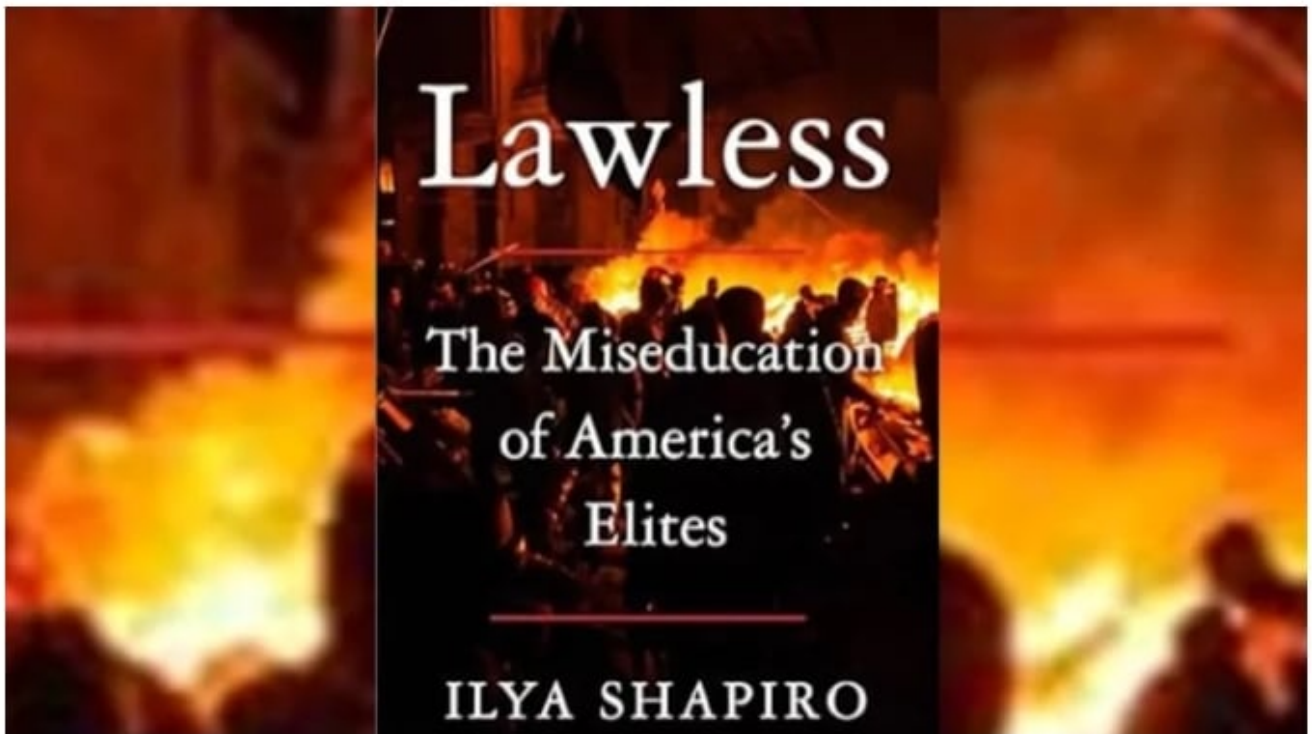


Destroying Legal Education

A new book anatomizes the decline of America's law schools.



By Bruce Bawer

As Donald Trump begins his second term as president with a mandate to undo the damage done to the country by leftist ideology, incompetence, and corruption, one of the many stables that most need cleaning up is academia – which is, of course, the source of virtually all of the most misbegotten ideas that have sent America astray.

To be sure, some parts of academia are more desperately in need of reform than others. As a rule, the elite universities, especially those in the Ivy League, are more poisoned by the new progressivism than most state schools, especially those in the heartland. Humanities and social science departments are worse off than STEM departments. And as Ilya Shapiro points out in his important new book, *Lawless: The Miseducation of America's Elite*, the introduction of woke thinking into law schools is singularly damaging.

Yes, writes Shapiro, it's unfortunate enough if, say, a sociology faculty is selling ideology rather than fact, for it represents "a loss to the richness of life and the accumulation of human knowledge." But for a law school to head down the same road is far more perilous. For these schools turn out the lawyers, politicians, and judges who will serve as "the gatekeepers of our institutions and of the rules of the game on which American prosperity, liberty, and equality sit."

And the sad fact, alas, is that in too many American law schools today, a preponderance of students are the products of classrooms in which, as Shapiro puts it, "the classical pedagogical model of legal education" has been abandoned in favor of "the postmodern activist one" – a process that has been underway for decades but that was greatly accelerated during the Covid pandemic and in the wake of the irrational nationwide hysteria over the killing of George Floyd. Hence those students swallow such dangerous notions as critical race theory and its corollary, critical legal theory, and therefore believe that colorblind justice, due process, and freedom of speech aren't desiderata but tools of white supremacy.

Lawless has its roots in Shapiro's own hellish encounter with this ideological leviathan. It happened like this: on January 26, 2022, the day that Supreme Court Justice Stephen Breyer announced his retirement, Shapiro tweeted that the "best pick" for a replacement was Sri Srinivasan, who, if appointed by President Biden, would be the "first Asian (Indian) American" on the Court. Yet because Biden had promised to name a black woman, lamented Shapiro, "we'll get [a] lesser black woman." After sending off the tweet, Shapiro went to bed – and awoke in the morning to discover that his comment had caused pandemonium in the legal community, where he was being viciously attacked as a racist and a sexist. Shapiro immediately deleted the tweet and issued an apology for expressing his opinion in such an "inartful" manner.

