

**MY PATH TO LAW AND MODERNIZATION AT YALE, 1968-70:  
A MEMOIR OF RADICALIZATION**

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*In his paper for this collection on the history of the L&M program at the Yale Law School and in several other papers, David Trubek "affectionately" attributes a role to me, as a sort of angel of destruction or a fox in the chicken coop, a "nightmare." This is exaggerated! I did, however, play a part in supporting the emergence from the program of legal academic projects--the Law and Society Association, the field of law and development and critical legal studies--that rejected some of the meliorist liberal Cold War assumptions of the program's initial formulation. This paper describes the personal, political and intellectual trajectory that brought me, like many others of my generation of children of the 1950s liberal establishment, to redefine myself as a "radical."*

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In his paper for this collection on the history of the Law and Modernization program at the Yale Law School and in several other papers, David Trubek "affectionately" attributes a role to me, as a sort of angel of destruction or a fox in the chicken coop, a "nightmare." This is exaggerated! I did, however, play a part in supporting the emergence from the program of legal academic projects--the Law and Society Association, the field of law and development and critical legal studies--that rejected some of the meliorist liberal Cold War assumptions of the program's initial formulation.

This piece is a contribution to the history of the Program and an homage to its organizers, Dave and Rick Abel. It is also a memoir of political radicalization. It narrates my path beginning at the age of 18 with a year in Paris before entering Harvard College, through a summer internship in Sekou Toure's Guinea and then two years after graduation working for the Cold War student operation of the CIA. Then to the Yale program just getting organized. Radicalization as it happened to me was an internally compelled repudiation of the American imperial project in which I had collaborated and also against the liberal American political consciousness that I grew up in. The piece ends at the search for a job in legal academia which seemed at the time, for all its compromises, to be a possible site for a radical intellectual/political project.

The Program encouraged intense academic discussions among and between students and teachers who understood ourselves to share a deep intellectual, political and often affective bond. Radicalization was a generational experience although of course be no means universally shared. It was simultaneously about the role of the US in the world, Vietnam and the imperialist project in the background, and equally about the dramatic crisis in race relations as black opposition to white supremacy turned to various forms of violence. Although we were all pre-boomers, assistant profs and graduate students, it was no less intense than what was happening on college campuses.

For all that, it is true as Dave affirms that I was vocally critical of a basic premises of the program: that making the legal systems of "underdeveloped countries" work better according to the model of the US legal system would be in the interest of those countries because it would promote economic development. My skepticism extended to the foundational idea that "modernization" itself, understood as economic development based on industrialization, with accompanying societal and institutional changes, was a benign as well as inevitable process (as long as it did not devolve into communism).

This point of view was different from the other critique of the program from the more Marxisant student participants, including Boa Santos, Mark Tushnet and Rand Rosenblatt. My critique was cultural modernist and existential but not nostalgic. It was more inspired by anthropology than by the "laws of capitalist development." It was the end point of a particular trajectory if something so convoluted can be called by that name. Some such story lies behind the arrival of

each of the L&Mers who emerged from the chrysalis of dying Law and Modernization to be principal architects of Law and Society, Law and Development and Critical Legal Studies.

In the first part of my paper I am going to describe how I came to my "nightmare" views. It is not a history but a narrative of my own transitions from "before," to law and modernization, to critical legal studies. Then I will speculate from my rocking chair about the larger sociological context that led to our collective sense of epistemic break.

An important moment in my life with a lot of significance for the choices I made as a participant in the Law and Modernization Program when I was a student and then in the birth and development of CLS was... a year in Paris right after graduating from Phillips Academy Andover, an elite private boys' boarding school. I worked changing travelers checks in a French bank for the equivalent of the minimum wage, a job acquired through a family friend. In Paris, 1960-61 was the political crisis of the French war in Algeria. I followed this in the French press and experienced the various forms of day-to-day and night- to-night police control that the de Gaulle regime imposed, faced with the FLN's Parisian operations, the street demonstrations of anti-war organizations and the "revolt of the Generals" in Algiers, beginning extreme right-wing violent resistance to de Gaulle's "betrayal" of the settler cause (April 1961).

