

AFTERWORD

PSYCHO-SOCIAL CLS: A COMMENT ON THE CARDOZO SYMPOSIUM

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In this comment, I'm going to talk about what the Cardozo cls symposium tells us about the "state of the movement." The state of the movement, as reflected in the symposium articles, is that it is rapidly institutionalizing itself. The articles as a group indicate that there is a "universe of discourse" called cls, which is similar to other universes of discourse in academia. Within the universe, there are many kinds of professional activity, none of which exhausts in itself what it is to be "involved." There are many different kinds of writing people do, and many different attitudes they adopt, both toward the movement itself and toward its surrounding milieu.

The articles illustrate the crosscutting relations that bind and separate the participants in an institutionalized academic intellectual movement. These are structured along familiar dimensions. A few are: young and old, male and female, veteran and neophyte, insider and outsider, mentor and mentee, and tenured and untenured. All of these relations are powerfully, sometimes overpoweringly conditioned by the place of the participants in the professional hierarchy within which the movement exists.

The articles hint at the problems faced by specifically leftwing intellectual movements that attempt to institutionalize themselves within academic disciplines (in this case legal education) dominated by the liberal center or the right. Cls writing is like cls movement practice in that it takes as an important theme the unity of political, professional, and personal life. It is this characteristic that makes it particularly difficult to discern the fate of the movement from our position in the belly of the whale.

A. Institutionalization

As compared with the recent past, today scholars who identify in one way or another with cls hold a lot of law school jobs. There are lots of law teachers at cls meetings. At some schools there are groups that identify themselves and are identified by their colleagues as "cls

people." Across the country there are isolated cls people who look forward to the meetings and keep in touch with others like themselves.

The tenure system, professional recognition of the movement's existence (if not its value) and the creation of an informal support network have some tendency to stabilize the group. A fair number of the people who wander in will stay in. Job security allows it. Notoriety sometimes encourages it, since some scholars sometimes get some professional recognition through the movement. People come to depend on the network, and so tend to stay in it unless and until a better one comes along. There are only a few alternatives (law and society, legal services, SALT, the NLG) for people who see themselves as progressive. I am not going to say anything more about this aspect of the phenomenon here. I want to focus on the emergence of a universe of discourse.

"In the beginning" (before institutionalization), there was a disconnected set of individuals writing things that were critical of established modes of legal thought, critical on grounds that were selfconsciously politically left. For reasons too complex to go into here, these people did not fit into any of the familiar modes of left attack on the legal/academic establishment. They brought to the emerging enterprise many kinds of left politics and many kinds of intellectual background and interests.

Their early work was directed, from nooks and crannies in the stone walls bordering the high road, at liberal and conservative scholarship passing by. It was, with very few exceptions (none attributable to me), exceedingly decorous in tone. But it purported to devastate, mind you at a strictly intellectual level, the *claims to coherence and also to benevolence* of the capacious world view called liberalism. meaning to include just about everything in American legal thought except left legal realism.

This work consisted in part of internal criticism of politically important bodies of doctrine (contract law, labor law, race law), and of the legal scholarship and jurisprudence that rationalize them. It also consisted, in spite of many accusations to the contrary, of alternative descriptive and normative models. There was a lot of "rethinking." especially of conventional wisdom about legal history, that was supposed to contribute to understanding the world better and making it better, meaning, in this case, more democratic, more egalitarian, and more communal.

There was no cls work about cls work. Moreover, there was, for a good long while, no visible response of any kind from the mainstream

we were attacking. Things have changed. As the symposium shows, we are still doing the things we have always done. (See Casebeer, Feinman, and Blatt, in the more constructive mode, and Freeman & Schlegel as trashers.) *But today a large part of all cls work is about cls work.*

Part of it interprets, questions, clarifies or attacks prior cls books and articles. Another part presents cls for the outside world, changing or at least inflecting it in the process of explaining it. Then there are parodies (see Soifer) and the history of the movement by the movement, written for the movement (and for anyone else who will listen and for posterity). That's the genre of this piece (see also Diamond and Jacobson).

Another (disappointingly small) body of work consists of responses of mainstream scholars to cls critiques they correctly see as aimed at their ideas (see Shupack). There is a quite different literature of what purport to be reports from the field about what is happening on the left. The idea is to characterize the cls movement from an establishment point of view, and in the process discredit it, without more than superficial engagement with ideas of any kind (none of those here).

