

LESS POWER TO LAWYERS?

ROBERT BELL

Eliot Freidson. *Professional Powers: A Study of the Institutionalization of Formal Knowledge*. (Chicago: University of Chicago Press, 1986). xviii + 241 pp. References, index. \$20.00.

Eve Spangler. *Lawyers for Hire: Salaried Professionals at Work*. (New Haven: Yale University Press, 1986). xvi + 233 pp. Notes, bibliography, appendix, index. \$25.00.

Eliot Freidson and Eve Spangler are both interested in the power and autonomy of professionals, but they address this subject in different ways. In *Professional Powers*, Freidson integrates commonly available information about the forms and limits of professional autonomy into a level-headed, general survey of the power of expertise in modern America. In *Lawyers for Hire*, Spangler focuses on the work roles of lawyers in organizations, asking whether they more closely resemble a new class of powerful and autonomous experts, an unusually educated proletariat, or some hybrid third model. Freidson's book is essentially an overview and synthesis. It does, however, include some original analyses of census classifications and of the legal regulation of professions. Spangler's book is essentially a research report on four kinds of work settings—big city corporate law firms, legal departments in large corporations, legal departments in the regional offices of federal government agencies, and Legal Services offices representing the poor and near poor in civil cases. It does, however, attempt some theoretical leaps in its opening and closing pages. Both books are well written, generally judicious, and easy to read. Neither yields major new insights or findings that will cause us to rethink the role of professions in America.

Spangler sets out to discover what happens to the power and autonomy of lawyers when they take on subordinate roles in four different organizations. She is especially interested in whether lawyers will resist organizational authority to uphold their own professional or personal standards. Like Freidson, Spangler has read "new class" theories that postulate an emerging class of experts whose interests diverge from those of property owners and whose skills give them the power partially to realize those interests. But, also like Freidson, she is more impressed with theories that see these experts coming under the domination of managers in their organizations and reconciling their professionalism to the

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demands of the bureaucracies in which they work. The heart of Spangler's book is a richly detailed account, informed by these general concerns, of legal work in four organizational settings.

The first of these settings is the large urban law firm. Here, Spangler finds almost no resistance from subordinates to the demands of powerful partners. Opportunities for promotion seem to be the key to this internal harmony, although ample salary and status rewards and internalized orientations toward hard work and success among associates also play a role. Spangler notes only minimal tendencies in these firms toward work simplification and, indeed, sees both partners and associates as eager to grant associates extensive autonomy and responsibility. Not surprisingly, she explains this by citing the market position of law firms as specialty organizations who do highly crafted work for affluent customers.

The legal departments of large corporations are Spangler's second research site, and she provides perhaps our best available portrait of these departments. Spangler finds in-house legal departments to be substantially more bureaucratic than law firms. She writes that "a corporation-wide system of personnel grades and lockstep promotion by seniority are paramount facts of life" (p. 81) in these departments, suggesting that this bureaucratization is a source of some dissatisfaction. Corporations successfully motivate their inside attorneys, however, by offering possibilities for promotion into nonlegal managerial positions. This is especially true for insurance and financial services companies, where the distance between legal work and the general work of the corporation is not great. In addition, much corporate legal work has an inherent variety and requires a degree of skill that makes for a relatively satisfactory exercise of technical autonomy in work.

Sadly, neither civil service nor Legal Services attorneys, both working for causes Spangler finds more noble than those of their two sets of corporate counterparts, gain the kind of satisfaction from their work that is available to private lawyers. Spangler shows that funding uncertainties and bureaucratic safeguards against favoritism make it difficult for civil service managers to reward good work or punish sloth and incompetence. Moreover, government concerns for policy consistency lead to a management style that intrudes on the technical autonomy that attorneys prefer. Insofar as managers succeed in motivating rank-and-file attorneys, they do so through ideological appeals to both their sympathy for organizational goals and their internalized professional standards. Spangler finds such motivators inadequate compared to the more tangible rewards offered in the private sector; at the very least, the absence of material incentives creates resentment.

