

ALL PEOPLES SUPPORT
HEROIC STRUGGLE OF
YALE LAW STUDENTS

The Late 1960s...

The Vietnam War. Black Power.

The Feminist Movement.

Student Power.

War, racism, and sexism pervaded the American consciousness and widespread distrust of “the Establishment” was felt across the U.S.

As the following excerpts from **Laura Kalman’s *Yale Law School and the Sixties*** show, YLS was not immune to the social unrest and challenge to authority endemic to society at large. Beginning in 1967, entering Yale Law School students clashed with their professors and Dean Louis Pollak, accusing the faculty of racism, sexism, and elitism. Students challenged the School’s curriculum, admissions, grading, and hiring policies—sometimes in spectacular fashion—in a period one former Law School dean came to call the “Dark Ages.” It was a time of activism and internal challenges that, Kalman argues, helped form the Yale Law School of today. →→

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From *Yale Law School And The Sixties: Revolt And Revolution* by Laura Kalman. Copyright (c) 2005 by the University of North Carolina Press. Used by permission of the publisher. www.uncpress.unc.edu

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Spring 1967. Imagine a college senior just accepted at Yale. Most such students were male, and many had attended an Ivy League college, where student unrest was only just beginning. At the time, San Francisco expected thousands for the summer of love, but the typical future Yale Law student had his sights on different spires. What would his vision of the school be when he entered in the fall?

If Yale had its way, he would focus on its storied association with legal realism and liberal judicial activism. “[I]f you wanted to get rid of realism at Yale,” Professor Ronald Dworkin told *The New York Times* in the 1960s, “you’d have to flush out the place for three years and fumigate the halls.” Even then, eradication would have been difficult, for the Law School gloried in its association with legal realism. In explaining why, person for person, Yale Law’s graduates possibly occupied “more seats of political power than the alumni of almost any other institution” and proved “even more influential” in the academic world than in political life, a 1963 issue of *Newsweek* credited the school’s realist roots: “During the ’20s and ’30s, the legal realists on the Yale faculty preached and practiced the doctrine that law is not a self-contained set of unchanging rules, but a vital tool for structuring and restructuring society.” Realism transformed Yale, giving the school its identity as the anti-Harvard and laying the groundwork for its association with a liberal judiciary linked to the civil rights movement, even as it did not transform the classroom experience inside or outside Yale. The vision of its history that Yale promoted was designed to attract a certain kind of student during the late 1960s. At the same time, it helped to create a faculty certain of its own righteousness and liberalism—just as the attack on liberalism was gaining strength.

... “[L]iberal as it was, Yale was unprepared for the shock when student radicals first appeared in our midst,” Robert Bork remembered. “The change at the Law School began abruptly with the class that entered in 1967.” To professors, it seemed that “[t]urmoil” had become “the order of the day” as insurgents condemned their failure to display Yale’s legendary innovativeness. The sixties came to the Law School, brought there by the Vietnam War and dissatisfaction with the classroom. In challenging the status quo, students hoped to become citizens of the school and transform it into a locus of democracy and community, pierce the smugness and elitism of its faculty, and redeem the lost promise of Yale in the 1930s.

Students at YLS began to challenge the curriculum and the faculty’s pedagogy. The Socratic method was cast as “demeaning” while students viewed their professors as inquisitors bent on breaking them. For disaffected students, the grading system became an example of the Law School’s problems with hierarchy and alienation from public interest. Affirmative action and sexism were also much-debated topics. As the Black Law Students Union (BLSU) was fighting for a louder voice on campus, so too, were female students. The activism so present among black and white students alike was, Kalman says, instrumental in laying “the groundwork for a real expansion of clinical education.” →→

New Haven, April 26, 1969. Alumni Weekend. As Yale Law students and graduates crowded into the Law School auditorium to hear about “Concerns of the Yale Law Student Today,” the faculty surely fretted. The previous year, law students had walked out of a session entitled “Law and the

