



ST. MARY'S  
UNIVERSITY

## Digital Commons at St. Mary's University

---

Faculty Articles

School of Law Faculty Scholarship

---

9-2015

### Glass Half Full: The Decline and Rebirth of the Legal Profession (book review)

Michael S. Ariens

*St. Mary's University School of Law*, [mariens@stmarytx.edu](mailto:mariens@stmarytx.edu)

Follow this and additional works at: <https://commons.stmarytx.edu/facarticles>



Part of the [Law Commons](#)

---

#### Recommended Citation

Michael S. Ariens, *Glass Half Full: The Decline and Rebirth of the Legal Profession* (book review), 62 *Fed. Law.* 81 (2015).

This Book Review is brought to you for free and open access by the School of Law Faculty Scholarship at Digital Commons at St. Mary's University. It has been accepted for inclusion in Faculty Articles by an authorized administrator of Digital Commons at St. Mary's University. For more information, please contact [egoode@stmarytx.edu](mailto:egoode@stmarytx.edu), [sfowler@stmarytx.edu](mailto:sfowler@stmarytx.edu).



### GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION

BY BENJAMIN H. BARTON

Oxford University Press, New York, NY, 2015.

305 pages, \$29.95.

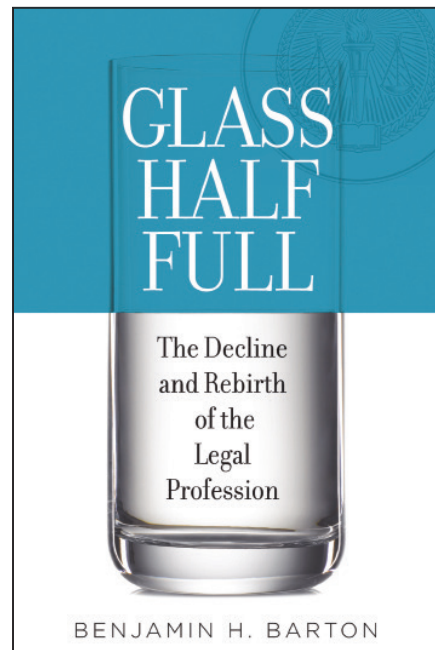
#### Reviewed by Michael Ariens

Benjamin H. Barton's *Glass Half Full* may be profitably included in the publishing genre of "legal profession disaster" books. Like a number of other books detailing wrenching recent changes in the legal profession, *Glass Half Full* presents a bird's-eye view of the difficulties facing many types of lawyers, and it illuminates the recent comeback of the American legal profession in its role as a socially important and financially remunerative part of U.S. commerce. As its title indicates, however, *Glass Half Full* departs from the dominant narrative by closing with an optimistic assessment of the legal profession. Unfortunately, that optimism appears on fewer than 20 of the book's 242 pages of text. Further, even that optimism is tempered by a hardheaded understanding that many lawyers simply hope to run out the clock, staving off needed reforms until they have enriched themselves sufficiently to retire.

*Glass Half Full* is divided into three parts. The first part assesses a number of existing and emerging transformations in the practice of law, which Barton divides into four "deaths": "Death from Above," which discusses challenges to "Big Law"; "Death from Below," which examines challenges to solo and small firm practice lawyers; "Death from the State," which focuses largely on tort reform; and "Death from the Side," on the oversupply of lawyers. The second part of the book discusses law schools' past as well as their bleak future. The third part contains three chapters that present the good, the bad, and the ugly of the near future for a significant number of lawyers.

*Glass Half Full* is most convincing in its assessment of the changes wrought on the legal profession by large and small economic trends. It is least convincing when it attempts, in its first chapter, to link one of those changes—the change to a "winner-

take-all" (or "The Economics of Superstars") American economy—to the difficulties facing lawyers. "In a superstar market," Barton explains, "the few performers at the top earn a tremendous living and almost everyone else earns very little. ..." A link between this market and the difficulties facing lawyers may exist, but the evidence presented for it is too tenuous for any firm conclusions. Barton soon lets this go (though he returns to this idea in chapter 10) and extols the change to a winner-take-all economy for according greater value to the legal consumer. In general, surplus value has shifted from the producer-lawyer to the consumer-client, and Barton concludes that this is a good thing.