Reading the opposing newspapers and amazing news magazines of the French political tendencies, along with a beginning bit of French political literature (not theory) was astonishing because nothing even faintly like it existed in the U.S. It was "a whole new world" and a whole new way of thinking about politics. The key difference, in retrospect, was the emphasis on debate, denunciation, critical analysis of opponent's positions, grounding of discussion of contemporary issues in conflicting understandings of French society and French history.

The French political discourse was not just superior to what I was accustomed to follow with interest in the New York Times or the New Republic (then liberal or from Public Radio or Walter Cronkite, both liberal and high-toned. (I hadn't found IF Stone and I remember being turned off by The Nation but not why.) It seemed then that our guys were like stumbling and obtuse children when they tried to analyze and like blatant soft-soaping apologists for an idealized version of American life at home and role abroad when they were just thoughtlessly nattering on.

In the debate of the time, I was completely sympathetic to the Algerian independence cause, which meant sympathetic to the FLN, a far left but not communist "Third Worldist" political formation proposing socialist transformation of Algeria after independence. I thought their decision for armed struggle was ethically and politically justified. I "understood" the tactic of

bombing the cafes on the Corniche where white settlers ritually gathered for evening aperitifs. I was against the CIA's attempt to overthrow Castro (also April 1961).

The year I was in Paris was the "year of African independence," as Britain and France granted independence to a dozen colonial possessions. But in the press I was following there was already intense interest in Guinea and Ghana, each of which had followed a confrontational path and gained independence two years and three years earlier, under a cloud of mainstream suspicion that they were crypto-communist or at least went "much too far" in that direction, possibly "threatening western interests" across the Continent.

This was the beginning of my interest in Africa, which endures to this day. I think the initial reason for it was the sense of white American collective guilt for the enslavement and then oppression of American blacks, which seemed to require sympathy and support for black Africans as they escaped from colonialism. I was influenced by a radio address of Malcom X in the summer of 1959 shockingly asserting that white oppression of blacks in the US was bad enough to justify a demand for political autonomy within the federal system.

Africa meant sub-Saharan Africa. Another element was admiration for African art, initially inspired by familial reverence for Picasso. Because I thought of myself as a leftist, a democratic socialist, it was crucial that African independence in that moment signified not just the transfer of sovereignty to new African states but also dramatic experiments with new but also specifically African forms of post-colonial socio-economic development. Senghor and Nyerere figured along with Nkrumah and Sékou Touré.

These views were consistent in my mind at the time with unequivocal anticommunism, meaning rejection first of everything Soviet and second of Marxism as a theory/doctrine. I believed that the Soviets were pursuing with scary success an agenda to turn as much of the world as possible into satellites, provinces in an empire based on state violence. Darkness at Noon. The God that Failed. Koestler and a little Raymond Aron.

This view was consistent with the idea that the US was not an imperialist power but rather an advocate for the colonized against their British and French masters. The Suez Crisis for example (1956). US foreign policy appeared to me to offer significant economic aid and technical support to the ex-colonies' efforts to develop, aiming to dramatically increase economic well-being, GDP per capita being a good approximation. True, this stance of support for the newly independent states was motivated in part by the desire/need to counter Soviet influence, but I saw that as a major virtuous element of US foreign policy (and I still see it that way in retrospect, having lost none of my anti-Soviet-communism convictions). It was also obviously motivated by rivalry with Britain and France, also fine with me because it served them right.