Then there are mainstream articles whose authors use a more or less summary characterization of what they suppose cls is about as a foil in developing their own ideas (see D'Amato). But there are also coming to be, and this symposium is the most striking example, articles by mainstream scholars that attempt to interpret and appropriate the cls literature for their own purposes (see Chaffin, Bratton, and Yablon).

There is already a next round, in which cls scholars respond to the attacks their attacks have provoked (Tushnet's response to Watson), and we can expect the mainstream pieces in the appropriative mode to have an impact, when they are as good as those of Bratton and Yablon here, on the internal cls debate about what cls was and is, as well as on our understanding of substantive issues like indeterminacy.

The tone of this work, its affect, is now extraordinarily varied, as the symposium well illustrates. The "old" cls tone (in this symposium as elsewhere) is one of earnest censoriousness toward the way things are, along with hopeful but somewhat vague suggestions about how to make things better. It is a little righteous toward the established order, and doesn't display any attitude toward cls itself other than grateful footnoting and acknowledging. But there are now lots of alternatives to this stance.

A parody may be funny and at the same time a somewhat vicious assault on "comrades," suggesting the build-up of irritation inside the movement, the need for a good laugh to discharge it. The intellectual histories may aim to be "affectionate" but they also aim, with the movement outsider's characteristic resentment, to sting the insiders. Or they show the urge of the second generation to cut the first generation down to size, to place its exaggerated pretensions in perspective, to impress with dazzling new talent and dazzling new sources. Cls responses to outside critics waver in tone between murderousness and an earnest impulse to set the record straight for the liberal audience. The new genre of trashing (as in Freeman & Schlegel) may be as dismissive and snide as its liberal counterpart.

Well, one might say, the movement is growing up. It has a complex internal structure, and a complex relation to its context. There are old friendships and old feuds and love crushes and fallings-out and quasi-familial relations between teachers and students . . . an internal class structure, even marriages and babies. My next pan is a glimpse behind the curtain, though only a glimpse, mind you, and not an empirical study of the type we need to establish that cls theories are actually valid descriptions of reality.

B. *Oedipal Riddles*

If an intellectual movement lasts and grows, there will be oldtimers and youngsters, and tensions between them. The oldtimers created the movement. They feel proprietary. In one way, they would just as soon that no one else join it, now that it is a secure, club-like arrangement with a niche in the consciousness of the outside world; on the other hand, it's nattering to be sought out by others. When the others are properly respectful, we oldtimers tend to interpret them as correctly recognizing that we are the best. When they are uppity, we question their motives for crashing our party.

For the youngsters, the movement was always there. This may mean that they feel at home, with all the ambivalence that implies. That's most likely when they were students of the oldtimers, and so heard about the movement at the moment of their induction into law study. But youngsters can approach from afar, signing on the dotted line only after getting law teaching jobs. Then they are likely to feel close to utterly incompetent in cls-speak, socially isolated at gatherings, and outsiders to the intense relationships on display. Such people may well feel the need to find an oldtimer to affiliate with as mentee.

These old-young relationships, whether formed in the classroom

or in the faculty lounge, have all kinds of obvious "oedipal" aspects. The oldtimer is a father in the law, not unlike a law partner vis-à-vis an associate, and for that matter not unlike any other older law professor with a junior. The hallmark of such relationships is ambivalence. Dependence goes along with love but also with hate, repressed through a norm of filial piety. The need for immortality through others goes along with love too, but also with hate, repressed through the norm of parental concern. And the fact that cls is a somewhat embattled leftwing intellectual movement complicates things a good deal.

First, it will be hard for either party to get access to the oedipal dimension of the relationship, just because it is supposed already to be an instance of fraternal revolt, and to some extent it probably is that. The mentee is likely to have rejected other plausible mentors who more closely represented his or her father, or, from another angle, more closely represented the mentee's image of conventional paternal/memorial authority in legal education. The mentors aspire to an egalitarian scholarly community within which you needn't tug the forelock to get attention and no one ever tries to get his way just by playing the card of seniority.

Second, there is an asymmetry between mentor and mentee that is lacking in the "normal case", where society is just reproducing itself through old-young relations. There weren't more than two or three radical leftwing legal scholars in all of American legal education when the oldtimers started out, and almost as few who were interested in what were to become the cls theoretical currents. Of course, the oldtimers had mentors, or they probably wouldn't have managed to become law teachers. But they dealt with their oedipal feelings about senior colleagues in the manner of totem and taboo: they launched a new social context the main theme of which was attacking their elders.