In Legal Services offices, the attorney's career is even more bureaucratized. Management discretion, limited by the usual government protections, is further restricted by attorney unions that disdain merit evaluations as a cloak for possible favoritism. In

general, work in Legal Services, Spangler reports, is a more actively “contested terrain” than it is in the other settings, with management and workers vying to shape program priorities and secure control of even relatively technical aspects of work organization. Ironically, at the same time Legal Services is the most “proletarianized” of the four organizations, with greatest management efforts to standardize work and reduce technical autonomy, and the one in which lawyers are most likely to behave like the “new class” by imposing their own interests even at the expense of their clients. Spangler persuasively explains this apparent anomaly by arguing that the prerogatives of Legal Services lawyers owe less to the power accruing to their expertise than to the relative powerlessness of their clients.

Spangler’s empirical chapters are less narrowly focused than my summary may suggest. Her chapters on civil service and Legal Services lawyers, for example, can be read with profit as accounts of the impact of Reagan administration policies on different groups of government lawyers. More generally, all of her empirical chapters attempt a rounded portrait of the organizations she studies while paying greatest attention to the themes of power and autonomy for subordinate attorneys. They thus have the advantage of including a variety of interesting facts, but the disadvantage of not pursuing the central relationships among political and economic context, management style, worker autonomy, and worker satisfaction as systematically as they might.

In her concluding chapter, Spangler laments the bargain that lawyers in organizations have made. They have accepted and even encouraged bureaucratization in a quest for security, and have been willing to cede control over larger policies to management as long as they themselves are permitted to exercise technical autonomy over their work. She fears that routinization may ultimately erode this autonomy, turning lawyers, in effect, into more educated and better paid paralegals. This is unlikely. Where a high degree of routinization is possible, relatively inexpensive genuine paralegals will replace lawyers except in those relatively few activities over which attorneys hold a legal monopoly. In a dynamic business civilization, however, there will continue to be a demand for a large volume of modestly creative rule drafting and dispute settling that can be done best when attorneys are given technical autonomy over their work. In the future, therefore, lawyers are likely to maintain their bargain with corporations and governments, especially since, as Spangler points out, the institutionalized values of their profession fit fairly snugly with those of their wealthy and powerful employers (how could they not?). More fundamentally, Spangler believes a bureaucratized legal profession is bad for pluralism and democracy. I see no reason why bureaucratization is any worse for these ideals than the formally independent legal profession of an earlier era, but then I suspect

that Spangler's lament has more to do with her distaste for capitalist justice than with any actual or potential diminution of it.

In his preface to *Professional Powers*, Freidson (p. xi) says that his

basic thesis is that the actual substance of the knowledge that is ultimately involved in influencing human activities is different from the formal knowledge that is asserted by academics and other authorities whose words are preserved in the documents that are so frequently relied on by historians and other documentary analysts. Down at the level of everyday human experience, . . . formal knowledge is transformed and modified by the activities of those participating in its use.

If this were indeed Freidson's basic thesis, his book would have to be judged a failure on three counts. First, it would be trivial, because no serious person believes that programmatic statements accurately portray how knowledge is used in practice. The disparity between theory and practice, however, raises some important questions, such as how formal knowledge is transformed by practical contexts and whether any interesting and significant general statements can be made about the changes in knowledge that result. Unfortunately, Freidson offers no memorable insights in answer to either question.

Second, if, as Freidson suggests, the practical use of formal knowledge is a strategic topic for research, he should have addressed that topic empirically. The kind of library research and intellectual synthesis he performs is peculiarly unsuited to examining this issue; only close field observations can adequately deal with it.

