

criminology alongside the many other genres that deal with crime and punishment—but they must understand them and recognize how they reorganize his or her field of study. Jones offers no such understanding. He writes as if all that happened in the late nineteenth century was a change of names (“‘criminology’ . . . was used first in 1879 . . . penology having been the widely used term before then” [15]). This rather ahistorical “What’s in a name?” approach fails to capture the very different premises, questions, and ambitions that distinguished the criminology of Lombroso from the criminal jurisprudence of Beccaria, let alone the difference that demarcates the other genres of crime writing.

This baleful lack of theoretical understanding that undermines Jones’s history is most fully revealed when, in the final chapter, he offers his own version of criminological theorizing. This, “the author’s own existential viewpoint,” is an embarrassing and unrestrained disquisition that suggests that criminality be understood in terms of “the will to power.” In its generalizations about “the criminal” (“the criminal is the exploiter! He is the capitalist *par excellence*” [218]), and its pseudo-Nietzschean psychology (“We are all criminals!”), the final sections of the book show that, for the author at least, little of value is to be learned from this version of criminology’s past.

David Garland

Laura Kalman, *Legal Realism at Yale 1927-1960*. Chapel Hill: University of North Carolina Press, 1986. Pp. xii, 314. \$35.00 (ISBN: 0-8078-1677-9).

Laura Kalman’s monograph, originally a dissertation, is nevertheless a fresh and rather engaging study of a finished chapter in intellectual history—the legal realist movement. It flourished in the 1930s, revived in another form after World War II, and then faded away around 1960, when Kalman ends her work. By that time, legal realism had left an indistinct legacy that was widely shared. It was always a rather shapeless growth, even in its prime.

Kalman proposes to give the movement some coherence by concentrating on its manifestations at the Yale Law School. Yet, after an introductory chapter in which she locates realism in the broader setting of functionalism as a way of doing history and other social sciences, the second chapter is about Harvard Law School; much of the third chapter is about curricular changes at Columbia and Yale. Late in the day, Yale occupies all of the fourth and fifth chapters; but the sixth and last again turns to Harvard.

This is not as zigzagging a course as I have made it appear. One can ill afford to write about a churning force in legal thought and legal education without ascertaining the role of Harvard. That Harvard early on “rejected” realism establishes a baseline for what anyone else did. That Harvard by 1960 had made peace with realism marks another boundary. As for Columbia, it is inescapable that realism started there or, if one insists on pushing its origins

back to Holmes, that it first became a recognizable influence in legal education and scholarship at Columbia in the 1920s, where half a dozen faculty members, led by Karl Lewellyn and Herman Oliphant, attempted to reorder the curriculum along "functional" lines, meaning chiefly that the content of courses was to be repackaged in order to reflect the commercial and human interests at stake, and that social science materials would be included to illuminate those interests. But, although the reformers initially enjoyed support from President Nicholas Murray Butler (this is surprising in retrospect, because Butler is now remembered as an establishment stalwart), his appointment of a middle-of-the-road dean resulted in five resignations (Lewellyn loyally stayed on). So, Kalman writes, "after 1928 the headquarters of legal realism shifted from Columbia to Yale" (75).

If the packet of mixed seeds that made up the realist movement was to bloom anywhere, Yale was the place, and 1928 the time. Dean Thomas Swan, recruited and then reinforced by the powerful contracts scholar Arthur Corbin, had brought the school out of provincial obscurity by making strong faculty appointments. When Swan went on the Second Circuit bench in 1927, Robert Hutchins, for whom the word *dynamic* would have had to be invented (he was only twenty-seven), took the reins, scooped up two of the Columbia defectors (Underhill Moore and William Douglas), and set the school definitely on a realist course before he left in 1929 for the presidency of Chicago.

