

Kronman Koh

Talking Dean to Dean

Two deans, the incoming Harold Hongju Koh and the outgoing Anthony Townsend Kronman, met in the dean's office at YLS on a spring Thursday afternoon, to look back — and look forward — for the *Yale Law Report*.



Harold Hongju Koh

Anthony Townsend Kronman



Harold Koh: Tony, when you became dean, what advice did you get from Guido?

Tony Kronman: It’s an interesting story. I was on sabbatical leave, living in Florence with my family, and I had to come back to New Haven to meet with the dean’s search committee. I met with [Yale University President] Rick Levin and he formally offered me the job and I accepted it. Then I went back to Florence to rejoin my family.

Guido, who has an apartment in Florence, called and offered to meet me and debrief me on the job there. When the day came, the two of us went to a park bench in a little park just below the Piazzale Michelangelo in Florence with this stupendous view of the city. I was very earnest. I went with a yellow pad and three sharpened pencils. Guido came with nothing other than an enormous straw hat to protect him from the sun and he said, “Why don’t we begin with the faculty?” He began to go down the list of faculty one by one and I realized that (a) I would never be able to remember what he was telling me, and (b) it would not be a good idea to write it down. So I put my yellow pad away.

One thing that Guido said at the start of our conversation, and that he came back to several times in the course of it, was that I must remember I was the dean of the Yale Law School. Which meant the dean of *everybody*. His principle message was inclusiveness. He said, “You’ve been a member of the faculty for many years, and you probably feel, understandably enough, that

your primary allegiance is to the faculty. It is true that you are centered in the faculty in an important way. But the faculty are only one of the several communities that together make up this glorious composite that we call the Yale Law School.”

It was wonderful advice. It has been encouraging to me at difficult moments, and it hasn’t always been so easy to live up to because not everyone sees eye to eye on every issue. Sometimes you need to arbitrate, sometimes you need to be a passionate advocate for one interest against another, but it has to be done always with an eye to the good of the whole.

H: What was the moment when you actually felt that you were the dean?

T: Oh, that I remember with crystal clarity. I came into this office for the first full day. I had my feet up on the desk and I was starting to think about all the large projects I’d begin and the new programs I’d invent and the wonderful forward steps that I’d take. The phone rang and it was Morris Cohen, then the law librarian, calling to report that a pipe had burst in the basement of the law school and that all the water in the building had to be turned off so they could fix it, and would I please send a memo around by hand as quickly as possible to all the faculty and staff—this was pre-email—telling them to use the toilets across the street? At that moment, I knew I was the dean.

You know, there were many such moments. I remember my first meeting with a group of graduates in Washington at a dinner, a black-tie dinner, which the Washington alumni host whenever there is a transition in the deanship. There I was with Gene Rostow and Harry Wellington and Lou Pollak and Abe Goldstein and Guido Calabresi and before the dinner, we lined up to have our picture taken. I still have it on

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the mantel over by my desk. As I was accepting the congratulations of these great men, I felt a certain weight of office begin to descend.

And of course, the first faculty meeting where I felt there was an issue of some consequence in play and had to do something decisive to move it forward was another moment of decanal awakening. I think it will come to you not just once but many times in many settings and that's as it should be because it's a job with many different parts.

H: You mentioned you didn't have email ten years ago. What are some of the other changes looking back ten years?

T: Well of course the building is the largest and most encompassing one. Construction began on Ruttenberg Hall the day I occupied the dean's office. Only the auditorium had been renovated at that point, and renovation plans for the rest of the building were still a work in progress. We had a planning committee with fifteen or twenty members that met weekly with our architects, representatives from the facilities department here at Yale, and members of the faculty, and we hashed through the large questions of design while at the same time figuring out the complicated logistics of running a law school in a construction site. But the faculty, the students, the staff, all displayed enormous patience and willingness to put

up with inconvenience in the extreme. If they hadn't, we never would have gotten through it. Though I do recall getting a phone call from a somewhat irritated colleague when a jackhammer punched its way through his office wall. He is normally a mild-mannered person, but this was enough to put him over the edge.

The use of computers in the classroom is another change. Ten years ago, the laptop was a rarity. And today, in any class you walk into, you see a forest of laptops. What this means for the tone and the dynamics of the classroom teaching experience, I'm not altogether sure, though I will find out when I return to teaching a year after next.