Third, Freidson's distrust of formal pronouncements is undercut, ironically, by his fascination throughout the book with the law on the books to the practical exclusion of the law in action. Thus he details the rules governing expert testimony in court and the legal authority of credentialed witnesses. Legally, he reports, credentials play a relatively circumscribed role, as courts retain the prerogative to make independent assessments of the expertise of credentialed professionals. But Freidson offers no data illuminating whether the body of professional opinion has a practical lack of influence commensurate with its lack of formal legal authority. I suspect that parties shaping organizational policies, contemplating lawsuits, negotiating settlements, and judging cases take little comfort from knowing there are legal doctrines that qualify the authority of recognized professionals in court and strongly prefer having credentialed professional authority on their side. Likewise, Freidson analyzes the formal legal requirements for hiring professional personnel rather than the incidence of social pressure to do so. To be sure, there is a good reason for this: It is easier to research the law on the books (not that this task is so easy) than to

explore its relationship to practical activity. For this same reason scholars have often glossed over the gap between codified knowledge and practical application, especially when they try to generalize about complicated subjects like professions. This is also why Freidson himself commits the very sins he criticizes in his preface.

Fortunately, the value of his book lies elsewhere. The heart of *Professional Powers* is its general synthesis of what we know about the role of professionals in organizations. Freidson points out, for example, that most professionals, including engineers, teachers, social workers, and librarians, have typically worked in large organizations. Lawyers and doctors have been exceptional in this regard, often working as independent consultants to fee-paying clients. In his chapter on the alleged decline of the professions, Freidson notes that increased organizational employment in these latter two professions has been offset by growing numbers of professionals in other fields who have found new, independent niches in an economy that increasingly demands specialized workers. In addition, Freidson stresses that market power, not the lack of organizational affiliation, is the key to autonomy and that there is no evidence that the market power of professionals has declined. Freidson's analysis persuasively shows that somewhat altered configurations of relations between professionals and organizations, but no major revolutions, can be expected in the future.

Similarly, in discussing the power of professionals in organizations, Freidson sensibly distinguishes between their considerable (although variable) technical autonomy over the work process and their lack of control over the general allocation of resources in organizations. After a certain point, depriving professionals of technical autonomy defeats the original purpose of employing them. Yet this technical autonomy has no necessary relationship to control over fundamental policies, although professions have ways of excluding managers without professional training from at least some top leadership posts. As with regard to autonomy, Freidson provides a useful, tempered picture of the nature and limits of professional power in organizations. He leads us to see variations among professions and work settings and to expect future modifications but no great changes.

Insofar as the virtue of *Professional Powers* is that it organizes, sifts, and synthesizes available knowledge with wisdom and restraint, the reader searching for original insight should look elsewhere. With regard to the legal profession, Freidson faithfully renders existing findings but does not put them in a new, helpful light. Some readers may find that his broad focus on professions puts their parochial concerns about attorneys into perspective. For most, however, their categories of analysis already draw heavily on the sociology of the professions, and Freidson's book will be useful as a compact codification and articulation of a perspective they more or less share.

Reading these two books together prompted a troubling thought. Both Freidson and Spangler draw on sociological theories about modern society, especially theories of stratification and the professions. Yet it is hard to believe that these theories are very helpful in making sense of the legal profession, partly because the authors criticize them effectively and partly because these theoretical contexts rarely illuminate the new findings in these books. As a sociologist writing for an interdisciplinary audience, I am hesitant to admit this, but feel constrained to do so if only because I fear that others reading these books and responding similarly will mistakenly reject the effort to theorize at all. But I am cheered at least a little by the thought that it is not sociological theorizing as such that is at fault. Rather, I think students of the legal profession have probably internalized the major lessons that theoretical categories derived from the sociologies of work and stratification suggest. Our research might be better served if we considered other theoretical contexts that, in our present state of knowledge, might be more revealing. Two examples come to mind. One could draw on the tradition of political economy in sociology by placing developments in the legal profession in the context of relatively comprehensive accounts of changing economic and political conditions. One could also draw on the institutional tradition in the sociology of law by taking more seriously the distinctively legal ideals that shape what attorneys do and exploring the relationship between these ideals and the social organization of the profession. There are undoubtedly other potentially fruitful theoretical contexts as well.

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