Barton's history of the American legal profession takes some shortcuts, and it might have been profitable for him simply to begin his story in the 1970s. Barton presents clearly and cogently the long-term trends (since 1970 or so) that he perceives, using excellent figures and charts. This is a major accomplishment. Concerning his four "deaths," Barton is most convincing in discussing "Death from Above" and "Death from Below," which refer to the challenges to both large and small firm private practice; he demonstrates, with detailed research and mounds of data, the difficulties facing

both types. The chapter on "Death from the State" is less convincing, as it focuses too narrowly on tort reform. Barton argues that tort reform has diminished the demand for lawyers. This is questionable, but, even if it is true, it is mitigated by the fact that the federal government has continued to engage in regulatory rulemaking in ways that provide much work for all sorts of lawyers, from those in the government to private practice lawyers to in-house counsel. Finally, the chapter on increased competition in private practice, "Death from the Side," is also persuasive.

Part II, with its two chapters on law schools, is strongest in its graphs and charts. In particular, Barton's figures concerning increases in law school debt and in tuition are eye-opening, even to those who are familiar with such issues. Its history section, however, could have been eliminated. The tremendous increase in lawyers begins in about 1970, for reasons demographic (baby boomers), political (the rights revolution), and social (significant increases in women and African-Americans entering law school). Overall, the existence of other books on law schools in the present and near future makes this section of less value than Part I.

After describing in great detail the dirty laundry of the legal profession, including law schools, Barton pivots from the half empty to the half full. But the first chapter in this final part simply reinforces the negative, in usually persuasive but occasionally repetitive ways. The good news is divided into the final two chapters, the first devoted to the benefits obtained by clients in a competitive market economy and the second rather ominously titled "The Profession and Law Schools That Emerge Will Be Stronger and Better." Barton suggests that the practice of Big Law will get better, because the remaining work (after routine work is sent to "a computer or a lawyer in Bangalore for \$10 an hour") will be more individualized and innovative. Barton correctly, in my opinion, concludes that the practice of law will be more entrepreneurial, "at every level of private practice." He is less persuasive in his view that "[t]imes of crisis bring people together, and this will unify the legal profession." The course of prior crises in

the history of the American legal profession believes that conclusion. I doubt (but hope I'm wrong) that his broadest and most optimistic prediction will come true: "When the dust settles we will have a happier, healthier profession, energized by the opportunity to do the challenging legal work that remains."

*Glass Half Full* contains a few distressing errors, such as an endnote reference to Harvard Law School dean Roscoe Pound as the poet Ezra Pound, and the book repeats itself, nearly word for word, in a couple of places. But, as an addition to the legal profession disaster canon, I appreciate its willingness to try optimism. Maybe the sky is falling, but at least Barton thinks we can lift it up again.

*Michael Ariens is a professor of law at St. Mary's University in San Antonio, Texas, where he teaches American legal history, constitutional law, evidence, and other courses. He is the author of Lone Star Law: A Legal History of Texas (2011) and other books.*

### **FIFTY YEARS OF JUSTICE: A HISTORY OF THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA**

BY JAMES M. DENHAM

University Press of Florida, Gainesville, FL, 2015.

505 pages, \$20.

#### **Reviewed by Richard S. Dellinger**

Due to great population growth, on Oct. 30, 1962, the Middle District of Florida was born after being carved out of part of the Northern District of Florida and part of the Southern District of Florida.

