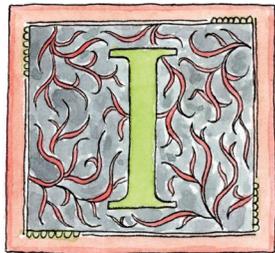


The Rise and Fall of Jews at Law Schools



IT MAY SEEM strange to look back nostalgically at the mid- and even late-20th century as a time when the mainstream of the legal profession offered a warm and welcoming place for Jewish students. Harvard and Yale, among other elite schools, engaged in overt discrimination until the 1960s. Jewish students generally attended less prestigious law schools, often working during the day and going to class at night. The large prestigious law firms were reserved for white Anglo-Saxon lawyers with the right connections. Jewish lawyers were forced to strike out on their own, hanging a shingle or joining a small firm. Even after Jews started gaining admission to the top schools, they were excluded from positions of power and socially ostracized. Hardly a heyday.

And yet the current climate at law schools, if not always as systematically hostile, may be even harder for Jewish students to navigate.

Signs of the new climate are increasingly pervasive. An advocate for “abolishing Israel” was chosen as this year’s student commencement speaker for the City University of New York’s law school. Another speaker, who accuses Israel of “unquenchable thirst for Palestinian blood,” was hosted by Georgetown Law School even as the school was busy investigating conservative (Jewish) law professor Ilya Shapiro for an ill-judged tweet. At Penn, there are efforts to boycott student trips to Israel, trips that are described by the resident pro-Palestinian critics as—what else?—“well-funded.”

The incident that strikes me as most revealing took place late last year at Yale Law School. The director of diversity, equity, and inclusion at Yale hosted a diversity trainer who listed “pretty privilege” and “fat-phobia” among the many forms of discrimination plaguing society—yet neglected to mention antisemitism. Asked to explain the omission, this administrator insisted that she had already covered it when she spoke about racism—because some Jews are black. She also questioned federal data showing that Jews are the most common targets of hate crimes, insisting that those who compile the statistics have an “agenda.”

And so, this diversity professional reduced thousands of years of antisemitism to a footnote, a particular brand of racism against black people. The training was based on a webinar in which participants were informed that anyone who questioned her conclusions had likely “been conditioned” to dismiss black people.

Not every DEI training goes that far. Not all discussions are so quickly shut down with accusations of racism. But it is also true that there is something new in the air at law schools, particularly elite ones.

Many, if not most, students have bought into academic lessons peddled in the 1980s and ’90s as an outgrowth of what’s often called critical legal theory. Among them:

- Law is not a neutral institution designed to ensure the peaceful resolution of disputes in a diverse society.
- Neutrality is not an unachieved but noble goal.
- Legal institutions are just a vicious guise that allows the powerful to exploit the weak.
- The law is not a flawed but worthy process to improve, but an evil institution to weaponize or dismantle.

The lecture halls in our law schools are now filled with professors and students who believe these things. In their view, the profession is no longer an essential gatekeeper of the rule of law, a key component of the American founding. Instead, it's a part of the problem: a white, racist, oppressive clique that uses its claims of fairness to mask its oppression of the powerless.

This kind of thinking is a big problem for Jews.



We used to joke when I was in law school about how the famous book *One L* was only kind of an exaggeration. “Look to your left, look to your right,” the dean in the novel declared. “One of you won’t be here next year.” Vicious, cutthroat, competitive—we took that somewhat for granted. The brightest and hardest-working would survive. The others... well, they might not be cut out for this line of work. We learned to think and argue like lawyers, to reason, analyze, and most of all debate.

I don’t mean to glorify a strict Socratic method, which can be demoralizing. We were all interchangeable, called on by our last names, and sometimes mocked if we couldn’t answer the question correctly. This wasn’t always a fun experience, but it was competitive. Merit mattered. The hazing ritual of the first year of law school cut us all down to size, but no one group had a monopoly on success. If the professor judged you based on the color of your skin, your

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religion, your gender, or some other irrelevant characteristic, you had a chance to prove him wrong. Perhaps it is no coincidence that the real dean on whom the one in *One L* is based presided during the time when Jews broke into the profession.

Law school is a kinder place now. Many professors are careful to deliver trigger warnings when topics are uncomfortable. Some semesters, I get an email stating that a student requires an accommodation that makes it such that the student cannot be called on to speak in class. One year, a student showed up to the first day of class with a Yorkie dressed in a tutu. Good thing I resisted the impulse to ask her to leave, because, as it turned out, it was a support dog.

Some of these changes are good. All students should feel free to contribute to the classroom dialogue. But just as we are taking new steps to make sure students feel welcome, a new group has grown silent: those whose views don’t correspond to the majority’s. They sit quietly, afraid of social ostracization and the professor’s retribution.

One might assume that the current focus in law-school classrooms on those who have been marginalized, outcast, and discriminated against would, indeed, be good for Jews. But as the story at Yale demonstrates, it turns out that there is strangely little room for Jews in the ever-expanding categories of people that the political far-Left is willing to protect. Perhaps this is because Jews are stereotyped as powerful masterminds, secretly controlling the levers of power, and perhaps because the current success of Jews in the legal profession

has erased historical memories of a long history of discrimination.

