

Book Review

Benjamin M. Becker and David L. Gibberman, *On Trial! Law, Lawyers and the Legal System*. New York: Philosophical Library, 1987. Pp. x + 260. \$22.95.

Reviewed by Edmund F. Byrne

Although Becker and Gibberman concede some "lesser included offenses" in response to charges against the legal profession, they are at bottom zealous attorneys for the defense. "We ain't perfect," they admit, but people would be a lot worse off without us, especially because awesome new problems cannot be solved without the omniscience of lawyers. *On Trial!* brings together the senior Becker's half century of practice in Chicago with Gibberman's perhaps more research-oriented "younger perspective" (x). Their book is a melange of personal reminiscences, survey results, professional advice, policy recommendations, and prognostications about a number of important aspects of the practice of law.

The authors seek "to explain what the average person can and should expect from lawyers and the legal system" (x), and yet they describe lawyering as an increasingly institutionalized profession that is very little concerned with—and beyond the financial reach of—"the average person" (e.g., 17, 21, 171). Despite their acknowledgement of its flaws, however, Becker and Gibberman exonerate the profession—it is, they suggest, in the final analysis nothing more nor less than what "the public" requires it to be (e.g., 42, 127, 137, 150, 160). Nevertheless, their consideration of what the public might expect from the legal profession leads the authors to recommend less reliance on the adversary system (which, they say, mainly benefits attorneys) and greater use of mediation and arbitration (e.g., in the areas of divorce and estate planning). Well trained in their lore, however, they usually present "both sides" of each controversial question. (A conservative bias peeks through in their at best reluctant acceptance of Fifth Amendment rights, preferably without Miranda warnings.)

The range of topics covered—from professional ethics through legal education to the procedures and branches of law that ordinary individuals are most likely to encounter—is entirely consistent with the stated purpose of informing the public. But the authors seem no less interested in having the public think well of the legal profession. This is apparent even from the arrangement and selective emphasis of topics: first, the two basic kinds of law (civil and criminal); next, *The Problem* ("public image of lawyers and the law profession"); then methods of legal problem solving, followed by some familiar branches of law; and then nine chapters about the awesome challenges that lawyers face in a rapidly changing world that includes such wonders as genetic engineering and computers on lawyers' desks.

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On Trial! is marred by unsubstantiated generalizing and moralizing. Serious issues about the law are settled by appeals to "most countries" (39), "most Americans" (93), or "most people" (3, 98-99). Conclusions of other authors are routinely accepted at face value—for instance, "[Woodward and Bernstein's] *The Brethren* demonstrates how the upbringing and personal attitudes of justices have a great influence on their decisions" (100). Becker and Gibberman also glibly assign not merely rights but duties. Clients have a duty to control fees by becoming knowledgeable about them (174, 178). Legal educators must give lawyers "the head and heart necessary to fulfill their public responsibilities" (190). Lawyers must "use their skills to help solve social, economic, and political problems" (204). And "law" (whatever that may be) must "develop legal concepts and legal structures to manage conflicts between science and technology and accepted mores of society" (209). The concerns of the critical law movement appear only in the penumbra of their account (189, 191).

As a microcosm of the thinking of two generations of practicing attorneys, *On Trial!* is perhaps as representative as any other popular work on the legal system. The authors do attempt to be realistic in their assessments. (They are at their realistic best, for instance, when they turn in chapter 16 to what lawyers-to-be might expect and describe the career constraints of the "legal profession as a way of life.") But they ultimately see every imaginable problem as calling for a legal solution. Laws have "become the life-blood of society" (241). And lawyers in the United States, for all their foibles, are a tremendous bargain if one considers how they (unlike lawyers in the Soviet Union) protect people's rights (179). In keeping with this patriotic fervor, the publishers have jacketed the book brightly in red, white, and blue.