

## Book Review

READINGS IN THE HISTORY OF THE AMERICAN LEGAL PROFESSION. Edited by Dennis R. Nolan.<sup>1</sup> Indianapolis: The Bobbs Merrill Co., Inc. 1980. Pp. xii, 329.

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### I

The standard histories of American law and the standard casebooks on American legal history have usually paid minimal attention to the legal profession.<sup>4</sup> Dennis Nolan's *Readings in the History of the American Legal Profession* is the first set of classroom materials exclusively devoted to the history of the American lawyer. The idea was a good one, for there is a pressing need,<sup>5</sup> and much useful digging in the field has been done in recent

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4. See L. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 265-92, 549-66 (1973); S. KIMBALL, ed., *HISTORICAL INTRODUCTION TO THE LEGAL SYSTEM* 519-72 (1966); S. PRESSER & J. ZAINALDIN, eds., *LAW AND AMERICAN HISTORY* 825-46 (1980). The exception is J. HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* 249-375 (1950).

5. As Nolan says, "there has been surprisingly little comprehensive writing on the history of the American legal profession. Charles Warren's *A History of the American Bar* (1911), the standard work, is badly dated and out of print," to say nothing of its errors and conventional interpretations. Anton-Hermann Chroust's *The Rise of the Legal Profession in America* (1965) has correctly been "much criticized." (p. v.) For the classic critique of Chroust, see Katz, *Book Review*, 33 *U. CHI. L. REV.* 873 (1966).

Despite the fact that there are no competing anthologies to choose from, neither of us shares Professor Hovenkamp's view that "books of 'cases and materials' [or collections of materials, one deduces from his whole argument] do not serve very well in law school courses on American legal history." Hovenkamp,

years.<sup>6</sup> Unfortunately—and despite the inclusion of several useful excerpts and articles—Nolan's product is seriously deficient and cannot be recommended as a primary resource for a course in the subject.

There are two major types of deficiency with these *Readings*. The first can be classified as pedagogical. Nolan has failed to bring together the best available exemplars, the most suggestive research, the most useful primary material. While he tells us in the Preface that "some of the best works were for one reason or another not available for reprinting" (p. v) (without telling us which ones), there is little summary of unincluded work in the notes after each chapter. As a result few of the chapters present a full view of their subjects. Moreover, the notes fail in other respects; they are cryptic, idiosyncratic, unconcerned with many of the issues raised by the readings; they ask questions for which the readings only begin to supply evidence for answers; and they fail to introduce the reader to the content of most of the "suggestions for further reading" listed at the ends of the chapters. In short, they give little aid to the inquiring reader. Even Nolan's nod toward the usual scholarly disagreements "as to the relative importance of the available writings" (p. v) does not prevent this collection from being fairly judged to be woefully incomplete and of limited pedagogical utility.

The second major deficiency can be classified as thematic, or, if you will, political. The book is very conservative, not a fatal deficiency in itself (especially since most lawyers and most legal

Book Review, 32 HASTINGS L.J. 553 (1980). While we do not accept the existing "orthodoxy and conventionalism," *id.*, we believe that there are central themes and problems in the history of the American legal profession that ought to form the focus of a proper course, and that attempts to collect materials dealing with those themes are to be commended.

6. Take, for example, three historians of the profession whose work deals with three different centuries: Milton Klein, on the eighteenth (see, e.g., Klein, *From Community to Status: The Development of the Legal Profession in Colonial New York*, 60 NEW YORK HIST. 133 [1979]; Klein, *New York Lawyers and the Coming of the Revolution*, 55 NEW YORK HIST. 383 [1974]; Klein, *The Rise of The New York Bar: The Legal Career of William Livingston*, 15 WILLIAM & MARY Q. (3d Ser.) 334 [1958]); Maxwell Bloomfield, on the nineteenth (see M. BLOOMFIELD, *AMERICAN LAWYERS IN A CHANGING SOCIETY, 1776-1876* [1976]; Bloomfield, *The Texas Bar in the Nineteenth Century*, 32 VAND. L. REV. 261 [1979]) and Jerold Auerbach, on the twentieth (See J. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* [1976]).

