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TRASHING AND BASHING LEGAL EDUCATION

Arthur Austin*

Criticizing legal education is a tradition. The first movement was internal, composed of law review articles by law professors finding defects and proposing reforms. Their work was—and continues to be—turgid reading. Few people read them except emeriti with time to waste. Therefore, I will not cite any.

In 1971, *The Paper Chase* introduced the modern age of bash and trash.¹ *The Paper Chase* is a thinly disguised autobiography. It is about a student protagonist trying to cope with an impersonal system and a relentless contracts professor who uses the Socratic method like a flame thrower. *The Paper Chase* gave the public its first view of law school tyranny from the students' perspective. Ironically, instead of turning young college graduates off it appealed to them, and was, so I have been told, a factor in the sudden increase in enrollment.²

After *The Paper Chase*, student bashing of law school became autobiographical.³ *One L*, by Scott Turow, is a diary of how the system impacts a 1L.⁴ A description of study groups, professorial intimidation, and competition between the best and brightest, it is a "handbook for psychological coping for the first year of law school."⁵ Then law school was politicized: first by the crits,⁶ then came the feminist movement,⁷ and most recently by Critical Race Theory.⁸

The next two autobiographies go after the system with fire and vengeance. They moralize and preach reform. Chris Goodrich complains in *Anarchy and Elegance* that Yale Law School tried—and succeeded—"temporarily" in stealing his soul.⁹ Law is, to him, a rationalization for the status quo of capitalism and oppression.

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1. JOHN JAY OSBORN, JR., *THE PAPER CHASE* (1971). His second book, *The Associates*, published in 1979, was not as successful.

2. Perhaps the appeal to students and the sudden increase in enrollment was attributable to the star of the movie, John Houseman, as the nasty Professor Kingsfield. It did not, however, get a warm reception from *New York Times* critic Vincent Canby: "It takes a long while for 'Paper Chase' to disintegrate, and there are some funny, intelligent sequences along the way, but by the end it has melted into a blob of clichés." Vincent Canby, *Screen: "Paper Chase"*, N.Y. TIMES, Oct. 17, 1973, at 55.

3. There have been two fictional novels about student life at law schools: KATHERINE A. DAVIS ROOME, *THE LETTER OF THE LAW* (1979); MICHAEL LEVIN, *THE SOCRATIC METHOD* (1987). For a discussion of law school fiction, see Arthur Austin, *The Waste Land of Law School Fiction*, 1989 DUKE L.J. 495 (1989).

4. SCOTT TUROW, *ONE L* (1977).

5. *One L: Mixed Reviews*, AM. L., Sept. 1986, at 19.

6. For a candid history of the CLS movement, see Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991). The conflict between the crits and liberals at Harvard Law School is covered by Ken Emerson, *When Legal Titans Clash*, N.Y. TIMES, Apr. 22, 1990, (Magazine) at 26. For an update on faculty fights at HLS, see Peter Collier, *Blood on the Charles*, VANITY FAIR, Oct. 1992, at 144.

7. Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School"*, 38 J. LEGAL EDUC. 61 (1988).

8. Randall Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989); Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991).

9. CHRIS GOODRICH, *ANARCHY AND ELEGANCE* (1991).

Goodrich demands a spiritual cleansing of legal education, a revival of the 1960s' Consciousness III.¹⁰

Things get serious with *Broken Contract*.¹¹ Richard Kahlenberg, a recent graduate of Harvard Law School [hereinafter HLS], accuses his school of institutional hypocrisy and corruption. The faculty disingenuously preaches left-liberalism in class while slinking off in BMWs to big money consulting jobs.¹² Collectively they corrupt the students by brainwashing them of their public interest inclinations and by training them to rationalize representing evil big business.¹³ Kahlenberg detects a self-serving motivation: HLS sends its "best and brightest" to the mega firms in exchange for generous contributions.¹⁴

Kahlenberg is the first student author to encompass three years in his writing and, thus, is a witness to the psychology of the change from public interest motivation to yuppie lawyer. The problem is that *Broken Contract* is unconvincing; it is a tale of a spoiled brat who advocates the hard life of a public interest advocate for others but wants an immediate position as a policy maker for himself.¹⁵ " 'In the end . . . Kahlenberg decides to work for the member of an elite institution with one woman, no minorities, and a reputation for being susceptible to pressure from wealthy supporters. He joins the staff of Sen. Charles Robb (D. Va.) . . . ' " ¹⁶

With the publication of *Making Elite Lawyers*,¹⁷ the analysis—and attack—shifted to a new level of intensity and a more probing perspective. Robert Granfield is an outsider, a sociologist who sees legal education as a conflict of contradictions. He surveyed three topics: the making of what he calls, but never defines, "elite lawyers"; the ideology of Harvard Law School; and the conversion of public interest motivation into money-grubbing aspirations and the desire to work at mega law firms.¹⁸

What Goodrich and Kahlenberg imply, Granfield candidly emphasizes: we need a public interest sector to fight capitalism. The "capitalist logic"¹⁹ legitimizes inequality, and "the role of lawyers has been one of producing and maintaining

10. Consciousness III is a concept from Charles Reich's *The Greening of America* (1970), an anti-establishment manifesto of the hippie generation.

