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Unequal Justice: By Jerold S. Auerbach

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BOOK REVIEW

UNEQUAL JUSTICE: By Jerold S. Auerbach. New York:
Oxford University Press, 1976. Pp. xiii, 395. \$14.39.

UNEQUAL JUSTICE is a history of a legal system. Its framework is Twentieth Century America; its theme, the self-perpetuation of an elite class of lawyers zealously committed to the preservation of an elite concept of law and justice. More than this, however, *Unequal Justice* is an analysis of the profession's basic insensitivity to society's need for a dynamic legal system. How and why this insensitivity has been fostered and protected is a constant consideration of the author. Yet, Jerold Auerbach finds a partial answer to this question of why the legal community has remained essentially indifferent to the social climate by examining the formation and structure of the modern American legal system. Such an investigation reveals a system conceived and controlled by a turn-of-the-century American aristocracy concerned solely with safekeeping its social position, values and economic self-interest. The rationalization for this particular structure was the preservation of "The Law" as an inviolable institution, detached from the concerns of social well-being. The result of such reasoning has manifested itself throughout this century. By restricting the natural process of professional evolution in the name of intellectual permanence, the legal system has been reluctant to direct change, reshape attitudes and formulate equitable solutions to recurrent social problems. The web of honorable appearances having been spun, the social realities have remained trapped within it.

As Auerbach perceives the early years of the Twentieth Century, the American legal community was dominated by men of similar social position, wealth, education and the proper Anglo-Saxon Protestant background. The vast majority of elite lawyers had earned a Harvard, Yale or Columbia Law School diploma, could trace ancestors to the English shores, and were content representing clients who could well afford their services. Virtually excluded from the roster of bar membership were blacks, women, Jews, and anyone with an unpronounceable last name.

The great influx of southern and eastern European immigrants posed the first serious threat to the well-established legal community. Hopeful and ambitious, the immigrant truly believed that hard work assured success and upward social mobility; of course, the best opportunity for such personal advancement could be found within the professions. The elite legal community, unwilling to yield advantageous positions of influence and financial strength, responded in a two-fold manner. Its first reaction was

to withdraw into big business. By serving the corporate giants, the established legal community further insulated itself from the immigrant newcomer. At the same time, it placed itself closer to the sources of power and money within a highly industrialized, commercial society.

A second reaction by the established legal community was to create barriers designed to exclude and discourage the foreign element from attaining influential positions within the practice of law. One barrier was the adoption of the American Bar Association's Canons of Ethics. The ABA, itself a refuge of upper class values, designed the Canons in order to eliminate immoral and unacceptable practices within the whole profession. The ultimate effect of the Canons, however, was to solidify the already secure position of the elite practitioner while at the same time preventing the foreign born lawyer from improving his professional status.

For example, the established lawyer could depend on his social position and reputation to attract clients; the Canons prohibited the immigrant lawyer from advertising his services, thereby forcing him to wait for a case. In addition, the established lawyer already belonged to a highly efficient law firm capable of litigating the most complex, lucrative cases; the immigrant lawyer was generally a solo practitioner in unrelenting competition with other solo practitioners in the same unprofitable situation.

Law School admission practices placed yet another barrier in the road to professional advancement and acceptance. While every aspiring immigrant hoped for an Ivy League education, the possibility of receiving one remained remote. The admissions process in these institutions naturally served the best interests of the white, Anglo-Saxon, Protestant elite. In theory, the school's were open to all, rich and poor alike. "But the critical question was whether a Jew, a black, a woman, or the Polish Catholic son of a day laborer could first qualify for admission to the school."

Realistically, the whole process ultimately excluded the ethnic minorities. The cost of an Ivy League education was prohibitive; indeed, the tuition at many university law schools was beyond the affordability of the great majority of immigrants. Consequently, members of the lower, immigrant class desiring a legal education were forced to work during the day and to attend law school at night. Yet, the prestigious law firms hired their associates exclusively from the better schools. Since the night law schools were considered inferior, the cycle of professional repression was virtually unbreakable.

Loyalty to America and respect for its legal institution became the dual rationalization for the elite legal community's obsession with self-

preservation. The premise was simple: immigrants were social radicals, incapable of understanding the complex American legal tradition. By excluding them from a profession of which they were ignorant, American values were ultimately protected. The elite class supported its theory by paralleling social unrest within the urban melting pot with the Bolshevik cry for proletarian rule. Thus, patriotic intentions were transformed into fear; and fear became the justification for maintaining the professional status quo. The results of stagnation were predictable. The ethnic minorities remained victims of bigotry and of a class-oriented society. Not until the more liberal New Deal era would they be afforded any opportunity to attain professional recognition through government service.

Auerbach explores and analyzes the historical realities of the profession's elitist attitudes throughout the Twentieth Century. In his consideration of the interaction between the legal profession and American Society from the giant wave of immigration through the Watergate scandal, the premise and conclusion are always the same. There is an established segment of the bar which regulates the entire legal system; this minority is powerful, self-perpetuating, and influential in the decision-making process within business and government. Yet, elite lawyers occupying important positions have generally ignored their duty to serve the public impartially, to foster social change for the benefit of all, and to encourage hybridization within the legal profession.

The long-term effect of inactivity and misdirection cannot be overlooked. A passive legal system not only relinquishes its function as a reformer and innovator, but it underscores its own insensitivity to social conditions and its inability to confront the challenge of improving these conditions.

The purpose of *Unequal Justice*, then is not merely to present the history of the American legal system in the Twentieth Century. More importantly, the book provides an evaluation of a profession which possesses the potential to implement great advancements for society and for itself, but which has consistently placed selfish motives before equitable objectives. Naturally Auerbach strives for historical accuracy; yet, *Unequal Justice* is as much a product of factual interpretation as it is of factual presentation. That others may comment upon the occurrences in a completely different way cannot be disregarded.

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