historians must be classified as conservative<sup>7</sup>), although its political position remains unannounced throughout. Indeed, the volume presents itself to be another example of academic neutrality. Its intellectual conservatism, however, has produced a book that is seriously misleading as to its subject. First, Nolan and many of the authors he includes view the legal profession in isolation, unconnected to economic and political history, ignoring possible parallels to other professions, unrelated to its social milieu. Second, despite Nolan's hope that the book will aid those "seeking to learn about the development of the legal profession," (p. v.) we find almost nothing about developments. The tone is ahistorical, and the legal profession is presented as essentially the same now as it was when the curtain went up in the seventeenth century. A few minor differences, difficulties, and controversies do not dispel the overwhelming sense the reader obtains that lawyers, the tasks they perform, the organizations they create, their relative position in society, and the high moral and social worth of their work have remained relatively unchanged throughout American history. Third, Nolan's attitude towards his subject-matter is uncritical to the point of being worshipful: anything of ill repute that may have been noised abroad about the bar either is sour grapes, or is erroneous, or concerns extremely aberrant behavior (usually of isolated individuals), or can be breezily dismissed as "inherent in our (or any) system of law" (p. 112). We are left with the feeling that lawyers and the bar at all times and in all places are a necessary, positive, spotless force for the good. The effect of all this is to conceal rather than to expound the important issues about the history and nature of the American legal profession.

## II

The book begins with excerpts dealing with two questions: What do lawyers do? and, What is a profession? Cotton Mather, of all personages, is chosen to present an ahistorical answer to the former query, an answer which dishes up most of the pious, self-important platitudes contained in the image lawyers like to disseminate about themselves. Repeated periodically by other contributors throughout the book,<sup>8</sup> only one view of lawyers is

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

8. Especially notable in this regard is a speech to graduating law students of

presented here. Lawyers represent clients, have specialized education, training, and expertise, distinguish themselves from other occupations and from the general populace. They work for the "Reformation of the Law," (Mather, p. 2) a phrase somehow never filled with specific substantive meaning. They have special ethical and occupational standards, higher than those of the general populace. They are neutral, unselfish, apolitical, perfectly capable of successfully representing any client, and yet they always give aid to "Oppressed Widows, and Orphans" and "the Poor and Needy" (Mather, p. 2) and defend our ancient and honorable liberties. Their special and deserved privileges, especially that of self-regulation, are recognized by the state.

Our carefully oriented train of thought is then interrupted by a windy example of the Bartlett's approach to speechwriting, pompously and superficially expounding the value of history for the study of law, written by a federal district judge (who is neither a historian nor a teacher) before the important surge in legal historiography of the past two decades. Better crafted pieces by well-recognized mainstream legal historians (two of them cited in a later bibliographical note) were available,<sup>9</sup> to say nothing about the possible use of an essay critical of the mainstream tradition in American legal historiography.<sup>10</sup>

A 1951 article by Peter Wright from a Canadian bar journal next purports to define "profession." The definition is neutral, abstract, ahistorical. It suggests that the notion of professionalism has not changed in the course of history, thus poisoning the discussion of the American legal profession by removing it from the context of social and economic change. No attempt is made to compare lawyers with other professionals. Surely Nolan should at least take account of Magali Larson's proposition that professionalism as we know it today is a post-industrial

the University of Wisconsin in 1873, by state Chief Justice Edward Ryan, in D. NOLAN, ed., *READINGS IN THE HISTORY OF THE AMERICAN LEGAL PROFESSION* 153-59 (1980) [hereinafter *Nolan, Readings*]; see also articles by Professor Griswold, C. Auerbach, Allen, and Ehrlich, *id.* at 230-34, 240-43, 247-57, 312-20.

9. See, e.g., Boorstein, *Tradition and Method in Legal History*, 54 *HARV. L. REV.* 424 (1941); Hurst, *The Law in United States History*, 104 *PROC. AM. PHIL. SOC'Y* 518 (1960); Hurst, *Legal History*, 104 *PROC. AM. PHIL. SOC'Y* 518 (1960); Hurst, *Legal Elements in United States History*, in D. Fleming & B. Bailyn eds., *LAW IN AMERICAN HISTORY* 392 (1971).