11. RICHARD D. KAHLENBERG, *BROKEN CONTRACT* (1992).

12. Kahlenberg even goes after the crits: "[T]hat's Critical Legal Studies—playing squash in cutoffs; teaching at the great prestigious law school and thinking of oneself as the vanguard of the proletariat; trying to be radical but only in the most traditional context." *Id.* at 84.

13. *Id.* at 93-118.

14. *See generally id.*

15. Arthur Austin, *Life at Harvard Law School: "Sometimes it's tough to get out of bed when you're wearing silk pajamas?"*, 78 IOWA L. REV. 427 (1993) (reviewing RICHARD D. KAHLENBERG, *BROKEN CONTRACT* (1992)) [hereinafter Austin].

16. *Id.* at 432 (quoting Peter Mancusi, *An Idealist's Take on Harvard Law School*, BOSTON GLOBE, Feb. 7, 1992, at 33).

17. ROBERT GRANFIELD, *MAKING ELITE LAWYERS* (1992) [hereinafter GRANFIELD].

18. *Id.* at 1-2. For a discussion of mega firm creation and mentality, see MARK STEVENS, *POWER OF ATTORNEY: THE RISE OF THE GIANT LAW FIRMS* (1987).

19. GRANFIELD, *supra* note 17, at 2.

capitalism rather than significantly altering the conditions that gave rise to social injustice."²⁰ The result is to fortify " 'powerful interests.' "²¹

HLS is, by Granfield's definition, the ideal school to test and analyze the conversion phenomenon.²² Its students come in with a strong altruistic spirit, they are ideologically left, and they want to be on the right (left) side of the issues.²³ The faculty is also liberal-left; it practices political correctness and has more critics than any law school in the country.²⁴ These factors, plus a diverse student mix, make HLS the prototype incubator for public interest lawyers.²⁵ Their potential is never realized: "[d]espite their humanistic concerns and their growing desire to contribute to society, most of these students accepted jobs working for America's power elite."²⁶

After putting this premise on the table, Granfield goes on to trash HLS, elite lawyers, and elite legal education. The first evil is training students to think like lawyers, or as a former colleague of mine, a HLS graduate, used to tell his class, learn to "logic chop." My friend would be amused to discover that logic chopping diverts attention from non-legal perspectives such as American Imperialism. It gets worse: "students were taught the ability to justify their opinions on legal grounds as opposed to ideological or substantive ones."²⁷ Worst of all, students became cynical, which they associate with "intellectual development and sophistication."²⁸

Logic chopping subversion is a seductive background; it fertilizes the next evil—the "ideology of neutrality."²⁹ "Professionals are expected to suspend any personal bias they may have regarding the situations they confront."³⁰ Neutrality breeds pragmatism, which breeds intolerance for empathy. Students are trained to comprehend tax as something other than " 'dirty.' "³¹ They " 'see more gray areas.' "³² They become professionals and as a result lose touch with "an orientation toward social justice."³³

The decision to stay away from public interest work is aided and abetted by the socializing effect of elite law schools. Everyone is bright, everyone is assured of a

20. GRANFIELD, *supra* note 17, at 6.

21. GRANFIELD, *supra* note 17, at 7 (quoting RALPH NADER, VERDICTS ON LAWYERS (1976)).

22. GRANFIELD, *supra* note 17, at 8-12.

23. GRANFIELD, *supra* note 17, at 11, 63.

24. GRANFIELD, *supra* note 17, at 42-43.

25. See generally GRANFIELD, *supra* note 17.

26. GRANFIELD, *supra* note 17, at 53.

27. GRANFIELD, *supra* note 17, at 55.

28. GRANFIELD, *supra* note 17, at 64. According to Granfield: "Indeed, cynical relativism regarding the nature of one's actions is a type of consciousness that is contrary to the pursuit of social justice." GRANFIELD, *supra* note 17, at 65.

