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Book Review of A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society, by Mary Ann Glendon

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appointments to federal courts including the Supreme Court—often quite effectively—is now evident. That this book supplies important pieces in the continuing story of Hoover, the FBI and the courts is equally evident.

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Mary Ann Glendon, *A Nation under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society,* New York: Farrar, Straus and Giroux, 1994. Pp. 331. $24.00 (ISBN 0-374-21938-9).

Mary Ann Glendon's latest work is a learned, engagingly written, and truly thought-provoking critique of the state of all three branches of the American legal profession: the practicing bar, the judges, and the professoriat. Some of the criticism is familiar: activist (in Professor Glendon's term, "romantic") judges damage democracy by usurping the legislature's rightful role; and practicing lawyers find themselves the prisoners of an increasingly selfish ethos, servants not of the jealous mistress but of Mammon. Some is especially mordant—law professors who have turned away from preparing students to actually practice law in favor of ill-prepared ventures into social sciences are well skewered: "Were it not for their spillover effects on the profession, the law school squabbles could be classed as harmless outlets for the excess energy of the sedentary class" (215). The book is an important summary of one thoughtful lawyer academic's concerns at the end of the twentieth century, all the more important because it is accessible to and should be read by lay people.

For the historian, then, *A Nation under Lawyers* is itself an original source, and future scholars will no doubt consult it to help them understand the current state of American law. There is, however, another aspect of the work which should attract historians' attention. Much of Glendon's argument rests on a reading of American legal history designed to show the nature of the crisis that is transforming our society. She has done what lawyers usually do with history, treating it as one more source of "authority" with which to prove a point. There is nothing in any sense wrong with forensic history, of course, and Glendon puts hers to particularly skilful use. The very nature of that use, however, illustrates the gaps between the professional enterprises of the lawyer and the historian.

The most obvious feature of this forensic history is Glendon's use of Alexis de Tocqueville's observations as the template for much of her criticism. She draws clear lessons from the Frenchman's portrayal of the young American legal culture, finding in it a world in which lawyers played an important but not overbearing role in creating a democratic community. She does not consider, however, the question the historian would ask: how did Tocqueville form his impressions? To a great degree Tocqueville's views were formed by his sources, probably those very members of the legal elite to whom he had letters of introduction and who in turn provided him with further introductions during his travels. He went from Whig to Whig, and both his, and to a degree Glendon's, view of American law reflect the antebellum Whig view of lawyers as the ultimate guardians of the Constitution holding back a flood of unreasoned

enthusiasm. Working towards different ends, the historian would treat Tocqueville's evidence differently.

The most problematic aspect of Glendon's history is related to her use of Tocqueville and deals with one of the least understood aspects of our legal history. Her portrait of the practicing bar shows a profession in disarray, unhappy and depressed over the decline of civility and the increasing importance of the business side of practice. Here Glendon walks a narrow line—her critique superficially resembles that of many early twentieth century "leaders" of the bar who blamed similar problems on increasing numbers of lawyers from "non-elite" or at least non-white anglo-saxon protestant backgrounds. She tries to solve the dilemma by giving equal time to the internalized ethics of both groups, one based on loyalty to institutions and gentlemanly conduct, the other on personal loyalty and the placing of people and relationships ahead of rules; and she draws support for this dichotomy from the work of Thomas and Mary Shaffer (68–69). The analysis also relies heavily on Jane Jacobs's suggestion "that human beings have had basically only two ways of making a living from prehistoric times to the present," one concerned with acquiring and protecting territories, the other with trading and producing for trade (63). Jacobs's work makes for thought-provoking sociology, but it is unlikely to convince a historian. The entrepreneurial activities of many members of the antebellum legal profession are certainly as well established as Jacobs's dichotomy, and perhaps say more about the roots of the current problem.

Another uninvestigated area is the history of contemporary legal education. Here Glendon avoids the usual demonization of Langdell and gives an interesting sketch of how the tension between professional training and the pursuit of knowledge made the academy the way it is (184–98). She notes the increasing numbers of law professors who are not only uninterested in but hostile to practice, and gives the impression that "the old-fashioned liberals who were in power in the early 1960s" were betrayed by the very people they hired in the name of open-mindedness and with the hope of compensating for their own deficiencies (223). What is not discussed is how hiring decisions are made. The truth may be that these "Young Turks and Turkettes" were hired just as much for their resumes as for anything else. They had done well as students, had gone on to the distinguished clerkships; they were like their predecessors. Law teaching is a hierarchy second only in age, not complexity, to that of the Roman Catholic Church. Believing that their best students were foreordained to be the leading academics of the next generation, the older generation did itself in.

Finally, the judges come in for their share of criticism when they depart from the "classical" virtues epitomized by Holmes, Frankfurter, Learned Hand, and Cardozo. Glendon's analysis comes at a time when judicial biography seems to be a growth industry and will stand as a classical statement of the value of judicial restraint and of modesty in the judicial enterprise. In no other section of the work are the differences between the present and the past so painfully clear. This book will help future historians understand those differences better, perhaps, than we do ourselves.

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