10. Horwitz, *supra* note 7 (also cited in the bibliographical note).

phenomenon,<sup>11</sup> which would make Wright's definition wrong in that it applies as much to seventeenth-century barristers as to the denizens of Cravath, Swaine, & Moore. This error is repeated throughout Wright's article. The "growth" of the profession is treated as a unitary process dealing with a single, ahistorically-encountered, initially well-defined type; at most it recognizes occasional historical epicycles.

Worse, hidden here and in the rest of the collection is an important contradiction which Nolan never acknowledges, much less attempts to resolve. Wright avers that lawyerly skill is "no doubt . . . place[d] at the public service for remuneration," but that lawyers are really much more interested in their art, "truly an end in itself." (p. 10) Historian Charles McKirdy finds a rather more venal reason to practice law: "by the mid-eighteenth century, . . . the bar was an avenue to wealth and power." (p. 47); see also (p. 197). And listen to the same theme in legal-services advocate Thomas Erlich's lament about the difficulty of convincing law school graduates, filled with visions of megabucks or else scrambling to get a job, to accept the obligation "that every private lawyer has . . . to provide some services without fee to the poor" (p. 320):<sup>12</sup>

Sometime ago . . . Erwin Griswold—former Dean of the Harvard Law School, former President of the American Bar Association, former Solicitor General of the United States . . . —was asked whether all private lawyers should donate some of their time and talents to serving the poor. "Should carpenters build houses free?" he responded. (p. 312)

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11. M. LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* (1977). See also B. BLEDSTEIN, *THE CULTURE OF PROFESSIONALISM* (1976).

12. It is interesting to note that hidden within Ehrlich's apparently humane reasons for urging fledgling lawyers to accept this burden is an element of fear of revolution:

I urge you to get out of the classroom . . . to spend time helping to learn and listen to what people—particularly the poor and the middleclass—think about law and lawyers. Come to know how scared many people are of legal institutions . . . You will learn how legal rules and procedures, logically defensible in a classroom debate, place unfair burdens upon poor people. You will gain some sense of just how frightening the law—and lawyers—can be, how important it is for lawyers to understand this, and to treat their clients as people rather than abstract legal problems.

Nolan, *Readings*, *supra* note 8, at 320.

Do lawyers law in order to satisfy Mather's injunction (and their own supposed professional need and responsibility) to "Do Good, and Serve the Cause of Righteousness," (p. 3) or are they merely another species of monadic entrepreneur, engaged for a profit in the unavoidable war of all against all? Legal historian Maxwell Bloomfield, dealing with a different context and period, suggests that lawyers have been very good at consciously constructing politically useful images of themselves:

[C]onservative bar leaders [in the mid-nineteenth century] did not remain passive in the face of what *they* at least considered a serious threat to the dignity and integrity of the legal profession. Instead, they set in motion an impressive public relations campaign that succeeded by the time of the Civil War in altering appreciably the popular image of the American lawyer—transforming him from a designing cryptopolitician into a benevolently neutral technocrat. (p. 141)

Is "doing good" only another image? These materials should ask such questions.

To compound the curiosity, it seems plain that Nolan himself cares little for the pious image of professionalism with a higher purpose his materials so stoutly put forward. Nolan backhandedly admits that lawyerly altruism is rare: "In every era of American history, a few talented lawyers have been distinguished by their commitment to justice *even* for the poor and the disreputable." (p. 170; emphasis added) He seems to accept Francis Aumann's deterministic explanation that lawyers become wealthy as society becomes wealthy (p. 69). He answers Mark Green's well-argued charge that the American Bar Association is "a trade association for lawyers" with the cynically rhetorical queries, "Is Green's complaint that the bar represents the interests of its members? If so, it is wrong to do so?" (p. 195) Nolan is an old-style (or is it newstyle?<sup>13</sup>) laissez-faire conservative, unquestioningly accepting the views of society put forward by Thomas Hobbes and Adam Smith. Lawyers naturally work for commercial interests<sup>14</sup> because

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13. Compare, e.g., Posner, *The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication*, 8 HOFSTRA L. REV. 487 (1980), with e.g., T. MALTHUS, AN ESSAY ON THE PRINCIPLES OF POPULATION (2 vols; 6th ed. 1826).

