

The pernicious influence of elite law schools

Reign of the Philosopher-Kings

Many terrible policies either spring from the minds of, or are eventually written into law by, lawyers. But those lawyers don't appear, fully formed, in positions of power within the apparatus of state. They are made in the nation's elite law schools, incubators for bad thinking.

"That the law schools churn out so many bad ideas is notable enough," Cato Institute senior fellow Walter Olson writes in *Schools for Misrule: Legal Academia and the Overlawyering of America*. "But equally notable is that they predictably churn out certain kinds of ideas." Olson examines how law schools evolved into America's "hatchery of bad ideas," the impact that change has had on how they educate future lawyers, and the influence of legal academics on public policy. "Overall," he concludes, "the ideology of law schools is biased toward the expansion of law and its uses, and away from a recognition of the inevitable costs, limitations, and inaccuracies of law."

The growth of legislation-by-litigation, a common tactic of legal academics, means that the unpopular ideas of activists don't need to win voters. Instead, well-trained arguers, forged at Harvard, Stanford, and Yale, must convince only a judge or two. Even with this more focused activism, Olson shows, most of these lawsuits fail to achieve their broad goals. And any gains from these suits are often swamped by unintended consequences and mammoth costs. But, as Olson points out, "in a different sense the suits clearly *have* worked. They have redistributed power and wealth to the class of lawyers and interest groups who can master the techniques of suing."

Olson articulates the ideological profile of America's top law schools, finding it remarkably uniform for institutions so vocally proud of their commitment to diversity—a uniformity "all the more tight and hermetic for going unacknowledged." But even if few are aware of the political characteristics of the elite schools, they are deeply impacted by the influence those schools have on public policy.

Olson unearths the origins of many of the worst trends in American law in recent decades—and finds them often in legal academies. This dramatic influence isn't simply a consequence of the law's importance. It was a conscious decision on the part of professors and deans, who maneuvered to make sure "lawyers were to be on top as society's natural decisionmaking class—as its technocratic managers, if not outright philosopher-kings."

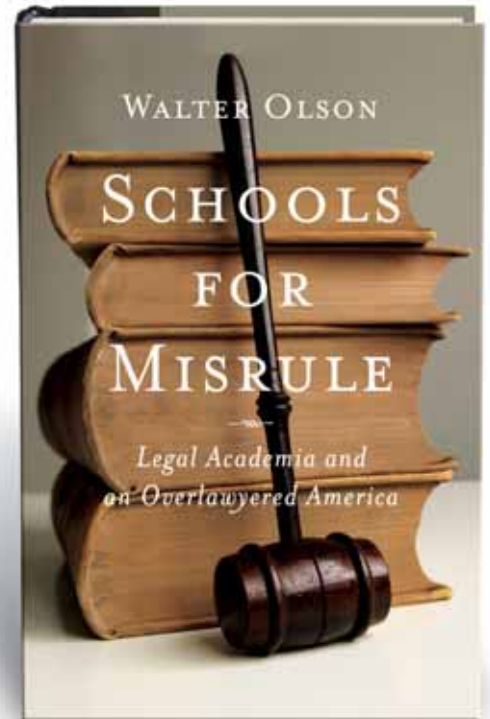
What this meant in practice was that law schools lessened their focus on drilling students in so-called "black letter law" and instead launched advocacy centers and legal clinics. These clinics used free stu-

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dent labor to engage in litigation on behalf of underrepresented groups and marginalized causes. They expanded the reach of administrative law, made tort actions more plaintiff-friendly, sued on behalf of Native American sovereignty and reparations for slavery, and contributed to the rise of "international human rights."

This last provokes particular concern from Olson. While human rights should be applauded and protected, the influence of academic elites has driven things very much out of hand. "Indeed," he writes, "new universal human rights are identified



and proclaimed on a regular basis, including rights to fresh water, corruption-free government, and access to gender-reassignment surgery." He warns of the "dangers in yielding up U.S. sovereignty to a new global governance class" but notes that the response by academia and activists has been, "Quit complaining, you're too late."

"The growth of the new international law is the perfect logical culmination of 50 years' worth of bad ideas from legal academia," Olson writes near the end of *Schools for Misrule*. Law schools have positioned themselves as global players with powerful influence, much of it for no good. As Olson shows, this pedagogical shift away from the trade of lawyering and toward activism is both dangerous and unfortunate. "We neither need nor want more philosopher-monarchs," he writes. "But we could use more good lawyers." ■

Schools for Misrule is published by Encounter Books and is available in bookstores nationwide, or order it direct from Cato by visiting www.cato.org/store or calling 800-767-1241; \$25.95 hardback.