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Making Elite Lawyers: Visions of Law at Harvard and Beyond

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MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND. By *Robert Granfield*. New York: Routledge, Chapman and Hall. 1992. Pp. 248. \$27.50.

“What is it like to be a bat?” Thomas Nagel once mused, trying to comprehend the nature of bat consciousness.¹ In *Making Elite Lawyers* Robert Granfield² ponders an only slightly less provocative question: What is it like to be a Harvard law student?

Bats emit an endless series of high-pitched shrieks to navigate their way around a vast, dark cave, flap their wings constantly as their bodies blindly glide past each other, chew up helpless insects, and strew guano across the cave floor. Harvard law students, according to Granfield, lose their moral vision as they grope through a demanding first-year curriculum in which they learn the art of legal argument, spend their second year flying across the country in search of suitable employment, and depart after their third year to serve the values and interests of the corporate marketplace. Not much different from being a bat.

Granfield explores the development of Harvard law students’ legal consciousness in order to identify the links between their highly liberal legal education and their highly conservative employment decisions. According to Granfield, the central paradox of Harvard Law School is that

the law school contains perhaps the largest contingent of Critical Legal Scholars in the country and has one of the only public interest placement centers in the country In many ways, the atmosphere within Harvard Law School suggests an orientation that would be consistent with the promotion of social justice careers and values.

All of this is very confusing particularly when so many students from Harvard accept legal positions in large corporate law firms. The environment is liberal and to the left while the occupational decisions that students make are corporate-oriented. [p. 43]

By what strange turn of events does a faculty with such an allegedly strong “crit” influence produce such highly conformist and proestablishment graduates? In essence, Granfield concludes that, by and large, the Harvard law faculty successfully grinds students down,³ to the point at which few have the moral and psychological strength to resist the siren song of corporate practice.

Granfield calls his work “ethnographic” (p. 11). The book derives from studies conducted between 1985 and 1988 at Harvard Law

1. THOMAS NAGEL, *What Is It Like To Be a Bat?*, in *MORTAL QUESTIONS* 165-80 (1979).

2. Assistant Professor of Sociology, University of Denver.

3. As in the student’s motto, *illegitimus non carborundum* — don’t let the bastards grind you down. See GEORGE J. ROTH, *SLAYING THE LAW SCHOOL DRAGON* 5 (1st ed. 1980).

School. During this time Granfield engaged in "participant observation;" that is, he attended classes. He also conducted 103 in-depth interviews with students and obtained responses from several hundred questionnaires (p. 11). But Granfield was perhaps more observer than participant: although he attended classes, he apparently neither enrolled as a law student nor prepared for classes by reading the assigned material.⁴

Central to Granfield's arguments are Chapters Four and Five, in which he discusses the nature and effects of legal education (pp. 51-93), and Chapter Nine, in which he examines the means by which Harvard law students rationalize their corporate employment decisions (pp. 143-67). The present discussion focuses on the content of these chapters, although Chapters Six through Eight — which address, respectively, the experiences of women, the experiences of working-class students, and the collective internalization of "elite" attitudes — also contain much interesting material (pp. 94-142).

Granfield argues that "[d]uring their law schooling, most students replace a justice-oriented consciousness with a game-oriented consciousness" (p. 52). This replacement occurs through several interrelated steps. First, students must master a congeries of difficult legal concepts: "promissory estopp[e], contractual consideration, *res ipsa loquitur*, *res judicata*, and *fee-tail*" (p. 53). The process of mastering this congeries "undermines radical thought by teaching a logic and vocabulary that isolates students from social contexts" (p. 53). Second, students learn "to justify their opinions on legal grounds as opposed to ideological or substantive ones" (p. 55). Third, students learn to draw connections between seemingly unrelated cases (p. 56). Fourth, and finally, students learn how to make legal arguments. In the words of one student, legal education reduces to this: "[T]eachers ask us to discuss the holding of a case and then ask us to distinguish it from other cases and then force us to argue the other side. We are taught how to flip arguments and how to maneuver around principles" (p. 58).