14. A point made frequently by the authors included in this collection. See, e.g., Klein, in Nolan, *Readings*, supra note 8, at 53; English, *id.* at 120; Swaine, *id.* at 147-51, 165-70; Earle & Parlin, *id.* at 259-66.

all people's pursue their individual self-interests, which means going where the fiscal action is, in a brutally competitive world that is regulated by the invisible hand, like it or not. "Attempts to ban attorneys altogether were doomed to failure," Nolan postulates without hesitation or explanation; "so too with fee limitations." (pp. 44-45) So devoted to possessive individualism<sup>15</sup> is he that he is able to exclaim: "[I]s there really such a creature as a 'public interest' lawyer? Do not all lawyers serve differing 'private' interests?" (pp. 257-58)

Nevertheless, Nolan never joins together the issues of image-making and money-grubbing in order to pose the seemingly obvious question about the reason for such an elaborate and moralistic smokescreen in a world supposedly characterized by cutthroat individualism. As a true intellectual conservative, he cannot. In the first place, he would have to admit, if only hypothetically, that some professional activity of lawyers was not induced directly by narrowly-defined impersonal economic pressures, thus opening up questions of conscious political activity on the part of supposedly neutral economic integers. The rigid compartmentalization of his intellectual universe would begin to dissolve, and he might have to evaluate the evidence, presented by some of his contributors (such as Milton Klein, Clement Eaton, Erwin Surrency, and even Charles Warren),<sup>16</sup> of social concerns and even of class divisions in society. Why do lawyers say they serve everyone when they chiefly serve the wealthy? In the second place, the falseness of the image of piety that the bar drapes itself in would lead to embarrassing and dangerous questions about the uses of propaganda by privileged groups and about the correctness of the ideology of rights which provides legitimacy in our legal system (and which, incidentally, is supposed to be put into effect by those very same self-serving lawyers!). If lawyers do not promote the protection of our rights, do those rights exist only on paper? Just how much of our ideology of constitutionalism rests upon similarly false premises? Who disseminates and supports these false ideologies, and why?

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15. Brilliantly described in C. MACPHERSON, *THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM: HOBBS TO LOCKE* (1962).

16. See Klein, in *Nolan, Readings, supra* note 8, at 52-60 84-92; Eaton, *id.* at 61-69; Surrency, *id.* at 73-79; Warren, *id.* at 96-102.

## III

Another example of the distortion of historical issues in the book is Nolan's handling of the question of popular antipathy toward lawyers. Many of the colonies from time to time forbade the practice of law. American lawyers have been variously criticized as avaricious, provocative of unnecessary litigation, overly concerned with technicality (in order to make themselves indispensable), elitist, and unnecessary. One of the strongest claims against them is that they have always seemed to serve the cause of the landlord, the creditor, the merchant, or the established political authority—acting as the tickbirds and the Vaseline of the ruling class.

One period of hostility toward the bar erupted before the Revolution and extended through the 1780's, a time of severe economic depression. A selection from the work of Charles Warren establishes the view that the prestige and effectiveness of the bar was crippled during this time, in no small part because of popular upset over the widespread employment of lawyers on behalf of creditors. (pp. 97-99) Other contributors to the collection lend support to the view that such work supplied a large part of the business of the bar. In telling about New York lawyer William Livingston's pre-Revolutionary practice, Milton Klein notes:

During the course of his practice, Livingston gave ample evidence of his effectiveness in prosecuting recalcitrant debtors . . . . The years from 1753 to 1755 witnessed a rash of debt-recovery actions. Trade fell sharply during this period; both English and colonial merchants were caught with overextended credits. . . . Forty-three of Livingston's fifty appearances in the Supreme Court during the spring, summer, and fall terms of 1754 were on behalf of merchants seeking debt recoveries. (p. 57)

