

Eugene V. Rostow as Dean, 1955–1965

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I entered Yale Law School in the fall of 1946, one of a class of students who had, for the most part, served in World War II. Our ages and experiences varied greatly, and we were drawn from a much broader slice of the population than Yale Law School had known in the pre-war period. The G.I. Bill of Rights had made it possible for persons from every part of the country and virtually every stratum of society to pay for a Yale education. At the time, the dominant student mood was one of appreciation for the agreeable setting provided by the law school after so many years—for many as much as five—serving the public interest.

The faculty that greeted us numbered twenty-four and seemed remarkably worldly, though when I look back on it now, I note that Eugene Rostow was only 32 years old, Boris Bittker was 29, and Bittker, Brown, Emerson, and Gilmore had just begun their law teaching careers.

Gene joined the faculty in 1938. When I met him in 1946, he seemed to have done it all—the successful student who had studied economics at Cambridge, practiced law, served in government and was now back with what seemed a vast store of experience. He exuded confidence, wide-ranging interests, and a generous view of legal study as an occasion for intellectual and professional adventure. His courses on Public Control of Business went a long way towards assuring us that Yale meant what it said when it urged that law must turn to other disciplines if it was to fulfill the promise implicit in legal realism.

There was a good deal of talk at Yale in that period (1946–1949) of moving from legal realism to the development of law as a policy science—indeed as the preeminent policy science. And law was not to be value-free. It was, so soon after a war against Nazism and revived concern about Communism, unashamedly committed to liberal democratic values which were to be pursued by judges and lawyers using whatever levers of power and authority were available to them. Arthur Schlesinger, Jr. wrote a memorable article that characterized the alleged conflict on these matters between Yale and Harvard, and among the Supreme Court Justices ostensibly reflecting their viewpoints, as one of “Judicial Activists” vs. “Champions of Self Restraint.”¹ Whatever the underlying truth of his

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1. Schlesinger, *The Supreme Court: 1947*, FORTUNE, Jan. 1947, at 73, 201–04.

characterization, many of us at Yale felt ourselves to be specially charged to use the law to make things righter than they had ever been before.

Yale Law School already had in place in 1946 many of the curricular features that were congenial to an experimental and reformist perspective—and that became the hallmark of reform elsewhere over the next twenty-five years. The curriculum was almost entirely elective; only the first term and one or two courses thereafter were prescribed. The faculty included several persons who were not lawyers (the economist Walton Hamilton, the political scientist Harold Lasswell, and the philosopher Filmer Northrop), as well as others who taught part-time (from the psychiatry, psychology, sociology, and anthropology departments). The curriculum was studded with seminars in subjects like “River Valleys,” “Legal Control of Atomic Energy,” and “Psychiatry and the Law.” And there had long been a commitment to empirical research and to what we now describe as clinical education. Yale had a legislative workshop, student-directed moot courts and mock jury trials, a legal aid and defender program, and a simulation seminar entitled “Case Presentation and Negotiation.”

Even at Yale, however, there was a nagging feeling that more needed to be done. With each year subsequent to 1946, the quality of the students seemed to rise. More of them had advanced further in their college years in fields of specialization. Increasing numbers had graduate degrees and work experience. The nature of law practice, too, was becoming more varied and complex. Many of these trends crystallized in the mid-1950's just when Gene Rostow became Dean.²

I returned to Yale as a member of the faculty in 1956. During the intervening years, the school had undergone some important changes. Harry Shulman had been designated Dean in 1954, but he died unexpectedly soon. Gene succeeded him in 1955 and found a faculty that had shrunk considerably. The full-time faculty roster was twenty-three in number when he began his term (and included Louis Pollak who had just arrived). By the end of the academic year 1955-1956, the number had fallen to nineteen. Some had passed away, others had left either for reasons of policy or because they had not been promoted. As is common in such matters, the departures left bitterness among some of those who remained. Plainly, there was a great deal to be done to rebuild both the size and the morale of the faculty.

