

SOCIAL



The Yale Strike Dossier featured in this issue focuses on the crisis of academic labor. Edited and introduced by Cary Nelson, it includes the proceedings of a strike symposium with Barbara Ehrenreich, Robin D. G. Kelley, Duncan Kennedy, Rick Wolff, John Wilhelm, and Andrew Ross, reflections on student organizing by Corey Robin and Michelle Stephens, an analysis of the cultural representations of graduate student life by Kathy M. Newman, and an essay on the academic politics of the strike by Michael Bérubé. ■ In addition, Robert Reid-Pharr addresses black-Jewish relations, James Livingston dissects the politics of pragmatism, Stephanie Kane investigates the strange case of Manuel Noriega's toads, and Gyan Prakash asks, "Who's Afraid of Postcoloniality?" \$12.00 **Winter 1996**

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TEXT

Duncan Kennedy

I don't feel like an outsider in writing about Yale because I went to the Yale Law School, and thinking back on my time there brings up all sorts of images from the late 1960s and early 1970s for me. A powerful image that's stayed with me all these years is one that could be from a *Life Magazine* book of news photos of 1970: a young man and a young woman, Yale undergraduates, handing roses to young men in a row, National Guardsmen called up to line Broadway to protect the co-op and the other shops against looting or just plain civil disobedience at the time of the trial of the New Haven chapter of the Black Panthers.

The National Guard guys were at first terrifying in their uniforms, with their rifles, but then a closer look revealed some upper-middle-class college-kid faces among theirs, not managing to look stony, just embarrassed, averting their eyes as the flower bearers approached them along the sidewalk. A girl asked, "Hey, Joe, what are you doing here?" But there were also working-class faces, and some angry classless "you assholes" faces as well; there were white faces and black faces in the line. The flowers were not innocent.

In a sense they were the equivalent of weapons, an aggression against the kids in their uniforms, as well as against the grown-ups' surreal school play in which they were the "forces of order," and we, the insane disrupters. It wasn't just a play, though, not only because the guns seemed to be loaded but because all kinds of ignored and suppressed and feared relationships among us—strollers, boys and girls, guardsmen—were briefly flushed like birds.

That was a long time ago, and the thread that binds oppositionists down the generations has stretched taut and thin. What does it mean today to join the labor movement, if you're a graduate student at an elite university, thinking of yourself as part of the tradition of humanistic or social scientific culture? One thing it means is conversations with your professors, maybe not many, maybe not long, but highly charged, like the conversations of those days. Law figures here: professors say you have no right to form a union because you are students, or that it's inappropriate because you are apprentices, not workers.

Even if the professor who says this to you is wearing a beautiful suit and tie, and even if you've read his book and would stake your life on his

ability to distinguish between two manuscripts of *Beowulf*, and even if you would feel honored to be chosen to do research for him, his statement is wrong. You do have a “right” to form a union. It is not illegal for you to form a union, or to strike, or to bargain collectively with Yale. Everyone in the United States (prisoners and soldiers maybe excepted) has the right to form a union, it’s not illegal, it doesn’t matter whether you’re a student.

The only valid legal point is that federal labor law, the New Deal National Labor Relations Act, the charter of organized labor in this country, may not apply to you—and I say *may not* advisedly—if you are a graduate student. If, a big *if*, it doesn’t apply to you, then your employer can use a lot of union-busting tactics on you that would be illegal if you were covered by the Act. Under the Act, it is an unfair labor practice to discipline workers for union activity; if you are not covered, and if there is also no state statute that applies to you, then the employer isn’t breaking the law if it fires you for organizing or striking.

It’s no disgrace to be in one of the categories of workers not covered by the federal protective act. The categories not covered include, for example, farm workers, who are not covered because they were excluded in order to get the act through Congress (the forces that lived off farm labor were strong enough to keep them out). The act doesn’t include domestic workers for the very same reason. Not being covered doesn’t mean that Big Daddy Law decided you shouldn’t unionize. Not at all. It means that you have to get your union without His help, that, as the saying goes, “you’re unprotected.”