Not surprisingly, Granfield concludes that such a pedagogical experience induces cynicism about the law. One student comments:

I originally had a very idealistic view of the law. I think now that it was a limited view. . . . I thought that there were some problems but that you could use political arguments to make changes, like in criminal law or civil rights. If you made a just or moral argument you would win. That's not the case though. [p. 62]

"Justice-oriented" idealism has thus evaporated in the face of the realization that "[t]he whole thing is just a game" (p. 63). Realization that legal argument consists merely of distinguishing cases and "weasel[ing] around principles" (p. 63) and that one can argue for either

4. Granfield provides a more complete discussion of his methodology at pp. 209-14.

side of any proposition with equal facility disabuses these students of the notion that legal argument produces substantively just decisions. Instead, Granfield concludes, students come to see law as “nothing more than a game performed by practitioners for the sake of being victorious” (p. 63).

So far, Granfield treads heavily on cliché. More provocative is the link Granfield perceives between this jaded appreciation of legal argument and an orientation toward corporate practice. Granfield believes that rigid pedagogical insistence on emotional and moral distance from the cases studied forges this crucial bond (pp. 75-78). Professors mock students who focus on political, ethical, or moral arguments when instead they should absorb the doctrinal lessons of the case at hand and focus on the technical aspects of winning a case (pp. 76-77). In turn, students come to find that their own pre-law-school views about various social issues were naive and “markedly inferior to their newly honed legal views” (p. 83). Law students not only acquire the skill to advocate any legal position whatsoever, but they also learn “that they [are] ethically bound to represent interests that may be at variance with their own values” (p. 84). Once students internalize this professional identity of the lawyer as amoral technician and advocate, they are psychologically and morally prepared to represent interests that previously seemed foreign or repugnant — particularly corporate interests.

Granfield’s account no doubt contains much truth. Still, his pervasive moralism deserves a skeptical response. In a nutshell, Granfield maintains that legal education teaches students to replace “moral” argument with “legal” argument, suggesting that moral reasoning has no role to play in legal argument. Granfield insinuates as well that students learn to believe that all legal arguments are created equal — none is in principle superior to any other. *Making Elite Lawyers*, in short, would have one believe that Harvard law professors are utterly indifferent to the quality of the arguments presented, caring only that arguments are made and then “flipped.”

Granfield apparently discounts the possibility that legal education — even at Harvard Law School — is partly an enterprise in distinguishing good arguments from bad, based not only on “technical” considerations but also on the arguments’ underlying moral assumptions and implications. Granfield likewise filters out any suggestion that legal education, at least at an “elite” institution like Harvard, consists not simply in learning to “flip” arguments but also — and perhaps more prevalently — in systematically studying problems of institutional design: what social needs legal institutions can serve or should serve, how law structures human behavior, what social costs a legal regime itself imposes, and so on.⁵

5. For example, one type of student voice Granfield filters out is the kind expressed in CHRIS

These criticisms suggest that Granfield has provided a rather incomplete picture of the type of professional identity that "elite" institutions such as Harvard Law School construct. Of course, the possibility remains that Harvard law students are generally apathetic to much of what Harvard law professors are trying to teach: professors may believe they are teaching the theory of tort or contract law, say, but students only take away the message that arguments are made to be flipped. Granfield's own approach, however, seems too selective in its material to shed any light on this issue.

Regarding the students' tendency to join corporate law firms, Granfield points to some obvious culprits: the seductions of the corporate law firm recruitment process (pp. 135-38), the obsequious treatment Harvard law students receive from recruiters (pp. 135-36), and the need to get out from under oppressive law school debt (pp. 151-53). Of greater interest is the gloss the students put on their own career choices.

Committed to public interest in theory, Harvard law students apparently disdain it in practice. Sample student comments include:

In 99.9 percent of the cases in poverty stuff the results are limited. I don't anymore see that change will come this way.

....

... [M]y first summer I worked in a public defender[']s office and it was terrible. I don't think you can really accomplish much of anything working someplace like that.

....

