

TEACHING FROM THE LEFT IN MY ANECDOTAGE

DUNCAN KENNEDY*

There were supposed to be a hundred and fifty thousand people at the demonstration against the looming Iraq war, in Boston, in March 2003. Fifty thousand showed up—lots of us out there by local standards, however pathetic compared to London, New York, or San Francisco. So there we were marching around in Boston, having a wonderful time. I hope we can have as good a time at this conference as we did that day. We felt very sure of ourselves—that we were right—and we *were* right. Afterwards, as events unfolded, we could say we hadn't been mistaken. It was a beautiful day, and it hadn't been stupid to spend it that way.

I was there with my wife and daughter. Everyone was looking around at everyone else as we walked along. It was really different from antiwar demonstrations in the late sixties and the seventies. Why? Because it was totally a family affair. We were a typical configuration: late fifties couple with thirty-something married daughter. People were falling into each other's arms, embracing and hugging and saying, "I haven't seen you in ten years. Is this your son? He's so grown up!" Question: "How has the left reproduced itself during this long period of decline?" Answer: "Through sexual intercourse and adoption."

As I said, there were a lot of us there shuffling along, filling the streets. We came upon a group of about fifteen people stopped in a cluster turned to face the oncoming stream. They had planted several beautiful old Red Flags, much-laundered red flags. They had the typical generational structure—people in their seventies, in their fifties, in their thirties, and there were some teenagers.

They were chanting a slogan, quite loud so we could all hear as we passed. "*Soldiers turn your guns around.*" "*Soldiers turn your guns around.*" "*Soldiers turn your guns around.*" I remember this slogan from the late-sixties. It was originally a Bolshevik slogan addressed by "the workers" to the enlisted men of the Imperial Army at the moment of the Russian Revolution. It urged them to turn their guns on their officers, who notoriously led from the rear, and then spearhead the overthrow of the Czar. Abruptly, I thought I knew who these people were. They were Trotskyists. Yes! They were Trotskyists. Somehow, this completed the day, fulfilled it.

Just as we passed them, we saw coming toward us through the crowd, walking against the current, a person instantly recognizable as a reporter for a local television station. She was young, pretty, blow-dried, done up in sober business attire in the mass of middle-aged casualness; right behind her was her

* Harvard Law School.

cameraman, a scruffy, bearded, dirty looking guy with a long boom mike projecting out in front of him like a giant phallus, coming right towards us. I had—this is part of the story of the left today—the fantasy that they were coming right toward me. In my mind: “Harvard professor denounces war.”

Of course, they went right by us, on a beeline toward the Trots. We turned around to look as we marched away. She walked right up to them; from behind her, the cameraman held out the boom mike so they could chant their slogan for the local news, denouncing in the name of world Communism the imperialist war in Iraq.

The Trotskyists are part of the left. There’s a part of me that was thrilled that they have managed to reproduce, and that there are still fifteen of them (keep it at that level, please); and that they’re still chanting Bolshevik slogans in spite of the fact that the Russian Revolution killed ultimately through Stalinism maybe somewhere between forty and eighty million people all told. They’re a reminder of the evils that the left has done as well as of a part of the spirit of the left that appeals to me—a spirit of intelligent deadly earnestness as opposed to just plain deadly deadly earnestness.

The left is a thing of sects. The analogy is to religion, to the disintegration of universal churches into sects. After the dissolution of universal churches we are all sectarians. It’s necessary for me to have an attitude towards Trotskyism just as it’s necessary to have an attitude towards radical environmentalism, and an attitude towards formally depoliticized human rights people.

Last night on the NPR broadcast of the BBC World News there was a young American presenting data for Iraq Body Count. The BBC reporter asked him, “Isn’t this just your politics?” To which he responded, “No, absolutely not. It’s not politics; it’s humanitarian.” Good. And I felt sort of bad when he then said, “But we’re against the Iraq war.” That was a mistake. I wanted him to go on presenting himself as just a humanitarian, as well as a technician gathering the most accurate possible statistics under technically difficult conditions. That’s the role of his sect.