When I got to Harvard with this background I majored in economics but I also took in the first two semesters a graduate survey course on African anthropology taught by Elizabeth Colson (and later a course from Darryl Forde) and Political Sociology, an introductory course taught by William Gamson (a visitor) that was heavily on Weber. I was immediately a "Weberian," but the classical works of E E Evans-Pritchard, Meyer Fortes, S F Nadel, and A R Radcliffe-Brown completely changed my budding understanding of how life works. They provided a deep--I would say profoundly thought-through--alternative view of "pre-modern[isation]." Infinitely superior to the culturally obtuse liberal economists and equally to the caricature of Marxism that usually figured in the first lecture of economics and history courses.

That spring I decided I wanted to get a summer job of some kind in Africa. I went through many typical routes, and then somehow was put in touch with an opening as a "stagiaire" (intern) working for Pechiney Ugine, the co-owner with Alcoa of a giant bauxite mine in the aforementioned Guinea. That was great but I didn't have the money for the trip. Then by what seemed utter chance my father called an old friend and architectural client named Tracy Barnes (yes the architect not of a summer home but of the Bay of Pigs invasion) and he somehow got me New York-Paris round trip tickets and I paid my way to Conakry from there.

I set out believing, remember, that African independence meant autonomy and development and the creation of new forms that would be better than, and transformations of, established communism and capitalism. I was a believer in a third way for the Third World. Three telling experiences: The intense even obsessional racial hatred for Africans and Africa of the French expatriate mini-society, who were paid triple home country wages and beautifully housed for free around the mine. Second, the frightening Sékou Touré surveillance regime making the African personnel of the mine afraid to say anything at all any time anywhere about any aspect of politics. (My brush with it is another story but made it real.)

Third, one time in Conakry, far away from the mine, I fell into a long open-air conversation ("the walls have ears") with an intelligent well-informed African who worked low level in some government agency. His message was simple and convinced me because of his cool objective presence: the regime is totally bad, incompetent and vicious, there is no African democratic alternative, the only thing to hope for is development as close to the American (not European) model as possible. And there was nothing in the world he would like more than to emigrate to the US.

Back at Harvard, the econ department was overwhelmingly moderate liberal; neo-liberals (Milton Friedman) were mocked or disdained. So was any kind of interest beyond orthodox marginalist modes of understanding of anything. There

was simply nothing visible on their left boundary. They did deliver the valuable goods of training in that narrow viewpoint. Against their grain, I took a course with the notorious brilliant Edward Banfield and became his research assistant—trying to pick the dead-on critiques of liberalism from the basket of his reactionary views.

I got a second job as research assistant to Perry Berg, who taught the only course in the school on Third World economic development (elsewhere it was all about abstract "growth models"). He specialized in African development. He agreed to supervise my thesis, but gave me no feedback at all. Maybe because he was not sympathetic to anything leftish, but I failed to note that he was waging a doomed struggle to get tenure.

I chose as my topic "Economic Dominance in the Colonial Relation: A Case Study of Nigeria." I realized that there was just no data about most of the things you would want to know if you wanted to understand either the past or the possible futures of African economies. The thesis began with an extended presentation of the theory of economic dominance developed as an alternative to and critique of both standard neoclassical and Marxist accounts of economic power. François Perroux and Jean Lhomme. Fluency in French acquired in Paris. I could find no English language account that was even slightly useful. The thesis then documented the ways in which the British exploited the Nigerians, making a sharp distinction between power exercised "within the rules" and "power to change the rules." But my visit to the Langdell Library culminated in a very nice librarian explaining that it was not possible to check out "the laws of Nigeria" because it was a "common law system" and the "rules are in the cases."

I was disappointed with my dissertation because I could not figure out how what was obviously exploitation worked "structurally" so as to be invisible to the eyes of the marginalist economist, not to speak of the liberal man in the street. When I graduated in 1964, Perry Berg hired me to be the junior member a Development Advisory Service team for a one-year stint in Liberia. I got sick, couldn't go. Perry Berg did go. (He didn't get tenure but those of you who are Africanists may know him as the designer of the Washington consensus neoliberalization of aid to Africa through the Berg report, which he wrote in 1980.)