The task confronting Gene in 1955 was unusually difficult. Committed to a curriculum that already may have promised more in the way of vari-

2. See Goldstein, *The Unfulfilled Promise in Legal Education*, in *LAW IN A CHANGING AMERICA* 157-59 (G. Hazard ed. 1968).

ety and voluntarism than could easily be delivered, Yale had to rebuild its faculty rapidly. As if that were not enough, Gene decided to go forward with a remarkable set of curricular innovations—the culmination of curricular planning led by Grant Gilmore and Ralph Brown. The most important of these innovations, which Gene made the centerpiece of his tenure, were the first-term small-group program and the divisional program.³

The small-group program was a remarkable solution to some classic problems of legal education. All entering law students were required to take one of their first-term courses in a group no larger than fifteen students. Each of these seminar-sized courses was taught by a member of the regular faculty, and a tutor was assigned to each section to assist in teaching students to engage in legal research. This was not merely a vehicle to provide tours of the library. Students were asked to write research memoranda which were then criticized by both tutors and faculty members before being revised for final submission. The small groups provided occasions for fuller participation in Socratic-like discussions—an experience easily lost in the large sections that had characterized and still characterize legal education. And small-group faculty and tutors became guides and counselors to students as they learned in their first term to deal with the distinctive language and culture of the legal profession.

The divisional program was an effort to address the malaise of the second half of the law school career, after the excitement of the first year had worn off. It involved a division of the law school into nine “faculties”—some following professional lines (such as corporate transactions and labor law), others following more broadly academic lines (e.g., law and behavioral sciences and social relations). Each student enrolled in one of the nine divisions and devoted half his time to that division in the fourth and fifth terms. He was examined on a comprehensive reading list, took three seminars in the division, and wrote a divisional paper—comparable in quality to a *Law Journal* Note—under the close supervision of the divisional faculty. Field work and internships associated with the work of the divisions were fairly common.

The divisional program was a brilliant structural device for dealing with the common complaint that law school courses are too often “introductory” in nature and survey-like in quality. While not presented as “majors” but rather as vehicles for getting students to write a genuinely critical essay, the divisions drew students into the kind of “deep” study that gave them a sense of their scholarly potential while working in subjects perceived by them as professionally relevant.⁴ And because they in-

3. See YALE L. SCH. BULL., 1956–1957, at 24–28.

4. See YALE L. SCH. BULL., 1959–1960, at 22:

The Divisional program is not one of postgraduate professional “specialization,” nor are its

volved a common group of students working with a sub-set of the faculty, in critique sessions as well as seminars, they provided the sort of contact between faculty and students which drew on the best each could offer the other at that stage of their lives. In effect, Yale had created specialized "colleges" within the corpus of the single law school—colleges with an intellectual focus in which social relationships among faculty and students, faculty and faculty, and among students themselves, were enriched.

Gene won the support of President Griswold not only for these programs but also for the resources necessary to bring them into being. The cost was staggering. Since all students were to take one of their required first-term courses in a group of fifteen and there were then 165 students in the entering class, eleven faculty members devoted at least one-fourth of their total teaching time to the small groups. This was in addition to the usual large sections in the required and elective courses. The divisional program, too, required more faculty to provide the additional seminars and research and writing supervision that were essential to its success.

Gene led the recruitment effort with unprecedented energy. And by the close of the academic year 1956-1957, the faculty had increased to thirty-two. In one year, thirteen persons had been added to the full-time faculty. Two of those appointed were professors (Charles Black and Clyde Summers); eleven were non-tenured associate or assistant professors (Alexander Bickel, Joseph Bishop, Ward Bowman, Francis Coker, Joseph Goldstein, Quintin Johnstone, Leon Lipson, Bayless Manning, Ellen Peters, Harry Wellington, and myself). We were a diverse group—ranging in age from Peters at twenty-six to Ward Bowman, at forty-five. We came from law firms, from government, and from teaching positions in other law schools. We were graduates not only of Yale Law School but of Harvard and Chicago. One of the group, Ward Bowman, was an economist; another, Joseph Goldstein, had a Ph.D. in political science as well as a law degree.

In the next two years, a psychiatrist (Jay Katz) and two sociologists (Richard Schwartz and Jerome Skolnick) were added to the faculty. And before Gene's term ended in 1965, the full-time faculty had risen to thirty-nine (and included Guido Calabresi, Robert Stevens, Steven Duke, Charles Reich, Robert Bork, Ronald Dworkin, John Simon, and Ralph Winter).