It's also been interesting to watch how the introduction of email has slowly altered faculty patterns of communication. I would say that there is still a divide between those on the faculty who use email and those who prefer some other medium—either the telephone or the fax machine or the old-fashioned letter. But those in the second group are increasingly few and this has speeded everything up.

H: What do you think the alumni expect of the dean?

T: To be reassured that the place is still the vibrant, edgy, exciting, somewhat unsettled, intellectually and morally ambitious place they remember it as being. I have been so deeply impressed from the first day of my deanship by the depth of affection our graduates feel for this place. It's not just an affection based on nostalgia. Of course, that's one dimension, but what our graduates really admire and love about the school is what you have called its "community of commitment." That's a very telling phrase and I think accurately describes not only the place as it is today but the place as it has been and as our graduates wish it to be. They will want to be reassured of that.

H: One of the things that really struck me on my first trip down to New York after I was named dean, and I went to see a group of alumni I had never met. I knew something about them and I guess they had read a little about me. But there was amazing goodwill that flowed to me because of the institutional position I was

assuming, really just a tremendous support and a sense that this was an institution that they really loved. As you know, I went to another law school, and I'm amazed that school is not a factor in my life. I don't think about it much, the graduates with whom I interact don't define themselves in terms of that school. It's a place where we studied, but it's not a living part of our lives. So the idea that everybody who went to YLS is somehow completely changed by the experience and refers to it every day in how they do business, in how they interact with each other personally, and how they challenge themselves intellectually, and how they define their self-worth—I was really just startled by that.

T: I'm not at all surprised that you found that. You will find it over and over again in every group of graduates that you meet with. I'll tell you a funny story about a piece of advice that a former dean gave me about our graduates.

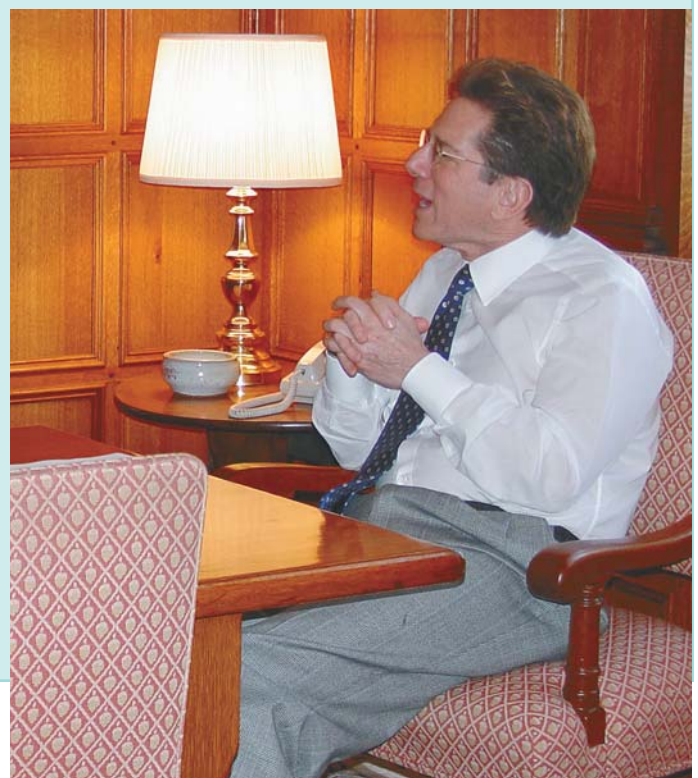
He said, "The day will come—you'll be several years along in your deanship—but the day will come and you will have just returned to your office from a very contentious faculty meeting. There will be an enormous stack of telephone messages from various student groups up in arms about this or that, but you won't have time to return them because you've got to get to the airport to get on a plane to fly somewhere to meet with a group of graduates for dinner. When you arrive at your destination, everyone will hang on your every word, intensely curious about what's happening at the school, full of admiration for you and for the place. You'll get a good pat on the back. You'll have a wonderful meal—probably at the best restaurant in the city. The next morning you'll get up and you could literally float back to New Haven, you're in such a good mood. But you get on the airplane and you find your way back to the law school and you walk into your office and the phone is ringing off the hook and the stack of pink slips has doubled and there are three faculty members sitting there, demanding that they have a meeting with you. Do you know what you do?"

And I said, "What?" And he said, "You don't even unpack your bag. You just turn around and go back to the airport and go visit the next group of graduates in another city somewhere because they will love you and you will love them."