During a full year of recovery, I enrolled in the Harvard economics Ph.D. program, where I discovered that I didn't have the math skills necessary to be an academic economist. After getting married, my next move was to apply for and get a job with USAID in Chile. My tentative career goal was to get training as an economist specialized in design of programs to produce development in the underdeveloped world. I was an anti-imperialist in the sense of anti-colonialist person, but I also aspired to be a technician, a professional specialist. And I took for granted the idea that the Chileans, for example, needed technical assistance from people trained in economics. I had felt a little queasiness about agreeing to work for the

notoriously corrupt and baroquely dictatorial regime of William Tubman in Liberia, but it seemed worth it for the professional opportunity.

In the case of Chile, I thought that the US support of Frei, who claimed to favor large scale land reform and the other elements of the Alliance for Progress program, was politically correct. I didn't try to understand the program of the Chilean socialist party, led by Allende, just assuming that it was radical in a way that made it impractical or worse compared to the Frei approach. The marital exemption from the draft was eliminated the year we got married. As we began planning what to take to Chile, USAID notified us that it had lost its ability to grant exemptions. If I went to Chile, I would be drafted. It was too late to apply to graduate school to qualify for a student exemption.

I took my next and I thought only option for avoiding serving in Vietnam, which was the CIA, having been connected the year before through the National Student Association, scouted by Paul Sigmund (who appears in Rick's story). So I went to work for the CIA for two years--one back to Paris and one in Washington at the Langley headquarters--and got out of the draft. The politicization that I'd had before working for the CIA, in Paris and at Harvard, was an anti-colonial form consistent with believing in the American mission to help the newly liberated countries develop economically and autonomously. My time in the CIA--at the height of the Vietnam War and also at the height of the United States chaotic crisis of race relations beginning with the ghetto riots and then the radicalization of the civil rights movement--shattered my belief that the liberal establishment then or ever had such a mission.

I came to the internal realization that I actually was against the government, against the "national interest" as liberals understood it. The liberals of the Kennedy and Johnson administrations, to whom I had been connected intellectually and in life ever since childhood, had been "revealed" as deeply in the wrong across the whole range of hot issues of the time. I was a Cold War liberal when I arrived. When I left, I was just a left liberal. Then we had a child, which got me out of the draft. So I went to the Yale Law School. It was totally the logical thing to do because the Yale Law School was the progressive law school, as opposed to the conservative law school, which was Harvard.

Yale Law School 1967-70 was an intense decisively formative experience. In my own understanding, I was radicalized, along with millions of students all over the world in relation to the liberal establishment, the state, the whole range of civil society institutions and the educational system. Not only was I no longer a Cold War liberal, I was not a liberal at all, either domestically or abroad. By the time I left I identified with radical left opposition, rational and nonviolent, to "the system." The Prague Spring, which began in January 1968, discredited the idea of a Soviet threat to Third World autonomy and after the Tet offensive (also January

1968), I found myself hoping for the defeat of the US in Vietnam. One way in which I formulated this to myself was that Todd Gitlin and Tom Hayden, each of whom I had met and dismissed as utopian and nastily sectarian, had been RIGHT ABOUT EVERYTHING.

The second drama was culture, the culture of the sixties in full force. Its impact was as powerful for me as political radicalization. It was critical as well as affirmative, pushing hard against the uptight, closed down quality of the liberal patriarchy who ran everything. They were frozen and nasty or ineffectually too nice to stand up for themselves.

The third was legal realism, inaugurated bizarrely by Alexander Bickel who, one day after I had been acting up in his Administrative Law class, took me aside and suggested with a hint of irony I didn't understand that I go to the Library and read Karl Llewellyn (never heard of him), "Toward a Realistic Jurisprudence: The Next Step." That was the only mention of legal realism that I can remember from the mainstream professoriate.