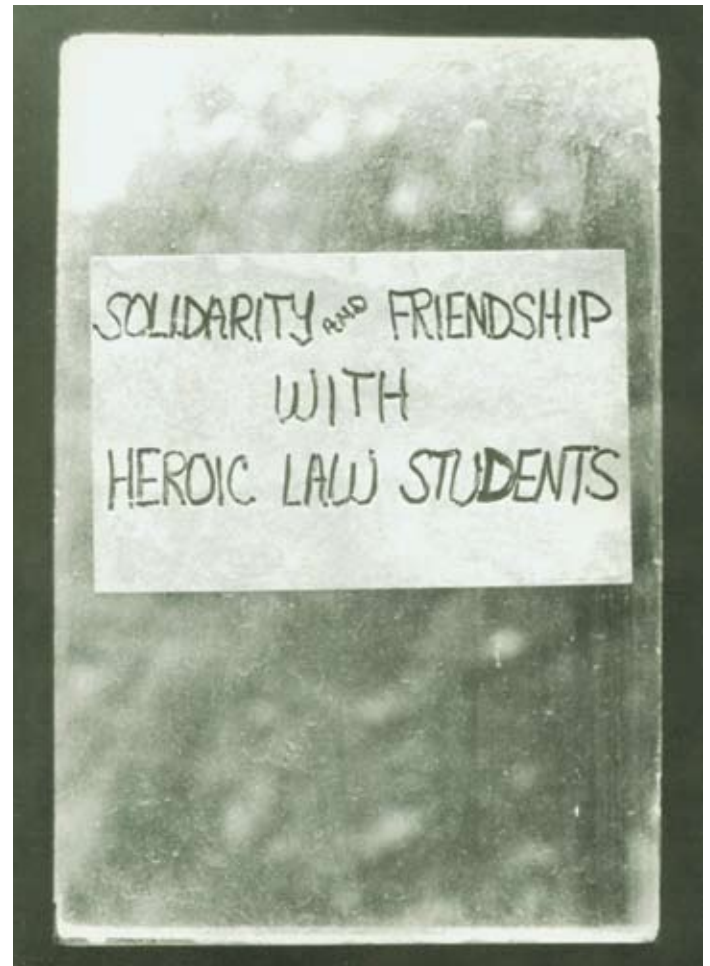
Urban Crisis” on Alumni Weekend, designed to underscore the faculty’s liberal good intentions. They complained the event featured white law school deans and staged their own “counterpanel” entitled “Law Is the Urban Crisis.” This year, the school was turning the podium over to student speakers. What would they say and do?

Plenty. Student Negotiating Committee members made the first presentation. Their proposal for “joint student-faculty rule” had caused consternation among professors all semester: they wanted to replace the faculty as governing body with a council composed of elected student representatives and professors. Now, committee members inveighed against their teachers’ “inertia and self-satisfaction.” Yale, they complained, was far from the “very progressive institution on the very frontiers of legal education” they expected, and their professors refused to make it “a real community.”

As the 1969-70 school year began, many at Yale worried about what would happen to Black Panther Bobby Seale, when he was tried in New Haven the following year. In August, Seale had been charged with six counts of murder, conspiracy to murder, and kidnapping in connection with the death of Alex Rackley, another Panther, whose body had been found soon after Seale had given a speech at Yale. According to the indictment, Rackley had been tortured at Seale’s behest by fellow Panthers, who suspected him of having acted as a police informant. →→

In the fall of 1969, Yale Law students’ rebelliousness peaked. To this point, they had focused on the faculty—identifying its shortcomings with respect to grades, admissions, and governance. And students kept up the criticism, challenging their teachers’ lifestyles while lambasting them for insufficient dedication to the antiwar movement. Now, though, police harassment of African Americans rose to the fore with potentially explosive consequences for the School. Naturally, some concluded their professors were taking insufficient steps to address the problem, leading to a confrontation and strike. In the process, the concerns of the Student Negotiating Committee and the BLSU, which had previously proceeded on separate tracks, began to converge. Race and governance matters brought white and black activists together, polarizing them and the faculty and revealing the inadequacy of the arrangements reached between Student Negotiating Committee members and professors the previous spring.