Every sect has a critique of every other sect as soon as it seems important as a threat or a target. Sometimes co-existence is easy, but at any given time there will be sectarian conflicts that are more important to leftists than disagreements with outsiders. Radical/cultural feminists in our moment are irreconcilably in conflict with queer theoretical/pro-sex feminists and post-feminists. Those of us who opposed this Iraq war may wish we could read the human rights oriented left liberals who supported it right out of the left. But wishing doesn’t make it so, and the sectarian bitterness of today is the bemused tolerance of tomorrow (see above).

The sects of the left are marginal in the current United Statesean political situation, but we are not irrelevant, and we are institutionalized. The degree of institutionalization varies from country to country, but even in the United States where the left is very weak, we are still an element, even when we are invisible.

So this guy on NPR, he is in my mind one of the sectarians of the left; he has an agenda; he's doing something that is actually part of the process of discrediting the war. A lot of the things that have discredited the war have been the products of sectarian initiatives like Iraq Body Count. Without them, the war would be much more plausible, even today with all its catastrophes.

It can be quite subtle. For example, liberal reporters who have no left sympathies are nonetheless conscious of a history of left opposition to the Vietnam War—they can hear our voices through their headsets telling them they are sell-outs, that they shouldn't cower before Fox News. That helps them do the right thing, even if they have nothing but contempt for us, or think we disappeared some time before they got to college.

In the Harvard context—a little Harvard story just 'cause we are at Harvard—we just got rid of the President. His departure under pressure from the faculty was denounced in the press everywhere. Alan Dershowitz wrote an op-ed saying that the “hard left” had “gotten” Summers.¹ This caused the Harvard faculty who had been involved to laugh. But there was an element of truth to the claim. The people who started to organize the assault on Summer's presidency were the remaining “left-of-liberal” people in the Harvard Faculty of Arts and Sciences (we law professors were cravenly subservient to the Bully King). Their initiative would have come to nothing if they hadn't acquired momentum with a much larger group, and if the president hadn't repeatedly played into the hands of his enemies. But it was the left-of-liberals who thought up the idea and pushed the discrediting strategy step by step until he was gone. So it was ridiculous to say the hard left got rid of him; but without the “hard left” it wouldn't have happened.

So where is the left institutionalized? The sects are institutionalized in the United States in the universities, just as the right says. They are wrong only in that, for rhetorical purposes, as they work to purge us, they have to vastly exaggerate our strength, while smearing the poor liberals with guilt by association.

Outside the universities, there are small grass-roots movements that are the lineal descendants of the much larger movements of the sixties and seventies. Some of them surfaced in New Orleans after Katrina, providing an instant alternative to the repellent mainstream restoration agenda.

But the universities are the only place where, when the wave of mass mobilizations receded, there were left on the beach a whole flotsam of networks, larger or smaller sectarian groupuscules. We are linked together and become visible to one another in moments like a protest march (which is not the same thing as a movement, as Maria pointed out²). And there are people wandering

1. Alan Dershowitz, *Coup Against Summers a Dubious Victory for the Politically Correct*, BOSTON GLOBE, Feb. 22, 2006, at A15.

2. Maria Grahn-Farley, *Urgent Times*, 31 N.Y.U. REV. L. & SOC. CHANGE 435, 443–44 (2007).

between the sects, who are interested, who have some idea that there is something there, who don't want to affiliate, who are curious. They have in the back of their minds the existence of a vague left as a potential part of their lives.

So if this is a moment, it might be a moment for two different kinds of moves within the universities, or rather, with the modesty befitting our situation, within the law faculties to which we have some kind of access. An outreach move and a consolidation move.

We might present ourselves a little more visibly and aggressively as quote leftists unquote. We could put up our well-laundered red flags and see whether there aren't wanderers, alienated, demobilized, who would be drawn in at least for a while, to see what we are up to. We could also "revive critical legal studies." That is, we could try to create a venue for the existing scattered left sects within legal academia to get together and sniff each other out, learn from each other, see if there aren't intersections we had forgotten about or never saw 'til now.