The fourth was structuralism, flowing from my yearning and longing to be that apogee of humanity--a European intellectual. Levi-Strauss, *The Savage Mind* and Piaget, *Play, Dreams and Imitation in Childhood* changed the way I thought about law and then beginning to read Marcuse, *Reason and Revolution*. I brought all of this to Dave's L&M seminar in the spring of 1969. It was the stage for an amazing confrontation, as Mark Tushnet pointed out in his "Political History of CLS." The question was how much of the modernization paradigm was consistent with having read some classical social theory, Durkheim and Weber and the others in neatly labelled packets on the bookshelves of the "theory wall" in Dave's office.

The seminar drew us into the program activities over the next two or three years, which seem in retrospect to have been the starting point for critical legal studies. Dave managed the program in the mode of open-minded willingness to engage absolutely anything anyone wanted to propose. Any level of critique. He had no loyalty to the paradigm at that point. He had moved on or out into the open, leaving behind, in abeyance so to speak, the "set up." Cold War anti-communist politics, Cold War liberal social science, Cold War liberalism in public and international law, a very basic sense of American exceptionalism, that "no one is perfect" but there was enough goodness in American motives to make participation unproblematic...well maybe, maybe not.

Of course at the same time he was way further immersed in the sacred texts than we were and beginning his path to "Scholars in Self-Estrangement," the seminal text of post-Cold War law and development studies, grounded in participant observation of the emergence of a new Brazilian capital market. In the background, out of our sight, Rick and Dave and some other junior faculty, were in rebellious tension with their older colleagues over basically both the race and the anti-war issues that were producing confrontational student activism within the school.



My attitude was much less open minded than Dave's. I believed, on the basis of my own limited experience and my own relatively shallow study, that the westernization (not modernization) of the cultures and societies and polities of the colonized world was tragic when it wasn't criminal. The imposition of western (English, French, Dutch, Spanish, Portuguese, American) legal systems on Third World countries was a principal instrument in both scenarios (tragic and criminal), not because it wasn't sufficiently pragmatically liberal but because it was stunningly destructive.

It was a modernist, cultural modernist, but also an anti-imperialist political critique of what the Third World was becoming, subjected to the influence of Western law, culture and economic policy. It was equally about the devastated feel of Conakry's and Nairobi's endless urban in-migrant sprawl, the tight grip of neocolonial and new colonial (the US) powers on what innovation could conceivably take place, and ... the idea that something was being quickly lost never to be replaced. In retrospect I failed to see through the dystopian fog to African resilience and creativity in the new situation.

What was lost through urbanization and long distance labor contracting, just for openers, was the thing the anthropologists had obsessively recorded, romanticized, and mourned: the coherence and survivability of myriad tribal cultures each with a different set of answers to the eternal questions (family, economy, governance) developed in comparative isolation and thrillingly disobedient to the supposed universal truths of the liberal North Atlantic. I wasn't sentimental. But if you asked what had been sacrificed for meager economic gains and political and cultural subordination, the answer, I thought, was "a lot." My "line" was transformed when I thought to look seriously at the work of J S Furnivall. In my thesis I mention him but I have no memory beyond that. His biography belongs in the text here, not in a footnote. I am still thrilled by his story (as it appears here-- who knows what really happened). For me then and today his life of deep engagement from a high elite position with his society's subaltern victims was a model. But already in 1969 I thought it was almost certainly just "too late" to think of it as a conceivable future for anyone in our time. Here's what I knew about him then—I'm hoping we'll soon learn a lot more. J S Furnivall 1878-1960. Undergraduate degree Cambridge natural sciences. Indian Civil Service posted to Burma 1902; that year married Margaret Ma Nyunt, who died in 1920; two daughters; retired from the ICS in 1923 but stayed in Burma; in 1924 founded the Burma Book Club. The members included young Burmese nationalists agitating for independence from Britain. Some went to Japan after the Japanese invasion, with the promise that Japan would free Burma. Furnivall spent the war teaching at Cambridge, advising the British government on South Asia affairs and drafting policy proposals for an as yet hypothetical independent Burma. Two years in the Netherlands and Netherlands India (Indonesia) studying Dutch

colonial policy. Published "Colonial Policy and Practice" in 1948. In 1948 he returned to Burma as National Planning Adviser in a government including the some of the young men he had mentored in the Burma Book Club. In 1960 he was expelled (with other expats) when General Ne Win came to power, beginning twenty years of authoritarian rule. He returned to England and died that same year. In development books of the time he is mentioned for the theory of "plural society." Colonial and post-colonial societies divide between a modern and a traditional sector with minimal interaction, other than the modern extracting from the traditional for the world market while undermining its cultural cohesion.