...The promise to “bring us together again” was Richard Nixon’s. But as at other law schools, 1969-70 proved “a year for Black and women students” at Yale. The echoes of a discontent sounded as loud as ever as feminists called for the



School’s transformation and BLSU members cried betrayal. And the world outside intruded more. Indeed Bobby Seale’s trial raised so many questions about Yale’s treatment of African Americans and the fairness of the rule of law that some law professors came to fear that both their school and city would go up in flames. Yet they also came to see that their students were not so far from them, after all. Unlike some young radicals, most Yale Law students retained their faith in the legal system, as they demonstrated during the trial and Nixon’s invasion of Cambodia. Ultimately, the trial and its aftermath restored a semblance of unity and peace to the Law School.

A suspicious fire in the basement of the YLS Library also acted as a catalyst for unity at the Law School. →→

At 1:04 a.m. on Monday, April 27, 1970, law student Paul Gewirtz telephoned the Yale University Police Department to report that he and others smelled smoke in the basement. Rushing to the Sterling Law Building, Yale police found a fire “of suspicious origin” in the International Law Library. Some

five hundred books had been destroyed, some structural damage sustained. The police sergeant on the scene reported that law students “did a very commendable job in forming a bucket brigade to salvage as much as they could” and that “some girls also took part.”

Though discontent with Law School policies and faculty did not disappear overnight, the fire came to be a turning point in the student body’s relationship with the School. →→

The period between 1967 and 1970 had witnessed a clash of cultures at Yale Law School—between students, between professors, and between students and professors. Students remained interested in the School afterward, but shifted more of their attention to national concerns. That suited the new dean, who celebrated the end of the psychodrama of the 1960s and preached a realist renewal. Appointed to restore stability, Abe Goldstein hoped to put the “Dark Ages” behind the School. Yet although an “eerie tranquility” returned to the student body during his deanship, the composition of the faculty changed dramatically. While hardly the sole reason for the turnover, the psychodrama of the late 1960s may have played a role in causing it. The sixties did not end at Yale simply because the decade did.

Though the sixties ended, their influence lived on in the form of a changing legal and political philosophy at Yale Law School. In what was perhaps the most unexpected legacy of the “Dark Ages,” legal realism lost favor to neoconservatism. →→

In 1965, Yale Law professors had confidently embraced legal liberalism. It rested on the legal realism that had made their school famous; made room for prudentialism, Alexander Bickel’s refinement of process theory; allied itself to the political liberalism of Lyndon Johnson’s Great Society; and underlay the judicial activism of the Warren Court. Fifteen years later, legal liberalism was in shambles, a casualty of a reaction against the sixties. Rejecting both the Warren Court and events at the Law School, Bickel moved toward neoconservatism. Sixties liberals lost the Court as it began turning right, along with former Warren Court fans who turned left to Critical Legal Studies. As [Harry] Wellington rebuilt the faculty during his deanship, Yale Law professors developed a new legal liberalism, embraced interdisciplinarity, a gesture at once cautious and strategic. The revised legal liberalism represented a response to all the forces that jeopardized the old one. It sought, further, to steer between the “law is politics” emphasis of Critical Legal Studies and the focus on efficiency evident in Chicago-style Law and Economics, while

preaching a constriction of the more conservative Supreme Court’s power.

By the 80s, some thought YLS was in trouble. *The National Law Journal* published a front-page article asking whether Yale Law School had “Lost Its Fizz.” Professors were displeased with their salaries. The building was a disaster. The homeless slept in the tunnels underneath the library. What YLS needed most, Kalman says, was a leader to help leave the “growing pains behind.” →→

Just keeping the ship afloat would prove problematic, given Yale’s financial problems. But beginning in 1985, the school’s prospects brightened. Guido Calabresi, the new dean, achieved financial independence from the university administration, raised the money required to change the School’s culture, tamed student dissent, and thrust himself and his school into the national spotlight, all the while creating a mood there of “affection, support and achievement, of excellence and humanity.” ¶

more reading

ON THE LAW SCHOOL’S STORIED HISTORY...