Clement Eaton makes similar comments about the pre-Revolutionary legal income of Virginia "radical" Patrick Henry and of North Carolina conservative William Avery:

Henry's . . . fee books show that a large part of his practice consisted of collecting debts for merchants . . . and a considerable part of Avery's practice consisted of collecting petty debts. . . . Avery acted as attorney for the large mercantile firm of Kershaw and Company of South Carolina, and his record of fees owed by them probably included

multiple cases of collection of petty debts. (pp. 63, 66)

William English concludes that lawyers on the Missouri frontier in the early nineteenth century "served the business man . . . in enforcing contracts, and in collecting of debts." (p. 120) Evidence from the courts in western Massachusetts, not alluded to in this collection, demonstrates a large amount of debt collection just after the Revolution and before Shays' Rebellion, one of the (successful) objects of the rebels being to close the courts.<sup>17</sup>

Nolan's response is to put his head into the sand. A lengthy excerpt from his own article, written in refutation of Warren from the evidence available concerning Maryland during and just after the Revolution, does not mention debt collection and fails to inquire into docket pressures or the kinds of practice pursued by the Maryland lawyers he scrutinizes. There is no allusion to the contemporaneous depression, no hint of recognition that some lawyers might serve different economic masters (and therefore political causes) than other lawyers (despite some evidence to that effect in an excerpt by Charles McKirdy in the previous chapter<sup>18</sup>). Socioeconomic evidence, with its potential import of class division, is eschewed by Nolan in favor of literary evidence. He concludes that Warren was wrong, as respects Maryland, largely because "criticism against lawyers in the Maryland press was almost nonexistent" and "the published or private writings of Maryland lawyers . . . reflect [no] anxiety [about public or legislative attack]."<sup>19</sup> (pp. 110-11) Attempting further to diffuse a question he cannot comfortably handle, Nolan says in the notes just following that "complaints about lawyers abound in virtually all nations and times," and he concludes with the astonishing query, "Are [the] causes [of criticism] remediable or are they inherent in our (or in any) system of law?" (pp. 111-12) This may be typical of Nolan's Malthusian conservatism, to presume that the evils of the world are inevitable, but it is not a historian's answer to the important question of lawyerly economic bias and the source of popular

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17. See C. McKirdy, "Lawyers in Crisis" (unpub. Ph.D. diss., Northwestern University, 1969), 215-237. This view is confirmed in D. SZATMARY, *SHAY'S REBELLION* (1980), eps. pp. 19-36.

18. McKirdy, in Nolan, *Readings*, *supra* note 8, at 79-84.

19. Nolan's article ignores other evidence that debt collection and depression were just as much a problem in Maryland as they were in most of the other colonies in the middle 1780s. See SZATMARY, *supra* note 17, at 124.

unrest against lawyers raised by history and by these very materials. Bloomfield, a thorough researcher firmly in the mainstream tradition of American legal historiography, comes much closer to the mark in locating the causes of unrest within the existing economic system:

The roots of popular suspicion perhaps inhere in the very structure of common-law justice—a system that places a premium upon aggressive individualism, pitting the self-interest of the client against that of his legal representative in matters of cost and efficiency. Throughout the nineteenth century, at any rate, anti-lawyer protest is overwhelmingly a middle-class protest that centers upon demands for cheaper and speedier justice. (p. 139)

#### IV

Open bias reveals itself in Nolan's treatment of a closely related critique of the bar: that it has consciously attempted to exclude the poor, the radical, and the ethnically "inferior." The most important exponent of this argument has been historian Jerold Auerbach in his thorough and widely-debated *Unequal Justice*, published in 1976. Auerbach demonstrates that stiffer law school admission requirements, the movement to lengthen the period of law school study, bar examinations, the attempt to eliminate night law schools, and other restrictions placed or attempted to be placed on entry to the practice of law were motivated in no small part by hostility to Jews, east European immigrants, and others snobbishly considered less fit to practice law than the white protestants who traditionally dominated the profession. Bar associations themselves, he argues, were snobbish and economically exclusive in origin.

