

Rebels No More

A new book laments how, in a few short decades, the students at Yale Law School turned from idealistic peaceniks to highly competitive (and increasingly conservative) future professionals.

By Peter H. Schuck

A RETELLING OF POLITICAL DEBATES that took place in a leafy courtyard in New Haven in 1967 seems a bit dated, doesn't it? But for Laura Kalman, the author of *Yale Law School in the 1960s: Revolt and Reverberation*, that step back in time provides "a prism on both the past and prospect of all legal education." Law schools, after all, are the gateways through which all lawyers must pass, shaping how lawyers think and act professionally.

The author's goal was to produce an authoritative study of how Yale dealt with a crisis—one that in similar forms roiled many campuses, produced lethal violence at Kent State, threatened the Nixon administration's Vietnam policy, and indeed created political earthquakes in France and Germany.

Kalman, a noted legal historian at the University of California, Santa Barbara, is the ideal chronicler of these events. She has long been intrigued by Yale Law School's disproportionate influence on legal thought, education, practice, and the media, as well as on the courts, legislative and executive politics, business, the nonprofit sector, and other areas of American life. Indeed, this book is her fourth in which Yale Law figures centrally; the others are histories of legal realism, legal liberalism, and Justice Abe Fortas.

Kalman sets the stage by describing the state of legal education generally, and Yale Law School in particular, in the year 1967. The members of the law school classes of 1970 and 1971 who would lead the protests there were bright, affluent, graduates of elite institutions, and educated primarily in the social sciences and humanities. Fifteen percent of Yale's class of 1970 and 32 percent of the class of 1972, many of them civil rights and antiwar activists, described themselves upon entry as "far left" as compared to "liberal" (62 percent and 45 percent, respectively). These

characteristics, Kalman notes, made them as similar to their professors as they were dissimilar to the rest of American society. Yale students and their generation entered law schools whose pedagogical techniques, notably the terrifying Socratic method and first-year curricula, had changed little for a century. "Elite legal education," she writes, "was remarkably static and uniform, its structure, style, and content set by Harvard, just as it had been in 1870."

Yale Law School was different. Its small size, multidisciplinary teaching, emphasis on social science research, and legacies of legal realism and liberalism engendered high expectations in entering students that they could use law school as a launching pad for large-scale social reform and small-scale humanization of their educational experience. Many of them were quickly disillusioned.

The most radical member of these was Duncan Kennedy. His polemic *How the Yale Law School Fails* was a fiery manifesto of student grievances and demands that both expressed and further shaped the radical elite university zeitgeist of the day. (Kennedy soon became, and remains, a controversial, provocative, and playful professor at Harvard, Yale's traditional and more conservative, more professionally oriented rival.)

With that backdrop in place, Kalman details how, during this period (dubbed "the Dark Ages" by the faculty), Yale students demanded that the faculty and administration act to support the students' political and pedagogical agendas—what they proclaimed to be more just, humane, and egalitarian institutional and public policies.

Among their more modest goals: the abolition of Yale's grading system, expansion of clinical programs for the poor, and reversal of certain disciplinary actions against students, as well as affirmative action admissions for minorities and women. Beyond that, they focused with



ARGUMENTS

laser-like energy on antiwar activities, calling for a moratorium on classes, war-related research, and other forms of institutional complicity with the “war machine.” The bad guys included the military-industrial complex and the New Haven and campus police.

Kalman reenacts the series of dramatic, increasingly divisive, and potentially violent contretemps between students and faculty, and among faculty and administrators. And she devotes special attention to the events surrounding the notorious trial of Black Panther chairman Bobby Seale, which took place in New Haven in 1971. Seale was on trial for murder and kidnapping, and the run-up to the trial galvanized massive student demonstrations and media attention, not just at Yale but throughout the country and abroad. Kalman also describes the faculty’s decision in these years to deny tenure to six young scholars, which convulsed the law school community and came to be known as “the slaughter of the innocents.”

Ultimately, Kalman’s book is better at narrating these dramatic events than at drawing out their larger meanings. The author’s strong research skills are simply unequal to the daunting task of interpreting the failed promise of the sixties.

The era was pregnant with reformist hopes (the student leaders called it a “revolution”), and although Kalman has painstakingly reviewed the documents, the “revolt and reverberations” turn out to be less consequential than the author may have anticipated when she began the project. In retrospect, the fruits of the revolution for legal education were paltry.

Indeed, she seems to acknowledge as much at the end of her book. Writing more than 30 years after the fact, she asks “how much have the pedagogy and politics of the contemporary academy changed” as a result of the upheavals that held so much promise? Her answer is one of evident disappointment: “Not much.”

In her eyes, students who entered Yale after the Dark Ages became too conservative, and the faculty grew and became too preoccupied with research. She downplays or ignores the fact that under the next five deans, the school’s competitiveness—its ability to attract the very best applicants, sought-after faculty, and alumni loyalty and donations—steadily increased; or that the school

In the 1960s, Yale students demanded an end to all forms of institutional complicity with the “war machine.”

has been consistently (and still is) ranked number one among law schools by *U.S. News & World Report*.