Brandt Goldstein, *Storming the Court: How a Band of Law Students Sued the President and Won* (2005)

Chris Goodrich, *Anarchy and Elegance: Confessions of a Journalist at Yale Law School* (1991)

Frederick C. Hicks, *History of the Yale Law School to 1915* (originally published as four pamphlets in 1935–38, reprinted 2001)

Laura Kalman, *Legal Realism at Yale, 1927–1960* (1986)

Laura Kalman, *Yale Law School and the Sixties: Revolt and Reverberations* (2005)

Anthony T. Kronman, Editor, *A History of the Yale Law School: The Tercentennial Lectures* (2004)

John Henry Schlegel, *American Legal Realism & Empirical Social Science* (1995)

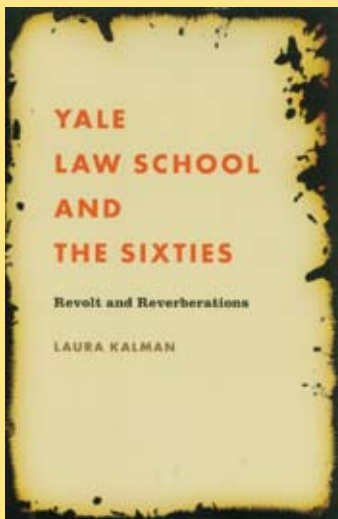
Q&A

WITH LAURA KALMAN

All four of your books have involved the history of Yale Law School. What interests you about Yale Law School specifically?

As is the case with many historians, my research interests have developed out of my own experiences. I began UCLA Law School in 1974. I was 19, I hadn't seen *The Paper Chase*, I knew nothing about legal education, and I had no idea what to expect. I was clueless, and I found the experience a giant turnoff. I disliked the case method, the Socratic method, the fascination with legal doctrine—in short, just about everything about it! I had been a history major at Pomona College, and I was also bewildered by law professors' inattentiveness to historical context. One day, we would be asked about *Marbury v. Madison*, the next *U.S. v. Nixon*. On one level, that made sense; on another, it did not.

In 1978, I entered the Yale History Department's Ph.D. program intending to leave law behind altogether.



But because I had a law degree, my adviser, the legendary John Morton Blum, thought I might find a dissertation topic in the Jerome Frank Papers in Sterling Memorial Library's Manuscripts and Archives Division. It was there that I came across a flood of correspondence about the realists' 1930s attempts to develop an alternative to the Harvard model at Yale. It was one of those "Eureka!" moments, and led me to write my dissertation about legal realism at Yale Law School, which became my first book, *Legal Realism at Yale, 1927-1960*. So my initial interest in Yale grew out of my own dissatisfaction with my own legal education and my realization Yale had tried to develop something different.

Everything followed from there. Because Abe Fortas had been a YLS student and professor in the 1930s, I had interviewed him while I was researching my dissertation. I was fascinated by the way he controlled the interview, and when I read his obituary and saw the arc of his life, I resolved to write his biography. The book I wrote after the Fortas biography, *The Strange Career of Legal Liberalism*, grew out of my interest in the intellectual history of liberal constitutional theory and the differences between the ways historians and law professors think about history. Because of Yale's importance to the development of liberal constitutional theory, YLS once again became crucial.

I never intended to write *Yale Law School and the Sixties*. But Tony Kronman invited me to give a public lecture on the history of the modern Yale Law School as part of Yale's tercentenary celebration during my 2001 visit. Gathering the material about the modern YLS that I would need to present such a lecture—in front of all the deans and professors

who had lived through it, no less!—was the last thing I wanted, or had the time, to do. But I didn't want to disappoint Tony, especially after he tempted me by promising me access to sources that had been closed to me when I was writing *Legal Realism at Yale*. Once I found myself back at the same desk in Sterling Manuscripts and Archives Division at which I had read Jerome Frank's mail twenty years earlier and I learned about what the YLS students and faculty were up to in the late sixties and early seventies, I had another "Eureka!" moment. I fell in love with the story, and I realized I needed a book to tell it.

In your book's prologue you write, "Exploration of Yale's history... provides a prism on both the past and prospect of all legal education." Given that this could be said of much of the School's history, why were the late sixties at YLS particularly significant in your mind?