He was far too dark for the mainstream Cold War development discourse of the time, and his advocacy for education and cultural reinvestment in the traditional sector before granting colonies independence made him seem at best outdated and paternalist. But I loved him. What he added was a big step along the path from my frustrated attempts to understand economic dominance exercised through the rules of the game of economic life. First, the legal rules imposed by the British interfered with local custom. Imposing their private law regime of absolute property and freedom of contract was a shocking intervention, leading to social devolution in the direction of Durkheimian anomie (suicide rates, random violence).

Assessing the effects of the legal changes did not have to be, indeed should not be, just about GNP per capita, which had of course skyrocketed on paper with the opening up all over the world of the trade in colonial raw materials and cheap European textiles after the destruction of local manufacture. The economic future was hostage to the political consequences of cultural/demographic transformation. All of this cohered both with my anthropological affections and with the modernist critique of modernity in the metropolises.

I was in a way happy that Furnivall was not a lawyer. There was nothing I could find about the particularity either of traditional legal regimes or of the liberal colonial legal codes that followed them. Although Western law was a serious villain, he was vague about how it worked and vaguer about the key category of "local custom." There were persistent references to van Vollenhoven and Indonesian adat law, but I was gone before I could follow up.

My Burma paper for David's class tried to complete the dominance analytic using Furnivall's Burma material to identify private law as key to the whole dystopian tale. This meant adding a post-realist understanding of contract and property law as particular interventions among the many possible rather than just as the "Western law" that followed automatically from the colonizer's decision to modernize. Too bad Dave somehow lost his copy and I lost mine so we'll never know how I thought to accomplish this feat.

Dave arranged in the spring of 1970 for an exchange between Yale L&M teachers and students and Henry Steiner's somewhat parallel program at Harvard Law School. There was a visit by Henry and his students to Yale and then a visit by us

to Harvard. My memory of the Harvards in New Haven is completely dominated by the presence of Roberto Unger, then an SJD student at Harvard Law School and already a friend and protégé of both Henry and Dave from their time in Brazil. We hit it off and became close friends, at first through a continuous and exciting set of agreements and disagreements. As I remember it (major caveat), we were in perfect agreement about the inner contradictions of the large Liberal and smaller liberal legalist creed. But we sharply disagreed about the consequences of internal critique. Roberto was on his way to a reconstructive project. I had a much more irrationalist Nietzschean decisionist take on our common "post" situation.

When we went to Harvard, the big event for me was Morty Horwitz' presentation of an early draft chapter from his book "The Transformation of American Law." He put on the table a highly original, coldly distributive analysis of changes in economically salient legal rules, things like nuisance law, that the late 19th century American legal elite carried out under the guise of science. In his story it was all in the interest of dominant economic forces but according to a logic of capitalist growth. There was no legal necessity at work in his post-realist story and the Willard Hurstian narrative of growth through "release of energy" was condemned for ignoring the effect on its victims. It was all about economic interests underlying ... private law rules.

Again, we hit it off and became close friends, agreeing completely on the idea of bringing a radical post-realist distributive analytic to private law. (No Pashukanis for us!) We disagreed sharply about how to understand "economic interests," economic forces and economic development as the historical process behind the rules. I was much less "materialist" than he was and also committed to neo-classical marginal analysis as key to unlocking bias. Where was Marxism in all this? I don't believe that either Roberto or Morty had studied Marxist economic theory with any seriousness (and I know I had not), although Roberto not long afterward introduced us to Lukacs's "Reification and the Consciousness of the Proletariat" and to Marx's "Essay on the Jewish Question," which became key texts in the first generation of CLS and fit perfectly into our theory preoccupations.