I used to think that social change would come about by being an activist. . . . But you really can't accomplish much by doing this. [pp. 153-55]

These grim prospects drive students with an ostensible public interest orientation into the arms of eager firms. Some justify their decisions in terms of pro bono opportunities: "I think I can do more good for people if I commit myself to working with community groups or activities in the bar during my spare time" (p. 88). Others believe they cannot become effective agents for social change without obtaining the credentials, training, and connections large law firms offer (pp. 155-56). Finally, many simply deny that they have lost their ideals by distinguishing themselves from their imagined antithesis, the "corporate tool." Two students express this view memorably:

I don't believe I'm a corporate tool. I'm working for a large firm but I don't think it's against my principles, which are left-oriented. . . . People who are corporate tools are politically right wing and have a vested interest in upholding that power structure. Corporate tools seek to uphold that power structure in an affirmative way and come here to learn

GOODRICH, ANARCHY AND ELEGANCE: CONFESSIONS OF A JOURNALIST AT YALE LAW SCHOOL 68-83, 155-76 (1991), which recounts Guido Calabresi's classroom discussions of the purposes, limits, and social effects of tort law.

to do that. I'm not a corporate tool. I intend to work on the right side of the cases I'll be involved in. I'm going to make deals, not fuck people over. [p. 161]

....

I wouldn't want to be a corporate litigator because they're just tools. The myth is that all corporate firms are cut-throat. That myth comes from litigation departments. As a corporate litigator you have to take the side that your client is on, regardless of what it might be. In corporate transactions lawyers are mediators, they bring people together. Corporate lawyers aren't like corporate litigators. They're not charlatans. I don't think I'm a corporate tool. I think you're a corporate tool if you do corporate litigation, not corporate law. [p. 162]

The tenacity with which these students hold on to the belief that they have not "sold out" to the establishment is fascinating; one wonders whether they made similar comments three years earlier in justifying their decision to attend Harvard Law School.

Although Granfield provides a reasonably illuminating analysis of the strategies by which students with an avowed public interest orientation justify their corporate employment decisions, his field of inquiry is disappointingly limited. Granfield, for instance, seems insufficiently critical about the depth of the avowed commitment itself. Granfield provides no information about the prelaw or law school activities of his subjects; consequently, the reader has no basis for judging whether these students ever had a genuine public interest orientation in the first place.

Granfield's surveys of students' attitudes, while informative, also seem insufficiently fine-grained. For example, Granfield surveys students on their shift in political attitudes during law school along the lines of "more radical," "same," or "more conservative" (p. 44). Granfield likewise surveys students on changes in their degree of interest in pro bono work along the lines of "more interested," "same," or "less interested" (p. 44). Such broad questions reveal comparatively little about the impact of a Harvard legal education on student attitudes. Consider, by way of contrast, a study of corporate attorneys conducted by the sociologist Robert Nelson.⁶ Nelson surveyed lawyers' responses to statements such as:

There is too much power concentrated in the hands of a few large companies for the good of the country.

....

On the whole, society is better off when the government does not attempt to regulate the economy through such legal instruments as the antitrust laws, securities regulation, banking law, and consumer protection.

....

Doctrines and rules pertaining to class actions should be interpreted to

6. See ROBERT L. NELSON, *PARTNERS WITH POWER* 236-43 (1988).

permit liberal use of the class action technique.⁷

A similar survey by Granfield would have provided a basis for a much more sensitive analysis of the impact of a Harvard legal education on its students' attitudes.

Finally, Granfield's study has an unfortunately limited scope. Granfield focuses on the *first* job Harvard law students accept upon graduation. Although methodological constraints no doubt justify this focus, it nonetheless provides an inadequate basis for determining what social contribution — if any — Harvard law graduates make toward advancement of public interest work and social justice issues. How long do these graduates remain in the private sector? How many of them subsequently enter the public sector or join public interest organizations? What are the pro bono practice profiles of graduates who remain in the private sector? What civic responsibilities do they assume? Although the answers to these questions necessarily lie beyond the scope of Granfield's "ethnographic" study, they bear directly on the accuracy of his assessments.

Making Elite Lawyers, in sum, makes a nice start toward understanding the evolution of legal consciousness at an elite law school and its impact on legal practice. Given the book's methodological shortcomings, however, the jury is still out on whether Harvard Law School single-handedly turns decent, public-minded citizens into bloodsucking vampires or merely harmless fruit bats.

— Daniel A. Cohen

7. *Id.* at 237.