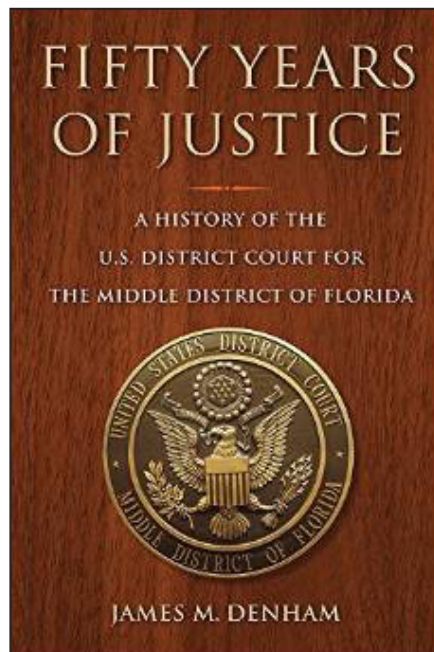
At the time that the Middle District was formed, Central Florida schools were segregated by race; real estate development was only beginning; airport use was not significant; Disney World, Universal Studios Florida, and Seaworld had not yet arrived; and the space race had just started.

Central Florida has seen much change over the past 50 years. And, throughout those 50 years, our courts have been witness to these changes.

When the Middle District was formed, three judges were selected from the Southern District and three were selected from the Northern District to ride the circuit and sit in federal courthouses across Central

Florida. The legal disputes they heard provide an in-depth perspective into the past 50 years in Central Florida.

*Fifty Years of Justice*, by James M. Denham, a professor of history at Florida Southern College, traces the history of the Middle District of Florida. As you read the book, think about the people involved, think about the stories it tells, and think about



how these stories of the court make up Central Florida's history. The history contained here was compiled from the public records and from interviews with judges, lawyers, and litigants. It was not preserved for the general public—until now.

As you read this book, you will see that the story of this court is really a story of the people of Central Florida. The cases heard by the court reflect the major political events of the times, including segregation and integration, prison overcrowding, natural disasters such as the collapse of the Skyway Bridge, criminal drug trafficking and the war on drugs, terrorism, spying, and the evolving technology disputes associated with intellectual property.

The cases heard by the federal courts in the Middle District tell the true story of Central Florida over the past half century. And, in Florida, reality is much more interesting than fiction.

*Richard S. Dellinger is a member of the board of directors of the Federal Bar Association and is the past vice president of the Eleventh Circuit, chair of the*

*vice presidents, and former president of the Orlando Chapter of the Federal Bar Association. Mr. Dellinger is a partner with Lowndes, Drosdick, Doster, Kantor & Reed, PA., in Orlando, Florida.*

### **LICENSED TO PRACTICE: THE SUPREME COURT DEFINES THE AMERICAN MEDICAL PROFESSION**

BY JAMES C. MOHR

Johns Hopkins University Press, Baltimore, MD, 2013.

216 page, \$49.95 (cloth), \$21.95 (paper).

#### **Reviewed by Jon M. Sands**

*Licensed to Practice* opens with two fatal shots fired by Dr. George Garrison into Dr. George Baird. Garrison, the city health officer of Wheeling, West Virginia, used his position to campaign for cleaner water standards and voluntary vaccinations at public expense. Baird, a Civil War veteran and former mayor of Wheeling, had been instrumental in passing a law that created the West Virginia Board of Health, which was the nation's first medical licensing board. The two prominent doctors had been close, with Baird having been a mentor to Garrison. Garrison had apprenticed under Baird and named his son after him, and Baird had paid for Garrison to attend Jefferson Medical College. But their friendship had turned to bitter animosity, ending in death and a murder trial. The reason was medical licensing.

*Licensed to Practice* tells the history of medical licensing in the United States. Today, we take it for granted that doctors are licensed and regulated by the states. Throughout the 19th century, however, anyone could call himself a doctor. In *Dent v. West Virginia*, 129 U.S. 114 (1889), the U.S. Supreme Court affirmed the power of a state to create a board to oversee medical licensing. This case transformed an unregulated occupation into a legally regulated profession. At the time, legal scholars scorned and criticized the opinion as violating due process and equal protection.

On the side of the struggle for regulating doctors during the latter half of the 19th century were the "Regulars," who sought basic standards for education and training, and credentialing by accredited medical schools. On the other side were the non-Regulars, going by such names as the Thomsonians, Botanics, Hydropaths, Homoeopaths, and