Rand Rosenblatt and Mark Tushnet, as I experienced them, were much more serious about Marxism as a way to understand the economy than we were. They exerted a friendly pressure and were rewarded as more Marxist people arrived in the early years.<sup>2</sup> Where was feminism in all this? Feminism was in the national news as something that was happening somewhere else, caricatured and eliciting panicked reactions. My memory is that it appeared at YLS for the first time in the fall of 1969 when some of the small number of women in the school organized a

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<sup>2</sup> For myself, reading the Marxist tradition in a study group organized by Karl Klare starting in 1977 and lasting many years was transformative.

series of discussions of gender issues and disinvited the few men who asked to be included. Guys were divided as to whether this was a good or bad idea. I thought good. Gender was absent from the L&M agenda.<sup>3</sup>

The Law and Modernization Program was one locale of the restructuring of the legal academic field that occurred quite abruptly around 1970. The key feature of the new regime was the creation of satellite fields that coexist with a practically unchanged academic core. The new fields are characterized by the opening to history and social science and "theory" of various kinds and their relative politicization. The sociology of law, law and development and obviously critical legal studies were and are part of this. The result in the case of these three was a new way to be and work as a left leaning law professor. Law and economics as developed by Guido Calabresi at Yale and Richard Posner at Chicago emerged at exactly the same moment with the publication of "The Costs of Accidents" and Posner's seminal but now little remembered article attacking restrictions on worker freedom of contract as hurting the people they were supposed to help. There were obvious parallels between the two developments.

The story of how Posner and Calabresi managed to secure research funding and get jobs for their proteges who would be second generation and then third generation personnel of liberal and conservative branches of a new academic school of thought is by now familiar. They were full professors before they mounted their challenge to mainstream doctrinalism. The story of L&M and therefore of the petri dish for CLS is still obscure but requires an account of how its assistant professor creators came to be in a position to spend a million dollars on a more and more leftish enterprise.

At the moment they got their jobs, in 1966, what I and those of my contemporaries who were "in the know" understood to be "the system" was at its apogee. The basis of the system was the amazing cultural/ideological hegemony of a particular form of pragmatic liberalism, one of whose bastions was the elite legal profession. Without social scientific basis that would have satisfied Rick Abel the empiricist, we "knew" that elite law schools trained students for different kinds of elite practice and most students were moderate liberals or conservatives destined for good lives as pillars of mainstream America.

But the elite schools had another much more exciting and exclusive role in training a super-elite subset of the liberal student body for greater things. This subset of liberal students followed a particular career sequence that began with performance on exams in the first year and then achieving contact with an internally powerful professor or professors whom one met by taking their seminars or small courses. Professors compared notes from the beginning of the

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<sup>3</sup> Dave and Louise had been plaintiffs in a companion suit to *Griswold v. Connecticut*, the famous Connecticut birth control suit. They were much more clued in than I was.

first year about which students might be emerging as the next stars/recruits, with complete confidence that they "knew one when they saw one," as Potter Stewart charmingly remarked about pornographic movies. Good grades were not enough. Nor was law review membership. To achieve menteeship, one had to pass a test of style, social skills and political adeptness. And one had to convey that one understood the odd play of bland legalist appearance with bluntly political subtext that was the mode of pragmatic legalist discourse. Without descending into "legal realist nihilism" or cynicism.