Repeated a few times, “you’re unprotected” picks up some modern sexual connotations. It means, “We can do anything we want to you, and we might, and the consequences could be terrible. Don’t forget it for a minute: YOU’RE UNPROTECTED.” But when a faculty member says that because you’re a student you’re unprotected, he or she is indulging in legal speculation. As I said earlier, whether graduate students are covered is an open question. The National Labor Relations Act doesn’t say students aren’t or can’t be covered. It does say that “employees” are covered. No court and no administrative agency has decided a case under the NLRA involving students who have the kind of relationship to a university that the typical Yale graduate student teaching a section has to his or her university employer.

My own opinion, speaking as a law professor, is this: if Clinton is reelected and the National Labor Relations Board remains a liberal board, it is probable that graduate students employed as you are will win recognition. Student employees of the type you are will be held to be covered. And all the people saying that you’re not protected because you’re not employees will turn out to be just wrong. If Bob Dole is elected, things

may be different. So when your teachers deploy law against you, you should laugh: they don't know what they're talking about.

Thinking about it as a set of bizarre legal questions is sometimes reassuring, I think, as a way to keep a certain ambivalence at bay. People, teachers and students, who are against the union or unsure about it are sometimes responding to an image of big labor, of industrial unionism, one that might be reinforced if it turned out that graduate students could be employees for purposes of the NLRA. Graduate students would put on hard hats, carry metal lunch pails, and punch the clock; when you could get yourself a cup of coffee would be a question of union work rules, inflexibly set by top management negotiation with top labor bureaucrats. There's a fear of being declassified, which we need to just get over, but also a fear that good things will be lost.

It's not true that the alternative to the status quo is bureaucratic union organization confronting the university at the top, destroying all the one-on-one, decentralized, emotionally charged relationships that graduate students have with faculty. That idea comes partly from what I can only call employer propaganda about unions, partly from the realities of organizing production workers in large factories; but it misconceives what unionization is like when people manage to do self-organization and to create, especially in this kind of context, something like a living labor movement for our own moment, for large and small workplaces, blue-collar and white-collar jobs, workplaces with very different atmospheres.

American labor law is facilitative; it encourages worker self-organization in any form the workers want to adopt. The American labor movement as an organized institution doesn't, indeed couldn't, impose on newly organizing workers any of the stultifying forms employers warn against. There's no legal reason and no social or institutional reason why a graduate student union shouldn't nurture and further good relations between grad students and faculty members, relations based on one-on-one contact, completely flexible relations between individual faculty members and individual students. If there is an issue, it's not what unionization "means" in the abstract, but what forms of self-government you yourselves would choose and how you would feel—not all good, certainly—about having to fight and haggle and compromise among yourselves about this kind of thing, rather than leaving it to the authorities.

Don't forget that no matter how many times you say the word *apprenticeship*, the university acts as a single unitary organization with respect to many issues that affect its own interests, and it doesn't do this in a decentralized way. It sets rates, it decides how many of you to employ, it frames the basic conditions of your lives as workers from the center, using all the power that comes from its own centralized unitary organization. And it

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There's something a little crazy in this part of the anti-union rhetoric. Professors tend to be happy and proud that they, as pure thinkers, have left the dirty work of setting the terms to the administration. They say it's not their fault if you're exploited, because they have no control; then they turn around and say you shouldn't organize to deal with the center because it will chill or kill your warm relations with them as individuals. But why should you deal with the administration as individuals when it deals with you as a unit? And why should organization at that level interfere with your cultivating loving, individual, idiosyncratic relations with them as teachers and supervisors day to day?

The real issues for professors are hard to figure, but maybe they know that they are competing with you for resources and compensation vis-à-vis the administration and doing very well at it, a little better than they'd do if you were organized. And then there is the idea of apprenticeship. This is an idea that I think has real pull, real emotional meaning for many professors and for many graduate students. But like most images or "figures" with that kind of power, it has its dark side, its neo-Gothic, hierarchical side, befitting the architecture of schools like Yale.

We don't have apprenticeship anymore. Legally, apprenticeship used to be the following: It was contractual and you were bound by it, but if you were a minor the contract might be made on your behalf by your father or the local overseers of the poor. It was also a status, because once you entered it you were bound by its rules. When you were an apprentice your master was legally obligated to provide you room and board in his house, and training in his art or craft, an art or craft you couldn't join except through him and the other members of his guild. In exchange, you agreed to work for him and to subject yourself to discipline of two different kinds. If you left you could be brought back by force—the local justice of the peace would return you to the master's household. Within the house you had a duty to obey his commands; he could send you to the local authorities for punishment if you disobeyed or misbehaved. In the 1950s, millions of schoolchildren read a turgid novel called *Johnny Tremain*, about an apprentice in the time of Paul Revere. I remember a horrifying scene in which liquid silver flowed across Johnny's hand . . . things could go badly wrong.