29. GRANFIELD, *supra* note 17, at 78.

30. GRANFIELD, *supra* note 17, at 78.

31. GRANFIELD, *supra* note 17, at 82.

32. GRANFIELD, *supra* note 17, at 83.

33. GRANFIELD, *supra* note 17, at 92. "This professionalization of justice, however, individualized conflict in ways that obscured various forms of class, gender, and racial inequality within society." GRANFIELD, *supra* note 17, at 92.

good job, and everyone knows that competitive behavior to get grades is counter-productive. Granfield calls this "collective eminence."³⁴ Influenced by collective eminence, "Harvard law students learn that to refuse jobs in elite law firms is to abandon the collectivity."³⁵

Collective eminence is not enough. It is pressure, but still the student has to rationalize the sellout. It is not easy; these are people who just several years ago entered law school chanting "public interest, public interest" and are now headed to Wall Street to be stigmatized as working the latrine patrol for the masters of the universe.³⁶ Granfield pulls out another sociological buzz phrase to help the students: "[o]ffering 'accounts' to justify and explain inappropriate behavior is often done to avoid stigmatization."³⁷ Here are the "accounts" from HLS: with a big loan debt I have no choice;³⁸ I can use the power of the mega firm to more "effectively" pursue change;³⁹ elite lawyers and firms are nice people with liberal views;⁴⁰ I am going to a "good" mega firm;⁴¹ I can separate my decent values from those of the firm;⁴² I will resist by not working in New York, instead I'll take a job with a San Antonio mega firm.⁴³

No one will argue with Granfield that students come to law school talking about public interest responsibilities and then go into some form of commercial practice. This is the accepted scenario for all law schools in all regions. The question is why? One point that Granfield does not adequately deal with is that the public interest sector is simply not large enough to handle the numbers that he seems to want. However, even ignoring this point, it is by no means clear he has provided the explanation for the "conversion." I doubt that we can put the entire blame on the "system," "elite" faculty and law firms, or ideology.

Granfield overlooks — or ignores — a critical factor: the bulk of the entering law students have just been through one of the most intensive thought-altering programs since the old days of the KGB or George Orwell's Big Brother.⁴⁴ Since the politization of undergraduate academe in the early 1980s, students have been conditioned by faculty to view Wall Street, liberalism, and corporate law as parts of

34. GRANFIELD, *supra* note 17, at 141.

35. GRANFIELD, *supra* note 17, at 141. "This sense of collective eminence reproduces itself when it leads powerful alumni back to Harvard Law to recruit future lawyers." GRANFIELD, *supra* note 17, at 141.

36. "In *The Bonfire of The Vanities* bright young people humiliate themselves for money. The ultimate humiliation for a former law review editor and a member of Coif who made partner in a Wall Street firm within seven years, is going on 'urinal patrol.' Get a strategic office next to a board of directors who are meeting to determine the winner of a LBO contest, follow the directors into the restroom, and solicit 'inside' information from them in their vulnerable moment of relief." Arthur Austin, *Barbarians at the Gate: The Fall of RJR Nabisco*, 44 ARK. L. REV. 157, 157 (1991) (book review) (footnotes omitted).

37. GRANFIELD, *supra* note 17, at 149.

38. GRANFIELD, *supra* note 17, at 152.

39. GRANFIELD, *supra* note 17, at 153-55.

40. GRANFIELD, *supra* note 17, at 156-57.

41. GRANFIELD, *supra* note 17, at 158.

42. GRANFIELD, *supra* note 17, at 161-62.

43. GRANFIELD, *supra* note 17, at 165.

44. GEORGE ORWELL, 1984 (1949).

the capitalist apparatus.⁴⁵ They are likewise taught to esteem, among other things, labor and public service.

Whether they really believe the party line is unknown. But one lesson the students do learn is that if they want to avoid harassment, they had better play the game and say the right (left) things. If you want verification of this, read the personal statements in student applications. The definite trend is to suck up to the admissions people by speaking of public interest obligations.

They then learn that the game continues in law school where an expression of conservative politics is "academic suicide."⁴⁶ Other factors are churning at the students. What happens is that during the second year students begin to realize that it is a game that they can no longer play. They begin to detect the difference between political rhetoric, faculty bias and isolation, and the real world of practice. Slogans are fine, but now it's time to face reality. And for many, reality is a big debt that becomes due upon graduation—a fact that Granfield avoids.⁴⁷

When second year students clerk with mega firms, they see a slice of reality and for the first time detect the isolation of law schools. Admittedly they are wined and dined, but they can sense the difference between work and academe. Since being politicized, law schools have turned away from the problems of practice and now look to the university culture for guidance.⁴⁸ Judge Harry T. Edwards says: "Too many law professors are ivory tower dilettantes . . ." ⁴⁹ Students realize that when they graduate, the academic game that they have played for years is over. It's time to work—and pay the bills.

Other perceptions are changing. These people are the best and the brightest, and they are addicted to challenge. Public interest, in its present form, is not an intellectual challenge. Landlord-tenant law is interesting and amusing in class when the professor is ridiculing capitalist slumlords. In practice, however, an

45. "The truth is that when the children of the sixties received their professorships and deanships they did not abandon the dream of radical cultural transformation; they set out to implement it. Now, instead of disrupting classes, they are teaching them; instead of attempting to destroy our educational institutions physically, they are subverting them from within." ROGER KIMBALL, *TENURED RADICALS* 166-67 (1990). For a discussion of the sixties radical penetration of academe, see Alvin Sanoff, *Colleges and Universities: '60s Protestors, '80s Professors, Political Activism on Campus Isn't Dead—It's Redirected Into Scholarship*, U.S. NEWS & WORLD REP., Jan. 16, 1989, at 54.