Not a single excerpt from Auerbach's work graces this collection. In the chapter dealing with the "Formation and Growth of Bar Associations," however, Nolan does include an arrogant, pious, misleading history of the foundation of the American Bar Association by one of its former presidents, Whitney North Seymour—from which "evidence" Nolan concludes that the ABA was formed "for social reasons and for self-improvement." (p. 195) A succeeding footnote deals with the possibility that bar admission requirements have been used to limit competition, but the citation

is to laissez-faire economist Milton Friedman, not to Auerbach.<sup>20</sup> Only the reader with a photographic memory will recall that, in a note located 182 pages back, Auerbach has been cited by Nolan, entirely without discussion and without cross-reference at either place, under the rubric "Left-wing critics argue that licensing requirements have often been used to exclude unpopular economic, ethnic, or political groups." The long chapter in the *Readings* which deals with the twentieth-century bar finds Auerbach cited in only one note, and then only for the proposition that he and other authors claim "that lawyers are usually on the wrong side—that is, they defend those who cause society's problems (war, pollution, inflation, discrimination) rather than trying to cure those problems." (p. 298) This pattern suggests deliberate avoidance of Auerbach and the issues he raises, rather than the neutral and even-handed treatment which the volume purports to give. A major socio-economic critique of the American Bar is thus transformed into another minor ripple.

The key is the pejorative "left-wing" appellation. Nolan downplays or ignores or disparages most arguments, organizations, and authors he perceives to be on the left. While good articles by Ralph Nader and Paul Savoy criticizing modern legal education are included in the collection, each is followed by bland, conservative, sadly unresponsive rejoinders by mainstream law professors.<sup>21</sup> Pieces by Duncan Kennedy and Rand Rosenblatt,<sup>22</sup> which would much more forcefully present the critical position, are omitted, not even being discussed in the notes. The worthwhile collection of radical articles edited in 1971 by Robert Lefcourt, *Law Against the People* (including a fine critique of modern legal education from the student's point of view by David Rockwell<sup>23</sup>), is not represented here and is only mentioned in the same footnote

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20. Incredibly, Auerbach is cited in the footnote intervening between the two footnotes discussed in the text, but only for "a conflicting view" on the question of the "direct correlation between the number and strength of bar associations and the quality of the bar," *id.* at 195, a narrow and misleading reference indeed.

21. See Nader, in Nolan, *Readings*, *supra* note 8, at 236-40; C. Auerbach, *id.* at 240-43; Savoy, *id.* at 243-47; Allen, *id.* at 247-57.

22. Kennedy, *How the Last School Fails: A Polemic*, 1 YALE REV. L. & SOCIAL ACTION 71 (1970); Note, *Legal Theory and Legal Education*, 79 YALE L.J. 1153 (1970).

23. Rockwell, *The Education of the Capitalist Lawyer: The Law School*, in R. LEFCOURT, ed., LAW AGAINST THE PEOPLE 90 (1971).

which disparages Auerbach (p. 298). Although three well-written and useful selections from the work of Nader-assistant Mark Green are included,<sup>24</sup> each is ignored or similarly down-played in the commentary in the footnotes. The general impression given is that radicals and critics are just other interest groups in our pluralistic society, not people who have especially trenchant and fundamental things to say. The National Lawyers Guild is damned as "left-wing" twice on the same page, is judged innocuous and futile ("the absence of alternatives to the ABA is hard to explain" (p. 195)) and is then buried as hypocritical. No useful discussion of this alternative organization of liberal and radical lawyers occurs, and no inquiry is made into the possible gravity and meaning of the economic and political sources of their discontent. Of course, no pejorative or even political adjectives are used to describe the ABA. The inclusion of a superb comment by Stephen Wexler concerning the difficulties of acting as a lawyer for poor people,<sup>25</sup> which confirms the necessity that such a lawyer be a political activist in order to perform her task at all well—a point which completely escapes comment by Nolan in the notes—must be viewed as tokenism, given the context. In keeping with his conservatism, Nolan finds radicals and even hard-hitting liberals like Nader and Green to be dangerous: they describe the invisible hand as grasping, paraplegically contorted, and attached by marionette strings to a disturbing and powerful social, political, and economic reality.