Rather than acknowledge what some might see as hard-won progress, Kalman, in the end, offers little but a rehash of familiar carps from the critics of contemporary legal education. Scornful of the status quo, she seems to endorse arguments from both extremes of the political spectrum.

Thus, she gives us Duncan Kennedy denouncing “the perspectivelessness or the apparent neutrality or the abstraction of legal studies” that persists outside his own classroom (and, one supposes, those of other Critical Legal Studies adherents). She presents Justice Clarence Thomas complaining that “today, some classes are more reminiscent of graduate seminars than law schools”—as if that were necessarily a bad thing for law students. In a similar vein, she offers Judge Harry Edwards ruing the lack of practical knowledge of faculty members who increas-

ingly come to law with advanced degrees in other subjects [“The Profession and the Professors,” July-August 1998].

Another of the book’s villains is Christopher Columbus Langdell, the nineteenth-century Harvard Law school dean who created the case method of instruction and whose ghost still dominates law teaching. As Kalman puts it: “The case method is still cheap. It justifies the existence of professional law teachers who have learned to read cases well in law school and have little practical experience.”

In her naive peroration, Kalman seems shocked that law schools, their alumni, and aspiring law students and professors are attentive to the annual rankings, and that the schools “celebrate their scholars’ high ranking in citation studies.” Musing that this may be “simply the predictable expression of the commodification of distinction and the continuing expansion of market norms in to all arenas of life in the United States,” she finds it “strange that all the sound and fury about credentials in the 1960s would have paved the way for the emergence of a legal academic culture that simply employed a more quantifiable notion of meritocracy.”

I beg to differ. Today’s law schools vigorously compete (yes, in a market) with one another to attract the best students and faculty, and they value scholarly work and seek ways to measure its distinction, including the extent to which judges and other scholars seem to make use of that work. But as one who has lectured widely abroad, I can say with utter confidence that American legal education—and not just at the elite schools—is in fact the envy of the legal world.

No, the problems lie elsewhere. At many schools, classes are still too large, though quite small compared with those in Europe. This reflects the unwillingness of even the best schools to devote their ample resources to create a learning environment in which teachers must do more than lecture, and students must prepare because they cannot

Horizontal Quarter

Maximum size is:
46p6 wide
15p6 deep

ARGUMENTS

hide. (Yale has managed to do this; its preeminence owes much to its remarkably low student-faculty ratio.)

At the same time—and there is no inconsistency here—legal education is too expensive because it is more prolonged than it needs to be. A strong case can be made for reducing the normal course of study to four semesters, possibly making each semester a few weeks longer and holding Saturday classes, which were once common. What is now the third year would be optional. Many students would use it to pursue more interdisciplinary and specialized training and certification.

Law schools (including Yale) also do a poor job of training students to understand how public officials think about legal and policy issues—to prepare them for the bureaucracy-governed life to come. Few law schools offer courses in policy analysis and related topics—although some public law courses (such as banking regulation, food and drug law, health care law, or education law) certainly touch on these topics. Law students with a policy orientation may have to find these courses in their university's political science department or graduate program in public policy.

Law schools (at least those that can afford it) can tailor the experience of public policy schools to the distinctive context of legal education, augmenting existing constitutional and administrative law courses and specialized public law courses such as environmental and telecommunications law. Students would have to become conversant with quan-

Some things could still be improved: student-faculty ratio, policy studies, and training for law firm life to come.

titative analysis; public choice theory; decision theory; political analysis; the legal, ethical, and philosophical principles that frame the public policy-making process; and other such subjects.

Many of the accusations leveled at legal education in the 1960s are still heard in 2006. The study of law is often dry, alienating, and abstract, remote from many glaring

injustices for which legal remedies are either inadequate or irrelevant. Professors are not always sufficiently accessible, and care more about their research than about their teaching. Competition for the best schools and the best lawyering jobs is intense. Tuition is too high, forcing students into considerable debt. For many, the idealism that impelled them to enter law school turns into rank careerism on the way out. The schools fail to prepare them for a big-firm life that is often nasty, brutish, and (unless one manages to make partner) short.

Many of these complaints reflect structural features that law schools cannot alter, and today's students, like their 1960s predecessors, must make hard choices about the kinds of lawyers, citizens, and family members they will be. But the schools can certainly do better in important respects. We can make legal education more humane, rigorous, engaging, interactive, intellectually rewarding, and relevant to the professional demands of twenty-first-century lawyering.

*Peter H. Schuck is a law professor at Yale and the author, most recently, of *Meditations of a Militant Moderate: Cool Views on Hot Topics* (Rowman & Littlefield) and *Diversity in America: Keeping Government at a Safe Distance* (Harvard University Press).*