This would involve tricky negotiations, but it would be interesting, and there is a moment of energy to take advantage of. I think Maria is right that it comes in part from the homogenizing power of the ideology of the right. The center from which we need to recruit doesn't agree with the right, doesn't like the right, often hates it, and feels utterly unable to resist it or to say or do anything that confronts it in a serious way. We could try to satisfy the desire for confrontation.

In the law school context, and more specifically in the U.S. law school context, because that's the only place I have any idea of what might be possible, my sectarian thought is that there are two kinds of left practice to focus on. One is producing polemical but tightly reasoned analysis and alternatives that are clearly to the left of what American liberals are now willing to contemplate. The other is to help students resist and colleagues resist cooptation into the training machine of the American regime.

The first requires the analysis of the larger society's political dynamics, which include things like the war but also like the incarceration rate for African Americans in the United States. It includes things like the fate of minimum-wage workers and illegals. Not just those things: absolutely every policy issue on which there is a division and as yet no well argued left position, or just one position where there should be several left positions.

At this level, the idea is to develop policy alternatives and classroom materials and teaching protocols that will reinforce the liberals, and also establish a presence on their flank to keep them honest. This is a classic left intelligentsia role, which we can play in the United States, and in a few other countries, just by virtue of the relative centrality of law schools in the policy apparatus of the regime. (Of course, there are many places where it's not a meaningful option.)

We can play a second counter-hegemonic role, because we are situated not

just within a policy generating apparatus, but also within a cadre training operation. The complexly oppressive American system, with its enormous power to draw people into it, is also based on the training of its elites. Law school is not a site for mass movements; law school is a training ground for the elites who manage and develop and produce the system that we are against. Law school is training for hierarchy; law school is a place where the Hessian mercenaries train to carry arms against the revolutionary forces. At the same time that it's a source of policies, it's a source of personnel.

It builds consciousness, a way of being that makes you a willing participant. It makes you a bought-in person who is doing the work of the system and enjoying the rewards of rulership, administering disastrous policy for yourself as well as for other people. That is a psychological enterprise; it inculcates a way of being in relation to the state; a way of being in relation to power in general, and it's taught in law school classrooms. Not today in the brutal Socratic mode of the 1960s but in a much more seductive, in fact, mind-numbing mode. The new, nicer mode is just as much a mode of recruitment, of intra-elite solidarity, as the old hazing mode was, and we can resist this one, too.

So, on the one hand there is the work of confrontation at the level of legal substance, and on the other there is the level of the classroom where the question is the building of consciousness: the attempt to unravel; to resist; to offer students and get from students energy against the system. I don't see the goal as to take over the law schools. It should be to reproduce and grow the left inside law faculties by means beyond sexual intercourse and adoption. That would be a lot in itself.

Such a left should be always looking for alliances beyond the university, but I am not in favor of saying we are the servants of the masses. I think we should build an institutionalized academic movement for its own sake, for what it can bring to alliances, and to be a resource for less privileged people wherever in the society they can find space to resist. But I'm against the idea that we only exist as a resource. We'll never be able to survive and grow if we are in it only for other people than ourselves. To survive in the belly of the hegemonic whale, we have to care for our movement internally through things like this meeting.

You might say we have made so many mistakes, we've screwed up so often in the past, and we've lost so many times, that what's the point? But that's actually the current situation of the right. Their successes in taking power at so many levels all over the world means their disastrous failures create an opportunity for us that did not exist before they'd had their shot and screwed up big time. By contrast, it's been quite a while since we've had a chance to make a lot of terrible blunders.

In this situation, it's not necessary to define the left at all. It's enough to recognize its sectarian structure, and there's no point in deciding who's part of it and who's not really part of it. It gets potentiated at moments of protest; it might develop toward movement. We aren't at a movement stage today, but there are

possibilities. I would say we should take the hopeful attitude that next year, or the year after, we will have a meeting that is three times as big as this one.