H: What about the state of legal education? In the introduction to *The Lost Lawyer*, you described the speech you gave at a conference on legal scholarship back in the eighties, and how it led to your writing that book. If you were being asked to speak at the same conference now, in 2004, what would you say is the state of legal education and legal scholarship?

T: That's a wonderful question and I wish I had a happier answer to it. The concerns about legal education and the relationship of the legal academy to the profession at large, which moved me to write that book ten years ago, have as much basis and legitimacy today as they did then. I worry that the space—I wouldn't call it a rift, because it's not that deep or dangerous—between the academy and the bar is as much a presence for us today as it was at the start of my deanship a decade ago. And frankly, I'm not entirely sure what can be done to close it. I do think that it will be important for you to continue in your deanship to search for ways to bridge the gap between the academy and the bar, and I know you've already given some thought to this.

I think that law school faculties, not just here, but at every law school with ambition, think of themselves increasingly as a group of research specialists whose primary identification is with the universities in which they are housed and not with the profession they are providing for. I've seen this here and elsewhere over the past decade. The standards or criteria



for appointment to a prestigious law faculty are coming closer and closer to the standards or criteria for appointment to a department in the faculty of arts and sciences, like philosophy or political science or history. You must have a lot of written work; and the credentials that used to matter and be given weight—the right clerkship, outstanding performance as a law student, experience in practice—these mean less and less. And that, I think, reflects the academic specialization of the legal academy and its movement away from the profession and professional concerns.

This same ten years have been a period of excitement and even glory in academic legal scholarship. Tremendous work has been done and I would hardly want to discourage any of that, but without discouraging it, ways need to be found to re-engage the profession and its concerns.

Perhaps here I can begin to turn the tables and put a question to you. It may be that closure between the academy and the bar will be brought about by the contribution the legal academy is able to make to our understanding of a phenomenon that is transforming the practice of law in the United States today but is not yet well understood by practicing lawyers themselves. I'm talking about globalization. This is a river carrying all of us along, and I think it has left many in the profession uncertain and unclear about the driving forces that are shaping their own professional lives.

I know globalization has been for you, for years, an important and central theme, personally and intellectually. And I know that you will put this at the top of your agenda. How do you think about it? How do you imagine sharpening our focus on this enormous, sprawling family of questions that go under the heading of globalization?

H: One thing I'm not sure people realize about my own life is that I've only spent part of my life in the academy. Part of my life was spent in the government, part of my life was spent doing human rights work, part of my life I practiced law. I've found all of those different sectors enjoyable and I feel that each has tested a different part of my skills and my passions.

Connecting all my different legal lives to globalization, I think that there's something about great social

movements and times in which the rule of law and the role of lawyers as architects rather than scribes becomes more important. One of those times was when we came of age: the Civil Rights movement, Vietnam, the sense of our constitutional democracy under siege, the post-Watergate period. Archibald Cox—a lawyer—was a great hero of Watergate. There was a sense that legal education needed to respond to that period by focusing on legal ethics in the profession and on public service. There was a sense that the passions of the masses could be harnessed with the skills of the professional elite to bring about a peaceful



change. There was a sense that this is what a civilized society can do, and societies that don't have these kinds of infrastructures and capacities can't.

Today we're in a very similar position. For me, my modern period with Yale Law School really began when I came back from the government in 2001. I spent a lot of time thinking about why being a law professor is a good thing. For me, it was the sense of a growing globalization with tremendous positive upsides—the globalization of technology, freedom, commerce, transportation. And then 9/11 hit, and we saw the dark underside of all of that. Lots of issues suddenly came up about the rule of law and globalization, not just traditional questions about the architecture of markets, the building of cyberspace, or the reshaping of the legal profession, but also civil liberties and human rights

with regard to national security. It seems to me that this is another moment where the whole legal profession will be called upon, particularly Yale Law School. So it's a particularly opportune moment for me to be a law professor—and a dean.

For me, it's almost like the period of *Brown v. Board of Education* fifty years ago, where different parts of the profession can come together and commit themselves to a common endeavor. This year's retrospective on *Brown* and our own *Brown* conference this past spring were reminders of what the Yale Law School is good at. At a time when other people were talking about neutral principles, we focused on racial justice. At a time when other people were focused on the difficulties of the courts bringing about social change, we saw the possibilities of procedure bringing about change. At a time when people were focused on local issues, we were focused on the power of national institutions and national values.