46. "To express conservative political beliefs in my school would be to commit academic suicide." Steven C. Bahls, *Political Correctness and the American Law School*, 69 WASH. U. L.Q. 1041, 1045 (1991) (Referring to a student response in a study which showed that almost sixty percent of students were afraid to express views that differed from the privileged liberal voice.).

47. As the Harvard Law Review observes about Granfield's book: "Unfortunately, the author largely ignores the elite debt burdens that most students have to bear when they graduate." Book Note, *Making Elite Lawyers: Visions of Law at Harvard and Beyond*, 106 HARV. L. REV. 516, 516 (1992).

48. The former dean of Yale Law School complains that "law professors today are more concerned with intellectual currents among their colleagues in the arts and sciences and less concerned about law practice and the output of the bench." John Metaxas, *Two Justices, Self-Congratulation Mark Harvard Anniversary Bash*, NAT'L L. J., Sept. 22, 1986, at 4. He subsequently wrote that they "do not venture outside the ivy-covered walls, scorn the practicing lawyer and his work . . . and look for rewards only from within the universities." Harry Wellington, *Challenges to Legal Education: The "Two Cultures" Phenomenon*, 37 J. LEGAL EDUC. 327, 329 (1987).

49. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 36 (1992).

eviction is boring and repetitive. Public defender work may seem glamorous and conjure up William Kunstler, but it is not something to tax the brain cells.

The intellectual challenge comes from corporate, securities, antitrust, and the other commercial law courses. It is inevitable that students, especially elite students, will gravitate to these areas and the firms that practice them. It is, to use a politically incorrect term, only *rational* for them to want to use their brains.

The most serious flaw is that Granfield subverts his mission by allowing his biases to intrude.⁵⁰ He is after the liberal canon which teaches that law is neutral and objective and that resolution of conflicts requires logic chopping. The liberal canon is an anathema to critics and feminists. Granfield values public interest practice because he considers it to be a weapon against the canon. Like Duncan Kennedy, he prefers altruism.⁵¹ Like Kennedy, he is short on solutions and definitions that have practical value.⁵²

For example, Granfield never defines public interest practice. I suspect that he would say that it incorporates the ideals of altruism and is aimed at the destruction of capitalism. This is more academic rhetoric. Yet without a *working* definition of public interest, how can he accuse HLS of co-opting students? Co-opting them from what?

50. In his zeal to blitz the corporate system, Granfield makes factual mistakes. He says: "Indeed, the legal resources that a single corporation can bring to bear sometimes outweigh those of the entire U.S. government, as was demonstrated in the 1979 antitrust suit against IBM." GRANFIELD, *supra* note 17, at 7. In a footnote Granfield suggests that IBM in-house staff had 243 lawyers, half the total number in the Antitrust Division; he then said that "[i]n spite of this, IBM retained the services of a major Wall Street firm . . ." GRANFIELD, *supra* note 17, at 217 n.31.

To say that there is something improper about IBM going to a mega firm to duke it out with the Antitrust Division is, at best, ridiculous. In-house lawyers do not have the expertise to handle monopolization, the most complex type of litigation. The Antitrust Division is specialized and capable of going after anyone. Furthermore, they have access to various government resources—including the FBI. Finally, Granfield does not mention that the case was dismissed by the Justice Department in 1982. Another error: the complaint was filed on the last day of the Johnson Administration—United States v. IBM, No. 69 Civ. 200 (S.D.N.Y. filed Jan. 17, 1969)—not 1979. See Arthur Austin, *Folded, Spindled, and Mutilated: Economic Analysis and United States v. IBM*, 58 TUL. L. REV. 1282 (1984) (book review).

51. Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1717 (1976).

52. Duncan Kennedy advises young law firm associates not to laugh at jokes and throw blank expressions where the oppressor expects a compliant smile. Duncan Kennedy, *Rebels from Principle: Changing the Corporate Law Firm from Within*, HARV. L. SCH. BULL., Fall 1981, at 39-40.

The strategy I am proposing involves fighting with your elders and sassing them, maybe; undermining them, maybe; hurting their feelings, certainly. . . . If you think before you act, if you are subtle, collusive, skillful and tricky, if you use confrontation when confrontation will work, you should be able to do left office politics without being fired, and make partner.

Id.

Kennedy has more advice. To solve the "politics of hierarchy," he recommends paying lawyers, law professors, paralegals, secretaries, and law firm janitors, the same salary. DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* 79 (1983).