In this enterprise, they had two classic, overlapping justifications for oedipal rebellion: intellectual innovation and political opposition. *As respected authority figures and models of scholarly life*, their mentors had to go or there would have been no cls. In place of fathers, there was the band of brothers (and a couple of sisters).

The cls oldsters addressed the larger community with a feeling that they could make it up as they went along, being just as responsive to its norms as they pleased subject only to the need for approval within the fraternal bond. Given the project, the primary audience was the liberal universe we were trying to change by criticism. The

ability to address that universe in terms that were telling was - perhaps the most important basis of prestige.

We developed a strong norm of not criticizing each other's work in any way that might invalidate it, even within the gossip network among ourselves, but especially in our individual contacts with mainstream scholars. This flat prohibition corresponded to the intense competitive longing all of us felt (and still feel) for outside approval and recognition, a longing that might have torn the movement apart in exactly the way the establishment would have most hoped. The prohibition was also, doubtless, an internal reaction against the fierceness with which we were at that very moment criticizing our elders and betters, a symbolic "taking back" or compensation for parricidal behavior.

The taboo on invalidating criticism sometimes prevents people from getting feedback or just plain help with their writing. It can make everyone nervous about what others really think. (It has the virtue of provoking annoyance in the mainstream, as though it were *incompatible with academic freedom*, or something like that, not to engage in the customary activity of promoting yourself by skillful trashing of your friends.)

It shouldn't surprise, under these circumstances, if the oldtimers have trouble finding viable models of the mentor/mentee relation. I won't belabor this point, except to add that radicals tend to have had early experiences of being left out and feeling illegitimate in standard social contexts—it goes with the territory. Cls is a real-life revenge of the nerds, and nerds by definition have trouble in groups.

The youngsters face an equally wrinkled oedipal situation, even supposing they find plausible mentors among the old. They have to deal with two professional-oedipal contexts. What pleases the elders within cls is almost by definition something that will not please the elders in legal education at large.

From the mentors' point of view, the basis of the mentor/mentee relationship is hostility to the mentors' rejected father figures, along with commitment to developing the cls universe of discourse. To the extent the mentee accepts this, he or she will write things that, first, are unmistakably hostile to the authority figures in the larger community who decide hiring and tenure issues, and second, are largely unintelligible to those authority figures because concerned with the internal development of an alien universe of discourse.

Now add a twist: a cls mentor cannot perform the full range of mentor functions, because he or she cannot be fully integrated into the social/professional world of legal education and still be a genuine

cls type. Worse yet, a cls mentor is likely at least some of the time to be a danger rather than an asset in one's career.

It may be (though nothing is inevitable in this kind of analysis) the mentee is psychologically and professionally dependent on a practically inadequate oedipal figure who refuses to recognize that anyone could have other than neurotic reasons for criticizing him (of all people!) as authoritarian. Mentee ambivalence seems a natural reaction to a mentor who is supposed to be better because anti-authoritarian, but is still an authority, and in this case an authority who can't do his job.

Under these circumstances, the norm of no-invalidating-criticism comes under terrific strain. The elders fear that the young will earn their spurs by attacking, displacing, and surpassing them; or that successful youngsters will upset the delicate pecking order the oldsters maintain among themselves. It's nice to sit around and reminisce about the good old days while deploring the softness of the next generation. And the young can jeopardize the elders' scholarly standing by making it look like the movement as a whole is mediocre, in a way that wasn't possible when cls was a collection of very individual pieces by approximate age-mates.

For the young, it's hard to avoid getting together to trash parental figures, and maybe even harder to avoid internecine criticism when (a) the stakes include parental approval within the community, (b) there are no longer unlimited opportunities to create new reputations (closing of the cls frontier), and (c) the outside world can seem a welcome respite from the intensity of life within the group.

A final twist: the mentor (or the cls group as a whole) may confront opportunities for political action that might endanger the mentee's chances of getting a teaching job or getting tenure. If the mentee is tagged as cls, and cls comes to look particularly evil to the people who actually make hiring and tenure decisions, the mentee knows perfectly well that there will be guilt by association, in spite of the liberal pieties.

Out of this kind of thing can come complexly soured relations, since it is hard to acknowledge what is going on ... much easier to devise ad hoc a story of slights or ancillary crimes that will explain a falling out as just the other person's fault.

