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## Book Review of Anthony Kronman's "A History of the Yale Law School"

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simply the result of editorial choices made for the second edition. For example, *Employment Division v. Smith*, the 1990 case that wrenched the free exercise clause back to its *Reynolds v. United States* roots, is inexplicably omitted, as is the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act, the federal laws spawned by *Smith* that have triggered important litigation concerning the scope of Congress's power to enforce the substance of the Fourteenth Amendment. To be sure, the essence of these developments can be gleaned from other entries, but one wonders about the wisdom of the editorial choice inherent in these omissions.

It is easy to be a critic, but as Theodore Roosevelt put it, the credit belongs to the man in the arena. Much credit, then, goes to the editors of and contributors to the *Oxford Companion to the Supreme Court of the United States*. This encyclopedia endures as a valuable reference tool that will continue to be of aid to everyone interested in the work of the Supreme Court.

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Anthony T. Kronman, editor, *History of the Yale Law School: The Tercentennial Lectures*, New Haven: Yale University Press, 2004. Pp. 304. \$30.00 (ISBN 0-300-09564-3).

What makes Yale Law School different? Different from what? From Harvard Law School, that's what. The essays in the current volume began as lectures celebrating Yale University's tercentennial. As Anthony Kronman points out in the "Introduction," these works are not meant to be a comprehensive history of the school. They all, however, try to delineate the unique features of Yale Law School's approach to legal education.

Robert Stevens begins by sketching the conservative and indeed provincial beginnings of Yale College, which kept the law school "a local law school with pretensions" until the 1930s (12). In his view, the "modern" Yale Law School began with the appointment of Eugene Rostow as dean in 1956 (14).

John Langbein's two essays on the early history of the school illuminate the beginnings of the Yale difference, which were not evident at the beginnings of the beginning. Langbein is candid about the utilitarian nature of the instruction offered by the proprietary school with which Yale affiliated in 1826. "It is as though," Langbein writes, "today's Yale University were to announce a merger with the New Haven School of Pipefitting or the New Haven Auto Driving School" (35). It happened because affiliation with a proprietary school allowed Yale to offer legal instruction like other American colleges without putting its own precarious finances at risk. The nature of that instruction was influenced strongly by the early success of the Litchfield Law School, which set classroom instruction on the road to vanquishing apprenticeship, made national rather than local law the subject of instruction, and "imported a profound private-law bias to the curricular traditions of American legal education" (32).

In his second essay, Langbein identifies the beginning of Yale's distinctive approach to legal education. In 1874 Theodore Woolsey gave a lecture to law school alumni in which he suggested that the law school should draw closer to the college, enlarging its teaching of public law and political science. He was not alone in finding in an expanded intellectual menu a way to compete with Columbia's outstandingly successful and very practice-oriented law school. Thus began the Yale emphasis on training lawyers in something more than private law, although Langbein agrees with Stevens that in the nineteenth century Yale Law School did not amount to much.

The other essays deal with the 1920s to the 1980s. Robert Gordon tells in detail the story of Yale law professors as policymakers in the New Deal and after and shows how extensive involvement in government permanently stretched the "gigantic rubber band" that concern with professional training creates to pull faculty and their schools back from "adventurous experiments" with activities outside "the private-law centered, doctrine-centered, court-centered, case-centered curriculum" (124). The result was an enlarged curriculum and an enlarged role for the law professors that together "created the romance of Yale Law School as a center of intellectual experience and heterodoxy, and incidentally helped make it glamorous and famous" (125). On the way to those conclusions, Gordon amply illustrates the accomplishments and limitations of his subjects' efforts to bring law and the social sciences closer together.

Gaddis Smith's essay also deals with the New Deal and after, but from the point of view of a university administration often exasperated by the public and political activities of its employees in the law school. The story is a sad one of anti-Semitism, fear of financial retaliation from politically and socially conservative alumni, and great unease with unpopular ideas. The tensions caused by the stretching of the gigantic rubber band were obvious, and relations improved only with the presidency of Kingman Brewster beginning in 1963.

The final essay by Laura Kalman, entitled "The Dark Ages," deals with the 1960s and early 1970s, a dark time not only because of tensions between faculty and students. There were six denials of tenure in the early 1970s. The student-faculty tensions eased for several reasons: Brewster's handling of the university-wide situation, the sobering effect of a fire in the library that seemed to show clearly the vulnerability of the institution, and, a reader can conclude, fear for their professional futures that led students to accept the faculty's refusal to cancel exams in the spring of 1970.

Examining each tenure decision, Kalman cannot make a definitive link with the tumult of the late 1960s but finds it easier to link fear of conflict to the failure to hire teachers associated with Critical Legal Studies. The Yale faculty saw the battles at Harvard over CLS and turned away: "Having lived through one civil war, the Yale Law School faculty did not want another" (206).

And although Kalman is quite clear that she considers Charles Clark the parent of the school ("His deanship witnessed the launching of the most ambitious challenge anywhere ever to the hegemony of Harvard and Langdell" [154]), the reader can conclude that it was the deanship of Guido Calabresi that at last brought

the school out of Harvard's shadow. Perhaps the last sentence of Kalman's essay says it all: "If Yale is number one, can Yale still be Yale?"

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Paul D. Carrington, *Spreading America's Word: Stories of Its Lawyer-Missionaries*, New York: Twelve Tables Press, 2005. Pp. 392 . \$26.95 (ISBN 0-9747286-2-4).

This ambitious volume explores over two centuries of efforts by American lawyers and policy-makers to replicate their laws and government in foreign countries. These lawyers and policy-makers are, in Paul D. Carrington's words, "lawyer-missionaries." Some came to doubt the enterprise in which they were engaged. Even larger numbers doggedly promoted American-style legal institutions, attempted to influence foreign lawyers, and hoped that the world's peoples would take a belief in democracy and the rule of law to heart. For the most part, the efforts by "legal missionaries" achieved only modest success or failed completely.

The range of Carrington's study is both a strength and a weakness. He begins with a treatment of American lawyers' reactions to the French Revolution and, with literally dozens of stops along the way, ends with Americans' involvement in the contemporary international human rights movement. Carrington's most insightful treatments concern American policy in the decades immediately before and after the turn of the twentieth century, and his commentary on Woodrow Wilson is especially sobering. The author also has a fine eye for history's ironies, and the reader cannot help but pause when contemplating former American slaves acquiring their own slaves in Liberia or the heroic liberation of Puerto Rico in which only six Americans were wounded. But Carrington ranges so far and wide as to deny some of his subjects their deserved detail and complexity. Some of his treatments do not even concern Americans attempting to carry their legal institutions and law-related ideology to other parts of the globe. *Spreading America's Word* would actually have been more shaped and coherent without the author's treatments of the Trail of Tears, Reconstruction, or the internment of Japanese-Americans during World War II.

It also appears that Carrington's editors did not alert him to the limitations of Whig history. Indeed, the editors have festooned the volume with roughly 100 head shots of important historical figures. These men and two women are for the most part the "lawyer-missionaries." The volume's subtitle suggests we will read their "stories," but there is no particular sensitivity to the imperatives and pitfalls of biographical narratives as building blocks for a historical study. The author is instead simply fascinated by individual major figures and their disastrous blind spots and facility for critical discernment. Overall, the volume seems less the work of a historian than that of a traditional law professor. The "stories" of great men are the equivalent of "cases" from which one may extract the rules and lessons of it all.