Whatever the case, the ideology that has taken hold at many law schools, which divides the world into white and black, oppressor and oppressed, leaves little room for the unique position that Jews occupy in the national imagination. They are seen as irrelevant in the narrative of white supremacy and its victims—and also somehow the epitome of white supremacy. In the old antisemitic narrative, Jews cheated and manipulated their way into the halls of power. In the modern version, they are even more “privileged”—and therefore even less deserving—than their white Christian colleagues.

One of the reasons why this new form of antisemitism is so insidious is that it is cast in proudly moral terms. Not only is it chic to look down on Jews, it's also virtuous.

This became evident in a recent episode at New York University Law School. The controversy started when the Law Students for Israel issued a letter on April 7, condemning terrorist attacks on Israeli citizens. The letter stated that there was room in the Middle East for “all its indigenous people to enjoy self-determination, security, and prosperity.” A pro-Palestinian student group responded by casting Israel as the aggressor and blaming the country for the terrorist violence against its own civilians: “The loss of any lives is the direct result of the Israeli occupation, not the resistance of those who are occupied.” Drawing on antisemitic tropes, the letter went on to suggest that alternate framings were the fault of “Zionist funded U.S. and Western media.”

That may have been predictable. More ominous was how left-leaning student groups lined up against the Zionist student organization. One after another, the Black Allied Law Students Association, the Disability Allied Law Students Association, the National Lawyers Guild, the Women of Color Collective, and others all publicly declared their support for the pro-Palestinian group against Israel.

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Once law schools dispensed with the idea that they were teaching a trade, a profession with a distinct set of skills and body of knowledge, education became much more concerned with a political and moral mission. Law-school clinics devoted to social justice grew in number and power. Tenured professors taught doctrinal classes, as they always had, but many viewed both their scholarship and their teaching as part of an activist agenda. This is true not only of the elite law schools in America, but also of legal education at all levels.

I can't remember receiving a political message from the dean when I was a law student. In fact, I can't remember receiving any messages at all. Now law-school deans seem to do little else. They reassure students that they “stand with” Black Lives Matter. They send out emails to the entire community when an unarmed black man is shot by a police officer, lamenting structural racism. (So much for the due-process value of waiting for the legal system to take its course.) A similar missive went out when anti-Asian hate crimes were on the rise after news that the pandemic had begun in China. My law school also issued a letter of support for Justice Ketanji Brown Jackson, though it had remained silent when Amy Coney Barrett won the nomination.

In May, when a series of antisemitic attacks in New York followed the conflict between Israel and Hamas in Gaza, many law schools sent yet another email. In these letters, deans denounced the violence against American Jews but went on to express concern and sympathy for Palestinians.

This was telling: The deans were implying that American Jews are somehow responsible for Israel's actions or at least that the events in the Middle East are logically tied to these attacks in the United States. It was a nod, albeit likely unintentional, to the antisemitic assumption that American Jews are part of an international cabal that owes allegiance to and shares responsibility with a foreign power. Imagine if the letter in support of the Asian-American

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community had simultaneously acknowledged sympathy for Americans who have contracted the coronavirus, or if the letter following a fatal shooting of an unarmed black man noted how difficult a police officer's job can be.

Where does this leave Jews? It might seem as if a progressive political mission would be consistent with Jewish ideals of *tikkun olam* as well as the belief that education and law are essential to a religious mission. After all, in the 1950s and '60s, Jewish lawyers flocked to the civil rights movement in America, disproportionately taking up the cause, just as they had joined FDR's New Deal government in the 1930s to become part of his "brain trust." Today, many Jewish lawyers and law students continue to work in public-interest law, devoting their lives to improving fairness and justice in society.

Yet, despite this synergy, the new ideological fervor at law schools has taken a sinister turn and made it increasingly difficult to combat antisemitism. It has contributed to an environment that stifles debate, first by branding certain views morally unacceptable, then by categorically excommunicating them. As the incidents at Yale and NYU show, defending Israel, even in the blandest terms, or insisting on the evils of antisemitism can qualify as among these immoral and unacceptable stances.

What is to be done? Should we go back to the old days when professors terrorized their students? Should we pretend that politics and other preconceptions do not affect legal decision-making?

This would be foolish. Law schools need to create an atmosphere in which all voices can be heard, including the politically unpopular ones. More than that, however, law schools need to focus on their core mission—educating students in the craft of law and training professionals who will serve clients well while making sure that they operate within the bounds of the law. This may not be a moral or social justice imperative, but it is a professional one. And it is one that an individual of any race, ethnicity, gender, or religion can join.

Free-speech advocates often argue that the rights of minorities are best ensured by robust protection for open dialogue, even though this means we may have to tolerate offensive, bigoted, hateful speech. The recent turn of events in law schools proves the point. One of the crucial skills a lawyer uses on behalf of his client is the ability to argue and debate, to use words to counter other words.

Law schools need to go back to placing primacy on this. Professionalism involves respectful disagreement. Lawyering necessarily involves encountering views and positions one may find abhorrent. If law schools can move in this direction, it will be good for a generation of lawyers and their clients, for the profession of law, and for the administration of justice.

And it will be good for Jews. *