C. Sexual Politics

I have been writing up to this point as though all the mentors were men and as though the mentees were without gender. It is true that virtually all of the elders are men, but the group as a whole has

come to include men and women, and men and women of different sexual identification. How does this change things? Totally.

It seems to me there are three crucial aspects to the sexual politics of cls. First, there is desire—between men and women and also between men and between women—with accompanying ambivalent feelings of hatred, and accompanying taboos (both against the desire and against the hatred).

Second, there is the historical fact of the oppression of women by men and of gays by straights. There go along with the oppression all the complex tactics by which oppressed people manage to live with it and to exercise freedom and real power within its constraints. Oppression on the basis of gender is the actual context within which cls came into being—"it's no accident that the mentors are men"—and cls has never been a counter-sphere within which it was absent, even though from the beginning there was self-conscious effort to make cls a non-sexist environment.

Third, there is feminism, a self-conscious reaction against the oppression of women, both in the larger world and within cls. I am writing this with a strong sense that I'm a straight man and not a woman or gay, and write in a way that both consciously and unconsciously reflects that. Just about everyone in cls over the last few years has come to a sharpened awareness of having a gendered point of view, and to act and think in some kind of relation (positive or negative) to feminist critiques.

Desire, oppression, and feminism constitute mentor-mentee relations nine ways to Sunday. This is not because we now bring sex into the equation—the oedipal story thus far is about the vicissitudes of desire, an erotic story. It's just more complex. The subject is so touchy, and my space so small, that I'll pick, without meaning to slight the omitted, just a few aspects.

The context for the sexual politics of mentor-mentee relations is that the internal structure of the conference is unmistakably reflective of the larger patriarchy. Men have much more power than women, and of the body of highly respected writing, much more is by men than by women. The style of discourse is usually classically academic, and academic discourse was invented by men for talking with other men. Most of the time, all participants in the discourse ignore the inequality of power and of cultural presence between men and women (the inequalities are invisible, and women as women are silent), or rationalize them as the effect on a sex-neutral enclave of present and historical oppression in the larger world.

A woman who approaches this institution with feminist inten-

tions, or who finds herself with strong feminist feelings provoked by day-to-day experiences in the movement, will face a very difficult problem in dealing with the men around her. So long as women seem to be mainly interested in participating through cls in an attack on patriarchy in the outside world, we men feel undiluted enthusiasm, at the conscious level, infected only by anxiety about what will happen to our own patriarchal privileges after the revolution.

For the internal challenge, there is much more intense ambivalence, all the syndrome of defensiveness and rage against the feminist critique, a deep sense of guilt, fear of feminist power, and the earnest longing both to vindicate oneself of the charges and to reform for the future. Given the underlying context of desire between men and women, and oppression, it must take a lot of energy for women to pursue the project in the face of these emotions.

It may be tempting to give up, and settle for seducing the men, by treating them as "honorary women" and appealing to the competitive desire they feel for women, into alliance against the outside world. This impulse is likely born *both* of intelligent instrumental politics, and of politically threatening impulses: desire for men, the urge to submit and recreate patriarchy, with all its comforts for the oppressed, within an organization supposedly devoted to overcoming it.

It doesn't surprise me that there sometimes seems to arise in response a feminist taboo on seductive self-presentation and on competition with other women, one that applies even where such behavior looks appropriate to my ruling class, straight, white, male eyes. Then there is the strategy of creating separate enclaves in cls, where women can appropriate and remake whatever of cls may seem of value, without having to deal with the intense emotions the men feel about the meanings of "their" stuff.

There may be a kind of ethic of confrontation, according to which no encounter can be called complete without at least one ritual affirmation of the separateness of men and women acting as political allies. These occasions, like the taboo on seductive self-presentation and competition, and like the strategy of separate enclaves, are made necessary by, but also stimulate and intensify men's many strategies for dealing with the pain of feminist critique in our midst.

One is simply to administer the regime of patriarchy, rewarding women who manage somehow to convey to us that we are all right as men, and ignoring or marginalizing or splitting the women who do not provide this steady stream of affirmative vibes.

Another is to seduce the enemy by becoming the "one feminist

man. " This one is born *both* of genuine commitment against the oppression of women and of unacknowledged fantasies: of hitting the sexual jackpot in what at first looked like the least promising possible situation, of romantic attachment to women without there being any issue of inequality, and so forth. Desire and idealization go hand in hand.

Another strategy is to present oneself to women as a man who suffers, for reasons unrelated to gender, pains and miseries analogous to, if not quite as bad, as those of sexism. The bid is for alliance based on common feelings of resentment and exclusion by the male establishment, or the *cls* elite.