But that wasn't the end of it. As it happened, Shapiro, who had just left the Cato Institute, was scheduled to take up a new position at Georgetown University's school of law in five days. And unluckily for him, the dean of the law school, William M. Treanor, was a wimp of the first order, the kind of craven academic administrator who's quick to cave to the noisiest and most radical elements. On January 27, Treanor issued a statement in which he represented Shapiro as believing that "the best Supreme Court nominee could not be a Black woman."

This was the height of disingenuity: it was clear that Shapiro simply meant that Biden shouldn't limit the pool of possible nominees on the basis of sex or race – a view shared by three-quarters of the American public. But as Shapiro would soon discover, under the current dispensation at woke law schools "what matters is not the objective meaning of a given statement or even its intent but its effect – not the facts but the feelings."

So it was that Treanor ordered an elaborate and expensive "investigation" by a top-dollar law firm into Shapiro's tweet – yes, *an investigation into a tweet*. Ludicrously, it took more than four months – during which Shapiro's new job was put on hold. In the end, the "investigators" concluded that Shapiro had indeed expressed an offensive opinion but permitted him to start work at Georgetown. Wisely, Shapiro decided that, given everything that had happened, Georgetown would not be a comfortable fit for him – at least not with Treanor at the helm – and chose instead to accept a job offer from the Manhattan Institute, where he works today.

If Shapiro, on the night he wrote that fateful tweet, was rather naive about the kind of trouble it could cause him at Georgetown, his learning curve in the weeks and months that followed was steep; *Lawless* is, in large part, a compendium of the things he's learned. For one thing, he's learned that the core problem at law schools, and at universities generally,

isn't the domination of faculties by left-wingers (which has, after all, been a phenomenon for a very long time) but rule by pusillanimous careerists in the administrative bureaucracy who reflexively appease the far left. One of the things that Shapiro has discovered is that on the rare occasions when university presidents and deans actually defend free speech and "truth-seeking" while punishing disruptors, the latter will shut up soon enough.

Unfortunately, the cowards in law-school administration greatly outnumber their more careerist counterparts. And what makes matters worse is that at many universities and law schools these days, the administrators outnumber the faculty and sometimes even the students. Even worse, many of them are diversity, equity, and inclusiveness officers, who have no other role than to serve as academic counterparts of Iran's moral police, ensuring that everyone on campus conforms with DEI protocols – or else. These "political commissars," as Shapiro rightly dubs them, "have little regard for the traditional mission of legal education." These days, of course, there are DEI police at law firms, too – especially the most prestigious ones: "Lawyers at top law firms in New York, DC, LA, and elsewhere constantly worry about saying the wrong thing or proposing to take the wrong client." And under Obama and Biden, the DEI toxin has spread throughout the federal government (a state of affairs that Trump undid with an executive order on Inauguration Day).

Shapiro devotes a good deal of *Lawless* to history – from the history of affirmative-action admissions (which have caused controversy for half a century) to the history of the erosion of freedom on campus (which led to the founding of FIRE, the Foundation for Individual Rights and Expression). But his focus is on the past few years, because, as he puts it, things would be more or less okay if only the culture of law schools had stayed as it was "until about a decade ago" – a decade during which all too many of those institutions have come

under the control of people who reject “the rules of the game” and “the rule of law as commonly understood” and during which the hard-left American Bar Association has increasingly used its monopoly on accreditation to force law schools to bow to woke ideology.

There are, to be sure, positive signs on the law-school front. In 2023, Florida and Texas ordered state colleges to close their DEI offices. Several Circuit Court judges have made it known that they won’t hire clerks from Yale Law School – long considered the nation’s best – because of its “hostility to the freedom of speech and indeed its enabling of mobs who shout down speakers and even the hiring of deans who punish those who deviate from ever-left-shifting progressive orthodoxy.” And Shapiro notes that some law schools have managed to buck the dark trends entirely; even Harvard Law (whose dean is actually conservative) “has mostly staved off ideological mania despite the larger university’s being at the bottom of FIRE’s rankings.”

Toward the end of his book, Shapiro quotes a Georgetown alumnus, William Spruance, as saying that there were three types of people who went after Shapiro for his tweet: “There were the remarkably stupid who lacked the basic skills to understand his statement; there were grifters who saw an opportunity for self-advancement; and there were the invertebrates who saw appeasement as an easy alternative to integrity.” Idiocy, ambition, gutlessness: these are the enemies of both justice and freedom – which, as Shapiro underscores, “cannot exist without each other.” Unless we “embrace real diversity and celebrate the power of debate, dialogue, and disagreement,” he warns, we’ll lose our liberty – and no longer have a justice system worthy of the name.

He’s absolutely right, needless to say. And after reading his book shortly before Trump’s inauguration, I was even gladder than I’d been before to know that Biden and his ideologically poisonous puppeteers (whoever they may be) were about to leave

the room – and that the return of Trump to the White House gives every indication of marking the beginning of the end of the age of woke. But it'll take more than Trump and his dream team to effect the desired transformation in law schools. Alumni, trustees, and professors, for example, can make a big difference by raising their voices against the radical law-school revolution. And we can allow ourselves to hope against hope that, in this second Trump era, at least some of the more pusillanimous law-school administrators will breathe the free air of a new day and learn to grow a spine – and, if not, will be given an unceremonious heave-ho.

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