For a future staffer within this liberal ruling corps, the first skill was the ability to propose and defend a legal solution or a policy proposal on the basis of a contextually sophisticated multifaceted path to a conclusion based on the boss's or client's or mentors' internal line within the liberal pragmatic consensus. It is crucial to understanding this universe that it was a Wasp/Jewish alliance. The old super elite Wasps within the liberal elite corps systematically passed over their mediocre sons and golf partners' sons in favor of upwardly mobile or old money Jewish or half Jewish job applicants with better resumes and connections inside the pragmatic legalist professional corps. The contrast with the combination of anti-Semitism and (less virulent) anti-Catholicism in the white shoe firms made this path even more attractive than it would otherwise have been.

The internally powerful liberal professors were in contact, in some way, to some degree, with powerful liberal lawyers in the large law firms and in the executive branch who circulated back and forth according to how much power liberal Democrats and liberal Republicans had in Washington. They placed the elite students in clerkships with important liberal judges (not just on the Supreme Court), and in bright young staffer jobs after clerkship, and siphoned off some of them back to be assistant professors. Young law professors circulated to Washington public sector and think tank gigs and back in early stages of their careers according to the fortunes of their mentors and, if they were "successful," could end their careers as professors/politicians exercising the power to place their own favorites in the bigfirm/Washington/elitecademe complex, or perhaps retire to the bench.

This looked good to me trying to decide my next step after my second year as a bright young staffer in the CIA Washington headquarters. But it was clear that the selection process was profoundly arbitrary, combining favoritism of some students based on the intuitions of the mentors and the seductions of student aspirants, with plain randomness. Dave and Rick seemed to illustrate both the narrow entrance gate based on law school grades and the central position of mentors, along with a strong dose of randomness : the powerful men in the system were so confident in the solidity of their hegemony that loyalty tests

seemed absurd and so confident in their intuitions about which bright young staffers would make good colleagues and do good work that quite diverse characters could waltz right in and grab a piece of the action.

Then something happened, which was that the system was quite suddenly rendered hateful even loathsome by our understanding that it was responsible for everything politically bad and everything culturally repressive, beginning with the war in Vietnam, which we now understood as genocidal, moving on to our system of de facto white supremacy behind the ineffectual façade of liberal reform, all the way to the Socratic classroom in which tough guy professors boot camped the young liberal recruits. At that point some of us, a small but very intense minority, opted out of the full system track. I remember just knowing for a fact that my views and activities and writing (not to speak of my personality) were radical enough that it was unlikely that I could ever be a successful person in the government. And that I would hate mainstream legal practice.

So the Yale Law School, or someplace like it, which I had thought of as a quick three year credentialing stop on the way to "governance" broadly conceived, suddenly looked like it might be the end of the road. Moreover ... the pay was influenced by the need to lure stars away from the firms, and tenure requirements were ludicrous compared to real academia. Reader, the three leftists in the seminar, Mark Tushnet, Rand Rosenblatt and I, all became law professors. To understand early CLS, it helps to know that Peter Gabel, Karl Klare and Mark Kelman all made the Harvard Law Review on grades and ...turned it down!

This did not mean abandoning our aspiration to be political actors. Quite the contrary. Law faculties, we knew from our own experience, might be excellent spots for recruiting the radicalized youth we imagined was coming up behind the 60s generation. Dave was a model as well as a crucial ally in making this turn, so the subsequent purge of the Yale junior faculty meant that the path had risks (but note that the innocents survived the slaughter to get fantastic jobs just down the ladder). There were definite clouds on the Yale horizon in 1970 but there were also winds whistling from the left. The idea was to build a left of liberal legal academic intelligentsia unlike anything that had existed since the 1930s. It would do what Dave dubbed the social theory of law, left of liberal doctrinal and policy work, and agitate for the radical reform of legal education. Quite a few of us had the ambition to cross over into or be recognized by non-legal academia or the left public intelligentsia that laid claim to theory.

Rick and Dave culturally transcended the system. They treated us not only as peers but also as potential political allies and as potential friends, thereby violating the constitutional grundnorm of academia. Then they joined us and we joined them in the crit venture. (Dave and I co-devised the idea of the first meeting in Madison in 1977). They were astonishingly counter cultural! I will always be grateful to them both.

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