The increase in faculty size made it possible not only to repair past losses but also to staff the curricular changes legislated in 1955. And it

educational goals those of most college "major" requirements. Its purpose, rather, is to give each student, as part of his general education in law, something of the opportunity for sustained experience in individual research previously available only to law journal editors, and to a few other students engaged in research.

created a faculty that encompassed a greater range and variety of fields of knowledge. As a result, the period 1955-1965 was characterized by a great many experiments in collaborative and interdisciplinary teaching and research, and by an extraordinarily vital intellectual community. More particularly, three things emerge from Gene's term as high-points in the history of Yale Law School. First, the small group program was an unqualified success and remains one of the most important features of a Yale legal education. Second, the faculty appointments in 1955-1965 were widely regarded in the law school world as, in Harry Kalven's words, a "stunning achievement." A glance at the roster of names of those who were brought to Yale during that period makes plain why Kalven and so many others thought so. Third, the divisional program was one of the boldest efforts in American legal education to break the generalist pattern in the service of academic objectives that did not undercut the professional mission of the law school.

Unfortunately, the divisional program also presented serious administrative problems. There were uneven numbers of students electing the various divisions so that disproportionate burdens fell on some faculty. Topics worthy of serious research and writing were difficult to provide year after year to so many students. Some faculty members gave more generously of themselves than others. Eventually, faculty grew restless, students complained, and after 1965, the program was trimmed—first a bit and then more until it receded into a shadow of its original self.⁵ Whether it might have survived if we had more faculty, or if we had been less sensitive to both student and faculty "voluntarism," is difficult to say. Indeed, the issue may deserve new consideration today when law faculties talk so often of pursuing "graduate" objectives.

Under Gene's leadership, Yale Law School moved unmistakably into the forefront of legal education—in the quality of its faculty, its students, and its curriculum. At the same time, he brought the school into a new era of educational administration. He increased the law school's fundraising—from alumni, foundations and government—dramatically, vindicating President Griswold's faith in Gene's ability to find the money to support so many appointments and programs. Major grants were obtained from the Ford Foundation, the National Institute of Mental Health, the Agency for International Development, and others. Placement for law students was put on a professional basis. Financial aid was expanded dramatically so as to maintain the gains in student quality achieved through the G.I. Bill of Rights. A capital fund drive was launched and successfully

5. See generally Freilich, *The Divisional Program at Yale: An Experiment For Legal Education in Depth*, 21 J. LEGAL EDUC. 443 (1969).

completed. The Law School (sparked by Myres McDougal) became a center of graduate education for foreign and domestic law teachers and scholars. Links to other departments of the university were strengthened through the Four Year Program in Law and Graduate Study.⁶ As if all this was not enough, Gene taught half-time, traveled the alumni circuit regularly, continued to speak out on public issues, and seemed constantly to retain his interest in the details of law school life and administration.

I do not mean to suggest there were no problems or disagreements. Of course there were. But over all, Gene presided with unusual skill—always good-humored, always encouraging us to stretch ourselves intellectually and personally. From the moment young faculty arrived, we were made to feel entirely the colleagues of our elders. There was no trace of the hierarchical mode that characterizes relations among seniors and juniors in so many other places. We were to go our own way—in scholarship, in law school matters, and in public affairs. There was never any doubt, however, that we were expected to meet the highest possible standards in scholarship, in teaching, and in collegiality. Looking back now over the years, it seems obvious that we, and Yale Law School, owe Gene Rostow an incalculable debt.

6. YALE L. SCH. BULL., 1959-1960, at 22-23:

With the cooperation of the Graduate School, the Law School offers a four-year program which, if successfully completed, will lead to the award of a Master of Arts degree by the Graduate School, as well as the Bachelor of Laws degree. This program is intended for those who plan to become law teachers, or who wish to acquire the specialized skills of some body of knowledge related to law as preparation for certain branches of law practice, or for other careers. . . . The graduate departments of Economics, History, International Relations, Philosophy, Political Science, Psychology, and Sociology [have indicated their desire to] participate in this program.