Kalman's account of realism at Yale combines with her main theme a detailed account of almost everything else of interest that happened at Yale, first in the 1930s when Charles E. Clark followed Hutchins as dean, and then in the postwar period 1946-1960. Indeed, her recounting of the school's fortunes is the best local history we have of a critical quarter-century (the World War II years, with faculty and students mostly gone, are a blank). One may properly ask, what does most of Kalman's chronicle have to do with legal realism? She tells us that "institutional factors" explain the failure of realist strains to dominate the 1930s. When realism had a renaissance after the war, but then appeared to lose steam during the 1950s, that too occurred partly because of external pressures, partly because certain elements of the movement came to be taken for granted, at Yale and even at Harvard, always the Mother Church, much as Yale people hated to admit it.

If one accepts the relevance of exogenous and even fortuitous forces, one does not mind at all reading juicy accounts of such 1930s issues as Dean Clark's poor rapport with Yale's President James Rowland Angell, in contrast to Hutchins's intimacy; Clark's related lack of success in getting adequate financial support from the university; the fading away of empirical research activities (except for Underhill Moore's tireless parking and bank collection studies); the seduction of key faculty members by the New Deal; the persistent Harvard-phobia of Clark and others, which affected the culminating event of the decade, the struggle over the deanship when Dean Clark in his turn went to the Second Circuit. At least two-thirds of the professors supported their Harvard-trained colleague Harry Shulman. The opposition was intransigent.

Influenced also by anti-Semitic elements, the choice finally fell to an amiable conservative, A. G. Gulliver. Thus ended the decade.

After the war, a committed realist, Wesley Sturges, became dean. He was almost immediately hampered by cool relations with Presidents Seymour and Griswold; by charges from alumni quarters that the curriculum was loaded with far-out seminars (in which very few students actually enrolled); by conservative trustees (led by Robert A. Taft) hostile to the appointment of ultra-liberals (Thomas Emerson, Fowler Harper) and a suspect social scientist, Harold Lasswell; by brushes with cold-war crusaders.

Intellectually, this era was enlivened by what Kalman aptly dubs "The Realists vs. The Realists" (164). In one corner, Judge Jerome Frank, author of the 1931 bombshell, *Law and the Modern Mind*, by now living in New Haven, teaching a course called "Fact Finding," and preaching heavy clinical training. In the other, Lasswell and Myres McDougal, tirelessly proclaiming "policy science" as the mission of legal education. Though both positions were influential, neither prevailed. And the inhibiting influences this time were not so extraneous to the intellectual currents as they were in the 1930s.

One more wrenching episode occurred, reported fully and scrupulously by Kalman. Harry Shulman, having at last become dean in 1954, joined with President Griswold in withholding promotion from Professor Vern Countryman on grounds that must have confused Countryman's liberal politics with the quality of his scholarship (Countryman went on to distinguished service at Harvard). Shulman soon died of cancer; poignantly, he was dean less than a year. Faculty morale, this reviewer can testify, was at its nadir. But then Eugene Rostow, sunny, confident, expansive, became dean. He spectacularly replenished and enlarged the faculty, and he presided over curricular regroupings that came as close as one could wish to a "functional" organization. It is said to be trite to declare that "we are all realists" (229). But we all were—for a time.

What did it mean, to be a realist? Did it require anything more than a mistrust of conceptual thinking, a skepticism about orthodox descriptions of the judicial, legislative, and administrative processes, and a willingness to experiment with teaching methods that went beyond the austere Langdellian casebook? Adherence to these three attitudes, I think, qualified one at least to pose as a legal realist, junior grade.

Kalman's catalog in her opening chapter of the attributes of realism is an eclectic one. She is right; it was an eclectic movement. Her modest mission, ably carried out, was to flesh out the catalog by a critical examination of the Yale experience.

A brief epilogue ventures generalizations. She concludes that, "Intellectually, realism had not proved significant; pedagogically, it had not fulfilled its promise" (230). Saved for the very last word is a sudden (self-revealing?) spear thrust: "realism's most important message [was] a message so arresting that even the realists never dared face it—that all law is politics." (231).

Ralph S. Brown