Each of those has a tremendous parallel right now in looking for a substantive rule of globalization that would be to the good of the international system, and looking at the ways in which international institutions could be made stronger and more potent, but also more democratic; and thinking about ways in which global identity and citizenship could be shaped.

So as part of Alumni Weekend next fall, I hope to have a conversation around the subject of global markets, global connections, global rights, and global governance in which our graduates—academics, public servants, and private practitioners—can all have a common dialogue.

T: One of the things that I was reminded of at the *Brown* conference was the extent to which members of the faculty—and deans as well—here at the Yale Law School have been willing to take risks and to speak their mind and lead the way, even when the path forward did not seem crystal clear to everyone. And that requires a measure of intellectual courage, which has been, I believe, a hallmark of the place. The Yale Law School has accumulated a great deal of prestige. There are many people around the world who pay attention to what happens here. We have a lot of clout. But what is clout for if it is not used to some good end? And so I would encourage you to make real use of the bully pulpit centered in this office.

Speaking of which, what do you imagine your very first day in this office will be like?

H: Well, there's a very funny story about that. July 1, 1985, was my first day at Yale Law School and it was also the first day of Guido's deanship. My wife, Christy, and I had moved to New Haven the night before, and closed on our house that morning. After we emptied the moving van into our new house, all that was left in the van was my office equipment. So the last part of the day, about four o'clock, the moving van was scheduled to come down to YLS so I could move into my office. I arrived here wearing the suit I had worn to the closing. I had actually taken it off to move into the house but I put it back on to come down to the Law School. The building was completely deserted. I walked around looking for someone to help me—and of course all the while this gigantic moving van is out in the street. Finally I found one of the custodians who didn't know who I was and didn't know that I had an office, but he agreed to let me into one of the classrooms.

So he opened the classroom and we moved all my boxes in, and then I wandered the hallways of the Law School, feeling amazed just to be here. Suddenly, I heard laughter and noise coming from the dean's office. I walked in and they were having a party. My initial reaction was that this was a party to welcome me to Yale Law School! Then I realized it was actually a party that Guido had thrown to mark the beginning of his deanship. He saw me over in the corner—I think many of the people did not know who I was—and he said, "Oh, Harold Koh has arrived! Hip hip hooray!"

So one thing I will definitely do on the first day is to have a party. And I will say, if anybody's new and starting that day, "Hip hip hooray!" Guido said to me at one point that being the dean of the law school means looking for pastoral opportunities, and constantly thinking about ways in which you can make other people on the team better and bring them into the spotlight. And that's something I'm hoping to do.

T: That's a wonderful and accurate way of describing a key aspect of the job. And it comes in a hundred different forms.

It can be over lunch, talking about the draft of an article with a young, untenured member of the faculty and helping them shape a research agenda

that will get them headed in the right direction. It can be sitting in your backyard over a cup of coffee with a colleague who has been invited to join another law faculty somewhere far away, which may very well have its attractions, and trying to think it through with him or her and to be a good friend and not just an advocate for the school. And of course, it comes with students countless times, who come in sometimes with very energetic but not yet well-formed ideas for some improvement in the school and to help them put it into shape and move it along. Or young people who just are under stress and need twenty minutes of sympathetic listening and a pat on the back and maybe a little bit of counsel and the knowledge that they can come back and see you again if they need to. All of the above will be part of your pastoral diet. And often you'll have some of each in every day. And it's a great pleasure and you'll be wonderful at it because you've got the temperamental openness and human warmth that will permit people to come to you and talk to you.

H: Well, Tony, I don't know if you remember, but the first time you and I talked was in 1984. It was in November, during a strike, and I had come up to interview for a junior appointment. Because of the strike, not much was going on in the building, but I was scheduled to have lunch with the appointments committee at Mory's. You had another appointment, so you couldn't join us for lunch, but I was supposed to meet you in front of Mory's to chat for a couple of minutes. I remember thinking that if we only chatted for a couple of minutes, I wasn't going to learn much. But I went over there and you shook my hand and in about five minutes gave me an introduction to the School that completely sold me on the place. I went into lunch thinking, "I'd better get this job!" And I would say that the only thing that's matched that is the way you did the exact same thing when I was named the dean.

T: It has been for me, a pleasure of the deepest kind, Harold, to be able to share this transitional period with you and to welcome you into a life which is pretty special, different in many ways, perhaps even some profound ways, from the lives of everyone else in the building—certainly of our faculty and colleagues. There is no one in the world that I would want more

to share this experience with and I am ready at hand and prepared to be a helpmate and a midnight counselor if there ever should be the need for one. And like everyone else in the building, we are waiting with high hopes and huge affection for July 1.