To the extent that any of this is real, mentor-mentee relations between the old white male heavies and feminists will be even more ambivalent and taboo-laden than those described earlier. To begin with, it is an intimate relation and a natural breeding ground of desire. Because it is modelled to some extent on the parent-child relation, it is subject to an incest taboo.

The mentor-mentee relation as developed by us men in academia is unmistakably hierarchical, and it has *even when both participants are men*, a great deal that is reminiscent of patriarchal relations between men and women. The mentor is assumed to know more, and just as important to have more power in the larger world. He is expected to impart knowledge and material assistance in an asymmetrical way to a subordinate whose return offer is willingness to do detail work (while the mentor thinks greater thoughts) and a steady flow of empathy, admiration, respite from the competitive rigors of the world of equals.

When the mentor is a man and the mentee is a woman, the relation may look so thoroughly patriarchal that both parties will be discredited in the eyes of others. She will appear to be playing a *permanently* subordinate role; we observers may conclude that he will not let her and/or she will not dare take the relationship to what we see as its appropriate conclusion of "graduation" to a more equal status.

But there is more to it than that. There is always the possibility of the eroticization of the domination that is inherent in the relationship. (There is also the possibility that the eroticization of that domination will be the route through to equality and love.) Desire may entangle itself with oppression in a way that mirrors what is worst about relations between men and women in general. The homosexual element in a good mentor-mentee relationship between men is likely to be unconscious. If this were not the case, male mentors might ap-

proach female mentees with more understanding of and more skill at dealing with the erotic dimensions of the encounter.

When the mentor is a man and the mentee a feminist, it seems likely she will feel that this is patriarchy in a very pure form. It is hard to imagine a situation in which it seems more appropriate to apply the feminist taboo against seductive self-presentation and competition for men's favors. Yet it is very difficult to get what is to be gotten from a mentor if one is seriously inhibited from entering his or her universe.

It seems likely to occur to him that she can never be his "true" mentee because she has a conflicting loyalty to a body of ideas in relation to which he must remain partly an outsider. It is always hard to deal with the fear of being attacked, displaced, surpassed, hard to deal with envy of a mentee's youth, jealousy when others seem interested in stealing him away. When the mentee is a feminist, these problems may paralyze the mentor to the extent that he just can't give what he's got.

There are many possible outcomes in any real relation between people of greater or lesser good faith and good luck. But desire, and the need to inhibit it first against incest and then against political self-betrayal on both sides can make for tough sledding.

D. Hierarchy in Cls

Here is a sketch of the interaction between the system of mentor-mentee relations and two hierarchies: that of the law school world and that of cls.

Law teachers in cls (this discussion does not apply to lawyers, or social scientists in the movement) have places in the legal academic hierarchy. It is sometimes useful to imagine this as a sort of "net worth" in the academic economy. Net worth is never certain; it is a shifting function of many assessments by many people; there is no single currency to measure it. People disagree about where others stand, and people often seem to assess their own worth higher or lower than many observers do.

The single most important factor is what school you teach at. But one's net worth is also influenced by what law school you went to, and how well you did there. There are also one's publications, one's status in one's legal specialty (measured perhaps by deference at meetings of the specialty) and one's reputation as a teacher. Then there is the matter of associations with people in the hierarchy. Status is to some extent contagious, so just by associating with "in" people one

becomes in oneself, and conversely for association with lower status people.

People's actions in the legal academic career game are constantly affecting their present or potential standing, whether or not they know or care that the game exists. Of course, many people consciously play the game throughout their professional lives, and care desperately about how they do.

Some are better at it than others, and to such an extent that talent for the game must be considered an important factor in explaining a player's net worth at any given moment. But the game is a slow one, except for crisis points like first year grades, entering law teaching through the hiring market, first publication, tenure, an attempt to change schools. The best way by far to predict any person's net worth today is to look and see what it was yesterday.

The most important consequence of your net worth, as well as the most important determinant of it, is how far up in the hierarchy of law schools you can get a job. The schools are entities with their own prestige, partially independent of that of their faculty. Schools try to maximize their net worth by hiring people who will increase it and avoiding people who will decrease it. If your net worth is high for the school where you are teaching, you can often get an offer from a higher status school, and this will increase your net worth (whether they made a good move will depend on the circumstances—it's much more risky for them than for you).

