

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