H: The first time somebody calls me about broken water mains, I'll think of you. I was looking at a word book recently, and it said, there's a gaggle of geese and a flock of hens and so forth. And somebody asked, "What do you call a group of deans?" As I was consulting the book, someone else said, "A pride." A pride of deans.

I'm looking at that picture over there and I'm very excited to be part of that pride of deans and to have you standing next to me.

T: It will be an honor to have you join our pride.

Let me return to an earlier topic. We've already talked in a broad way about globalization. Do you have some specific initiatives either in that area or in others that you're hoping to be able to take up in the near term?

H: I have four priorities: renewal of the faculty, globalization, the profession, and public service.

Renewal of the faculty is simply a matter, I think, of appointing people who are every bit as good as those who are already here. This is a point of generational change at Yale Law School, where we need to renew the faculty, where those people who have been faculty leaders for many years are anxious to pass the baton on to a group of younger people.

With regard to globalization, I am anxious to explore all pieces of this, which I think are curriculum, global faculty, global student body, and global programs. Where we have the biggest head start is with the programs you've pioneered—Global Constitutionalism, the Schell Center, the China Law Center, the South American Legal Studies Program, the Middle East Legal Studies Program, and what I'd like to do is to work those programs together with things like the Corporate Law Center around some of the general themes of global markets, global connections, global rights, and global governance.

With regard to faculty, I'm hoping we can start to appoint more foreign visitors of the kind that we've

had in the past, and maybe revise our calendar in a way that we could have more short courses taught by foreign visitors. With regard to the student body, I'd like to see a more explicit focus on foreign travel and foreign awareness by our students, and a closer integration between the JD and the graduate programs.

The tricky part will be the curriculum. I'd like to see ways in which we could incorporate more global issues into the first-term agenda. We are doing it by the pervasive method with the global discussions in Procedure and Torts. In Procedure, we're increasingly talking about the International Criminal Court, enemy combatants, and the like, and in Constitutional Law, we touch on comparative constitutionalism. Some of us are looking into the idea of a recommended transnational law course for the second term, which could be offered on an optional basis. We're also looking into a professional responsibility component that can somehow address these globalization issues; and closer ties with the globalization center of the university and the other schools that are doing international work. I'm also interested in exploring calendar reform, which will allow us both to get on a common calendar with other schools and to give more time for more intensive courses, travel, and the like. These are not things that must be. But I want them to be debated and discussed. We had the first faculty retreat in many years, maybe ever, the two days after graduation, where we talked through the different pieces of this and tried to get some consensus on where people want to go.

I guess at the end of the day I'd say the paradox is that to stay the same and be as great as we are in a changing time, we have to change. The question is, do people agree on the directions of that change?

So that's my plan for the foreseeable future. Tony, how do you see yourself spending your next couple of years?

T: Next year I have a sabbatical leave. I'll be in New Haven with Nancy and three children in school here, including a seventeen-year-old daughter who will be a senior in high school. It's not a good time for us to be thinking about going anywhere and the truth is, I

really don't want to go anywhere. I'm going to reacquaint myself with my family. I'm eager to be reunited with my colleagues and my books and to enjoy my freedom, but I will be able to do that most efficiently and pleasurably in familiar circumstances.

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Koh

So I'll be reading a lot and writing. I can already begin to anticipate the enjoyment of having my old professorial life back again—it's a wonderful life. I'm planning to start and hopefully to finish a book next year. Someone asked me how long my book would be and I said, "As long a book as I can write in a year!" After next year I'll come back to teaching full time. My plan at the moment is to divide my teaching between the law school and the Directed Studies program in Yale College—that's an integrated philosophy, political theory, literature, and history program for Yale freshmen.

I suspect that I probably won't go back, on the law school side, to the courses I taught before, but venture out in some new direction. I'm toying with the idea of concentrating in the area of law and religion, which is a subject I've long been fascinated with, though don't yet know enough about to responsibly describe myself as a teacher of the subject.

H: One very important final question: where exactly is the Santa Claus costume?

T: Ah, the Santa Claus costume. It's in the dean's office closet, right next to the academic regalia.

H: Good to know.

T: I think we also have a bottle of brandy that a former dean left in one of those cabinets behind the sofa. You'll have to do some excavation work when you move in. ▣