This system has a high degree of legitimacy in the eyes of most of the participants in it. By this I mean, first, that most people believe the hierarchy of schools is based on their quality: higher ranked schools are better schools, with better faculty and students. That they also have more wealth and better job opportunities for students is seen as a consequence rather than as a cause of prestige.

Second, most people believe that the system's judgments of net worth are meaningful judgments of the real merit of those judged, and that most people end up teaching at the law school they "deserve." Moreover, there is enough equality of opportunity in the struggle for assets so that people appear to be in some sense entitled to the places they achieve.

Third, when they disagree with the way others measure someone's net worth, most people put this down to error in the particular case, in the application of valid criteria, rather than to any deeper flaw in the system.

Of course, many people tend to take it as a premise that the legal academic career game is invalid in a number of basic ways. First, it is stacked

because access to assets, like a "good" degree and a "good" job is biased according to race, sex, and class, and also according to politics—it's harder if you're a radical. Second, the criteria of judgment that are applied to academic work and teaching are invalid—bad work and bad teaching are systematically (though not intentionally) preferred to better.

Moreover, the criteria are extraordinarily vague, especially in this period of the disintegration of consensus about legal theory, and those with the power to apply the vague standards in particular cases tend, quite unconsciously, to be biased in favor of unthreatening mediocrity.

Third, there is a culture of professional career competition that is full of bad values, that accepts behavior that should be socially reprobated, and, in general, reflects many of the traits of our capitalism that clsers tend to think should be changed. Fourth, the gross disparities in feelings of self-esteem, as well as income and power, that go along with maintaining a hierarchy of law schools are socially unnecessary as well as unjust. We could abolish or greatly flatten the hierarchy without any significant social cost, and to great social advantage.

But along with this attitude of censure and reprobation, we have, like everyone else, longings for conventional success and recognition. In so much as we are part of the legal academic community, it is *impossible* (not just difficult) for us to be indifferent to its judgments of us. And as in any other group, there are bound to be some cls types for whom their legal academic status, whether high or low, is of great concern.

There are bound to be many more who at least partly accept negative judgments of their professional standing as valid comment on their merit, and who glory in positive judgments. We shouldn't be shocked or even surprised that this is so.

Along with the desire to succeed in legal academia, on legal academia's own terms, cls types feel, just like other mortals, envy and rage against their closest competitors in the struggle for assets, whether or not they are political allies. And they are aggrieved when they feel they have been assessed unfairly according to the very criteria of merit they condemn. We are inside the system as well as outside it.

These contradictory feelings lead to a taboo on the expression of academic ambition, and on expressions of jealousy of competitors, except in so much as these can be stated as objections to discrimination against us because we are radicals or women or blacks. And the norm

against invalidating criticism within cls is partly explained by the danger that these same emotions pose for the movement.

Given such attitudes, we tend naturally to want our own cls scene to be anti-hierarchical, at least by comparison. This means both that status in legal academia should be irrelevant to status in cls, and that there should be an absolute minimum of hierarchy of any kind in cls.

To the extent we have hierarchy, it should be based on writing good articles (whether or not they can find a publisher) and on conceiving and executing good movement actions (whether or not they are successful). Above all, we should avoid the culture of hierarchy that surrounds us, the narcissism of small differences in status, bug-eyed intensity in passing negative judgment behind someone's back.

To some extent, the internal life of cls reflects these ideals. To that extent, the well-defined and entrenched internal hierarchy of cls has at least a bare claim to legitimacy. To that extent, it is all right that people longing upward and fearing downward mobility accept *as valid* the judgments passed on them within cls. But the cls hierarchy is quite obviously illegitimate in a number of ways, and to that extent dishonors the movement.

To begin with, the legal academic hierarchy strongly influences hierarchy within cls. This is sometimes grossly evident, as when people in cls get more attention from other clsers because they teach at fancy schools, quite without regard to how good their work or their activism is. But corruption can also be more subtle, as when the outside world pays more attention to cls work done by people at high status schools, and this attention then increases the prestige of that work within cls. However you slice it, where you teach matters a lot to your life in the movement.

There are cls people at lower status schools who find their careers blocked because they do radical legal scholarship unacceptable to the mainstream. They are likely to feel that this unjust situation threatens their cls status as well. They are likely to be unsympathetic to people already at high status schools who can enter the movement with less risk, and with prospects of high prestige.