Of course, it's not so simple. Apprenticeship has positive connotations as well. It evokes the truth of filiation, the emotional nexus that sometimes does exist between graduate students in Ph.D. programs and their professors, the element of vulnerability, of self-surrender of the student, the element of good patriarchal and matriarchal emotion and responsibility in their teachers.

One of the things that was most powerful for me as a student at Yale Law School was the experience of disappointment, of the disappointment of my expectations as an apprentice. I was a strongly anticommunist left-liberal who wanted to join the progressive part of the ruling class, to make good policy. I identified, easily, quickly, with the leading scholar/activist professors who were liberals and seemed to have exactly that agenda, as well as access to the power through which one might realize it.

I didn't like radicals in the beginning. I was not a radical. I was radicalized by law school, by my interactions with my teachers rather than by experience in the Movement. One event in particular crystallized my disillusionment. Alexander Bickel, a brilliant, complicated left-liberal professor and intellectual leader, briefly a speechwriter for Bobby Kennedy, was distressed by the emerging, sometimes-threatening rudeness of student activists, particularly that of the first generation of black students in the law school, there because of an admirably progressive outreach program. He was the quintessential liberal-against-loyalty-oaths, but in the spring of 1970 he felt, in utter good faith but absurdly, it seemed to me, that there was a parallel between black radical and white radical activism and Brown Shirt activism in late Weimar. He proposed that every student should sign an oath of loyalty to the "academic enterprise" on admission, with no enforcement mechanism, just as a symbolic act.

It wasn't the proposal that distressed us in turn but our civilized discussion with him. He seemed terrifyingly different from how I had imagined him. He seemed to think we, his students, in a sense his followers, were terrifyingly different, too. At first there was a cool exchange, and then a moment in which he, in which they, a whole generation, really, just flipped. You could see in their body language, in their eyes, that it was revulsion, it was fear, it was shame that we were jamming them from the left.

It was also more anger than we could account for: our demands seemed just the extension of what they had taught us, demands around the war in Vietnam, race, gender, demands for more student power in administering the school. In the moment of seeing ourselves—our awful selves—in their eyes, we thought, and you might think today, "Maybe I am a criminal, maybe we are destroying the academic community." Then you think . . . "Nahh."

The upshot was that they withdrew from us and we from them, a withdrawal that was hurtful but never complete, because we were bound to them willy-nilly, even when we were angriest at them. I think we were right to be angry as well as hurt. As it got more intense, the mean ones among them got meaner and meaner, and the timid ones got more and more timid. Those among the junior faculty who were timid but brave in spite of themselves, or just plain brave, got hurt, sometimes seriously,

were perhaps denied tenure, because they tried to protect us in one way or another, and that's still not forgotten. It sometimes seemed the meanest ones—or maybe just the ones whose meanness hurt the most—were those who had the most unselfconscious confidence that they *were* enlightened American progressivism.

They were the ones who'd say, "Who do you think you are? Bolivian peasants? You are Yale law students." It was tricky, the feeling of being shamed for one's privilege by a person who was unbelievably more privileged, a person saying to you, "Because you are privileged you have to do everything I say."

We didn't do what they said, but in spite of that, in spite of what we thought we learned in our tense, disappointing conversations with them, now we, my generation, are them. We are the faculty who in one school after another bristle, shamed, trapped, cornered, self-righteous, and to my mind often pathetically confused in argument, when graduate students say to us the kind of things we said to the "them" of our own day.

One of your most basic functions as graduate students is to revive the moral sense of your faculty interlocutors by keeping on and pressing them and not even for a minute letting yourselves be carried back into the feeling that maybe you're bad children and maybe you were wrong from the beginning. In this, today's graduate student union activists are more like the militants of the early American labor movement than they first appear. A lot of the fight, all along, has been against the part of us that responds with fear and passivity not just to material threats but to the felt legitimacy of the boss, the master of apprentices. Overcoming that, through the kind of brave actions GESO members have been taking, is to me what's redeeming in the moment of joining organized labor, no less today than a hundred years ago.