As a historian of the twentieth century, I often teach courses at UCSB about "the sixties," a period in which there is still enormous undergraduate interest. Every year, new books appear about undergraduate life at Yale, Harvard, Cornell, Wisconsin, Berkeley, etc., during this turbulent era (to use a really timeworn phrase). Yet historians have paid little attention to what happened then in professional schools. I wondered if law students had been as alienated from the faculty and their education during the sixties as so many undergraduates at elite institutions. The idea of writing a book about the sixties set in a professional school intrigued me, and Yale turned out to be an ideal site. In the process of researching the book, I read every law school student

newspaper from the sixties in the country on which I could lay my hands. Yale students' efforts were among the earliest and most considerable of the "law student power" movement at elite law schools.

Did you see any significant shifts in ideology or in trends in legal education beginning to appear at the Law School when you taught here in 2001? Some have said that the faculty and students are overwhelmingly liberal. However, there seems to be a growing interest in more conservative viewpoints from a number of quarters.

There were liberals on the faculty in 2001, but there were also conservatives. As far as students go, I had conservatives, liberals, and lefties in my 2001 legal history course and seminar on YLS, but the range of political opinions wasn't what impressed me. What struck me was that all the students were spectacular. In my opinion, YLS students are the school's greatest treasure.

There is one current trend of which I am aware, since its roots lie in "my" period: YLS has become the preeminent pipeline to the legal academy. Many YLS graduates have chosen to teach law since the 1930s. But in the last quarter of the twentieth century, beginning with the deanship of Harry Wellington, YLS became, as Wellington said, "the most theoretical and academically oriented law school in America." A slew of J.D.-Ph.D.s joined the faculty, and a slew of Yale students began acquiring J.D.s and Ph.D.s. Increasingly, more and more of them became law professors. One need only check the blogs of Brian Leiter and Larry Solum to see that despite its small size, YLS probably places more of its alumni, a good number of whom also have advanced degrees, in elite

law schools than any other law school does today.

Such developments have brought YLS and other elite law schools closer to the rest of the university. Where once historians criticized law professors' "history lite" and philosophers challenged their philosophy, now some of the ablest humanists and social scientists join law faculties. The work of some law professors has become less doctrinal. Naturally, this trend has not pleased everyone, and some maintain Yale and other law schools have become isolated from the profession. I myself think the change is highly salutary.

But has legal education changed as much as legal scholarship? I do think that YLS's preeminence as the producer of this generation's law professors gives it a special obligation to work with other law schools in pondering the shape of legal education for the twenty-first century.

What was the most challenging part of writing this book?

This was a fraught period in the school's history. The historian's task, I believe, is to try to recreate the past as it seemed to the actors at the time, while realizing that hindsight and her present concerns and inclinations always color the way she understands the past. The most challenging part of writing this book was trying fairly to represent the views of everyone about whom I wrote and to explain, with some degree of compassion, why they took the positions they did. Obviously, I was not always wholly successful in achieving the latter objective, but it was my goal. I tried to tell the tale in the words of my characters and to present enough evidence so that a reader could interpret the story I had set out differently, while understanding

why I came to my conclusions. It was tough. If I had rewritten any other book as many times as I have this one, I would still await tenure.

How did YLS students and faculty from the sixties react to the news that you'd be writing a book about that time period at the Law School?

I wager that all historians who write about the living always meet some individuals who would prefer to let the proverbial sleeping dogs lie. That happened here too. But the overwhelming majority of people were incredibly gracious, kind, and forthcoming. Tony paid me the compliment of ensuring that I would have access to all sources for which I asked and trusting them to my discretion. (He did once joke to me that he was going to burn his papers!) He never asked to read what I had written in manuscript and I never offered to show it to him, lest either of us be compromised. Tony was wonderful: Every historian who is asked to write about an institution should be so lucky. All the deans extended themselves. In particular, Lou Pollak and Guido Calabresi spent an inordinate amount of time and patience on me. Almost all of the faculty, present and past, tried to help. The students from the sixties who spoke with me were marvelous, and I loved meeting them, talking with them and emailing them.

What other time periods in the School's history interest you most? Any more books about YLS in your future?

After I finished my biography of Abe Fortas, I told my husband that if I ever again expressed interest in writing another biography, he should take me out and shoot me. At the moment, I feel that way about YLS. Y