The history of cls accentuates internal hierarchy. Status flows from being an oldtimer, a member of one of the founding cliques, and from association with such people. People with status want to hang onto it, even if they no longer "deserve" it, and we all play office politics to that end. The evolution of the cls hierarchy is partly the conscious artifact of initially powerful players, whose judgments have disproportionate weight on the merits of new work and new activism.

To this extent, the hierarchy is not a matter of consensus or collective judgment, but rather an order imposed on the group from above, with a pretense of objectivity manipulated to pursue clique agendas. What difference does it make how good your article "really" is if you are close friends with a cls heavy who can promote you as an ally by praising it?

Many of the most charged situations in cls derive from the fact that the cls hierarchy is corrupted both from the outside and from the inside, so that many people have grievances. For example, a person with high legal academic status, but who is a cls "outsider," finds himself or herself in competition (it could be for almost anything) with someone who has lower outside status but high cls position. Each of these people has a ready made critique of the other.

At a cls meeting, it may sometimes seem that a random group of gossipers is judging, by its choice of conversation, that it is worse for an outsider to be denied tenure at a high status school than for an insider to be "trapped" forever at a lower status school. Or you might become aware that people were wondering whether you failed in your bid for an offer from a prestigious school because your work was too radical, or because it wasn't good enough by the neutral standards of that school.

When your old friend gets an offer from a high status school, while you are "left behind", you may resentfully decide that it was opportunism, or even the appeal of mediocrity that gave him an edge, and at the same time feel subtly impressed, over-mastered in his presence. And hate the whole set of reactions. Or you may find yourself wondering why you weren't invited to participate in this very symposium. Outsiders are ranking us all the time, and a single missed opportunity can cost you "momentum", if not the whole game. And so forth, through a hundred resentful variations.

Mentor-mentee relations play a central part in the construction and also in the corruption of the cls hierarchy. I'm going to concentrate on one aspect of this—the problem of unequal access to mentees.

A high proportion of all law teachers graduate from a small number of elite schools. A goodly number of other law teachers pass through an LLM program at an elite school. Law teachers at elite schools have extensive access to future law teachers. Law teachers at lower status schools have no such access, except for the odd case.

Cls people at high status schools have the chance to find and teach and influence and get to be intimate protectors of the next cls generation. People at lower status schools have to be content with hearing about them, and then meeting them *after* they have entered

the network and made an initial affiliation. Over time, this enhances the cls status of people at high status schools, just because the movement's younger generation is made up largely of their students.

In cls, as in any intellectual movement, an outsider's chance of achieving status depends to a great extent on finding a powerful mentor. Such a mentor can impose his judgment of your worth (partly just because the younger members of the group are in no position to question his eye for talent). He will have an interest in promoting you, regardless of your merits, as pan of his stable. His former mentees are a ready-made informal placement network at your service. Not *necessarily* least important, the high status mentor may have gained through experience some real ability to impart the skills that are the legitimate basis of prestige in the group.

This means that a less "objectively worthy" person who goes to a high status school, and finds a mentor there with high cls status, may have a better chance of getting "on" in cls than a more worthy person who goes to a lower status school, even if he finds a well-regarded cls mentor there. Add to this that the elite school graduates have the asset of their degree, and it is likely that they will be demoralizingly successful at building their net worth in legal academia as well as in cls.

The danger is that unequal access to mentees, and the boost it gives to people from elite schools, will alienate and discourage everyone in the movement disadvantaged by it. That it will breed jealousies that transmute themselves, in the face of the taboo on their expression, into quarrels and critiques that aren't really about what they say they're about. And on the other side, there may be the secret superiority of elite status, which excuses petty arrogance and explains for its possessor the little slights one wants to believe undeserved.

Over the long run, it is easy to imagine cls becoming the analog of, say, the legal process/institutional competence/neutral principles movement, which in the 1950's and 60's scattered elite law students into teaching jobs across the country. They are now middle aged, often just as isolated as ever, a little bitter at the insensitivity of the professorial mass to high thought, a testimonial to their teachers at Harvard, Yale and Columbia. They're mainly a worry to the untenured (beware their quirky hauteur!).

I suspect that we will avoid this fate only to the extent cls manages to retain its dimension of workplace activism. The real life of the movement might be the creation of little movements school by school.

E. Afterword on the Future

It is not at all likely that cls will cease to exist, as a movement or as a universe of discourse, at any time in the near future. We are already far too thoroughly institutionalized for that. But cls has become sufficiently threatening (at last) to the mainstream so that we can expect a whole variety of efforts to contain or roll it back.