## V

And so it goes through this collection. The coming of the industrial revolution receives only three paragraphs in the middle of an excerpt from a mundane article in the *ABA Journal*.<sup>26</sup> Vast changes took place in the American economy at this time, with arguably coordinate vast changes in social organization, but the rise of monopoly capital and its links to the emergence of administrative government and the modern legal profession go almost unnoticed. This is an area in which important thought and work is being undertaken in legal historiography at the moment,<sup>27</sup>

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24. Green, in Nolan, *Readings*, supra note 8, at 189-94, 266-76, 292-97.

25. Wexler, *id.* at 286-92.

26. See Lambeth, *id.*, at 162.

27. See, e.g., Chase, *The Birth of the Modern Law School*, 23 AM. J. LEG.

but the reader catches no sense of it. We have no idea why or how the great law firms appeared, or how the legal profession's definition of self changed. Seymour's history of the ABA might give students the erroneous notion that it has been a key defender of civil liberties and equal justice (pp. 184, 187), but, as noted before, the article presents skewed and incomplete ideas about the origins and purposes of that organization.

There is more material on legal education before 1870 than after. No mention is made, however, of alternatives to the famous Litchfield School of Tapping Reeve and James Gould, which flourished in Connecticut between 1775 and 1833. Further, the lengthy discussion of Litchfield, including Nolan's unusually full footnote dealing with the numbers of Litchfield's graduates who went on to successful judicial or political careers (p. 214), fails to mention that most of those prominent graduates were Federalists (as was Reeve). Thomas Jefferson desired to establish a rival Republican law school at the University of Virginia, to counteract the principles of "quondam federalism" then being taught to the legal professions, "the nursery of our Congress," in the north.<sup>28</sup> Even at its inception law school education was not politically neutral, but such matters go unmentioned here. The revolution in American legal education which took place between 1870 and 1910 is not well-explained<sup>29</sup> and is not connected to any other developments in thought, education, the profession, or society. And the twentieth century is left to be explained by that advocate of pay for carpentering, Erwin Griswold, and not well-explained at that.<sup>30</sup> All in all, this book is a contribution to the misunderstanding of American legal history.

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HIST. 329 (1979); Gordon, "Legal Thought and Legal Practice in the Age of American Enterprise" (unpublished paper 1981); Morton Horwitz' forthcoming work; and the unpublished magnum opus of Duncan Kennedy.

28. The quotations are from two famous letters, Jefferson to George C. Cabell, Feb. 3, 1825, and Jefferson on to James Madison, Feb. 17, 1826, included in the multivolume published collections of Jefferson's letters. For Jefferson's political purposes in establishing the law school at the University of Virginia, see L. LEVY, *JEFFERSON AND CIVIL LIBERTIES: THE DARKER SIDE* 149-57 (1963).

29. The omission of Robert Stevens' or another account of this revolution is incomprehensible. See Stevens, *Two Cheers for 1870: The American Law School*, in D. FLEMING & B. BAILYN, eds., *supra* note 9, at 405. See also First, *Competition in the Legal Education Industry*, 53 N.Y.U.L. Rev. 311 (1978).

30. Griswold, in Nolan, *Readings*, *supra* note 8, at 230-34.

## VI

A much more comprehensive and less biased set of materials is needed. But that is not to say that Nolan's volume is completely without value. As has been noted, several of the included articles can usefully be assigned in a legal history or legal profession course (although most are easily available in any law school library). Moreover, there is the ideological value of the collection. We must all teach from the artifacts of existing civilization. Those of us who find serious fault with the status quo and who wish to help to build a better world can utilize artifacts such as this one to demonstrate what is wrong. Nolan's *Readings* provides a good book to teach against, to use as a point of critical departure. Its faults are, more than usually so, the faults of its age, and those faults deserve to be noticed.