There is nothing to say these efforts will fail. And there is no reason to believe that the outcome will be clear any time soon. The prospect is for protracted pushing and shoving, in which it is *to be expected* that the size and enthusiasm and also the respectability of the movement will wax and wane and wax again.

It is paranoid to imagine that the legal establishment will set out in a concerted way to "crush" cls. "This is not the Soviet Union", as our detractors are fond of saying, and there is every prospect that the participants in the pushing and shoving will feel a basic commitment to pluralism in legal academia, or at least to the tenure system.

Yet even here in America, there are lots of things that the liberal center and the right in academia can and will do to limit the growth of radical left intellectual movements. It is just fantasy to think ideological conflict occurs only in an imaginary marketplace of ideas, that institutional power plays no part in it.

The basic mechanism of control is to communicate to radical scholars, especially the young, that their association with the radical movement will be harmful to their careers. There are good cops and bad cops in this enterprise. The bad cops attack radicals frontally. A typical claim is that particular radicals are bad scholars, when judged simply according to agreed standards of scholarship and quite apart from any question of politics.

There is likely to be a clear implication that bad scholarship is produced by the tendency of leftists (or of all ideologues, if the critic is a centrist) to distort things to suit their political purposes. And there are likely to be claims that particular radicals are guilty of non-political crimes, such as incivility or breach of confidence, that are subtly related to the amorality of the left in general.

The bad cop is unlikely to shrink from the conclusion that people of the radical tendency in question should be regarded with suspicion before as well as after they have committed crimes against scholarly objectivity. After all, he can assert in perfect good faith that people's associations tell a lot about them. Moreover, he is likely to believe in good faith that leftists have a tendency to true believer behavior that makes it probable that the sins of leaders will reappear as the sins of followers.

In the background, there are *always* some bad cops who believe in good faith that anyone who is a radical has to be intellectually defective to start with, since on purely objective grounds the ideas of the left are stupid. We all know America is the richest and freest country in the world; Marx's predictions all turned out to be false.

Attacks of this kind are unpleasant for their objects, but their main function is to demoralize other members and potential members of the group, who realize that if they stick around they will be subject to a type of criticism that just doesn't happen within the mainstream. The attacks may be valid or invalid, and they may or may not be successfully refuted. *Whichever way it goes*, it's now obvious that affiliation is a risky business, especially if you don't have tenure or are looking to move up.

The good cop assures other members of the movement, or potential members, that they personally are promising and civil scholars with acceptable politics, and need only avoid association with the discredited ones, in order to assure nameless colleagues that they are as sound as the good cop knows them to be. Where this works, it splits and marginalizes the movement until it is represented only by its most off-the-wall members, those who have for one reason or another given up on respectability.

Then there is the extreme vagueness of the standards for hiring and promotion of faculty. Even when administered in good faith, these exercise a powerful in terrorem effect whenever there are strong political differences between those passing and those undergoing judgment. Not everyone, always, everywhere is in good faith. Still, the greater danger is probably the inherent arbitrariness or randomness of decisions made with the greatest care and earnest commitment to neutrality.

Younger scholars are perfectly rationally and legitimately responsive to this kind of pressure. There are bound to be periods when the pressure seems to be having its desired effect. But the game is a long one, and the "system" is diffuse and porous, at the same time that it is supple and insidious.

Finally, it seems well to mention the twin dangers of self-marginalization and the civil libertarian stance. The first happens when the radical movement abandons sustained dialogue with its liberal and conservative counterparts. It comes to seem boring for those with tenure, just too bruising for those without it. Better to reconceive the "movement" as an enclave of surcease from our feelings of rejection or incompetence in the mainstream.

The civil libertarian stance is endlessly appealing to left intellec-

tual minorities. It consists in the demand that we be allowed to hold our unpopular opinions without molestation or discrimination, as representatives of the claims of conscience.

In return, we might offer to remain passive in our workplaces, never to *do* anything that might change legal education or the image of law in mass consciousness, merely to opine freely about this and that. We might survive in the manner of the European left intelligentsia, as respected cultural figures without practical impact on any context.

But it is well to keep in mind that like oedipal riddles, sexual politics, and internal hierarchy, these dangers of the future are purely and simply the fruits of success. It was hardly probable that in late '70's and early '80's America there would arise anything like the critical legal studies movement. And if we've been lucky in the past, why shouldn't we be lucky in the next stage?

Pessimism of the intellect, optimism of the will.