CHECK IT OUT

Critical legal studies people at Stanford have organized a three-part panel on the "Politics of Legal Education" covering institutional reform, clinical issues and law and economics issues. It will be held at the Bellevue Hotel, Geary and Taylor Sts., on Friday, January 6, from 3-5 p.m. Refreshments afterwards.

An Open Letter Regarding the Devolution of the Legal Realist Legacy: The Case of the Murdering Heir

Dear Senior Faculty Member:

I recently read an article by a Chicago-style law and economics adherent claiming that law and economics is the intellectual heir to legal realism. It's really not too important; the term "legal realism" gets bandied around a lot anyway and I'm not the right person to get shook about property rights in your legacy. But it is noticeable at this point that both law and economics, the rightist legal approach and critical legal studies, the Marxist group, claim you. I think the law and economics people haven't read Hale and Cohen carefully enough.

But which is it?

I imagine you are a senior (Continued p. 2)

Notes from the Margin

Critical Legal Studies is beginning to develop institutional power. The value in this seems obvious: it is easier to get our articles published; we are more likely to get tenure; we have more influence with respect to appointments and other political issues.

There are also risks. Institutional power has a way of replacing instead of augmenting other forms of power—analytic power, creativity, the power of passionate conviction. It is a commonplace that most movements that begin as exciting intellectual upheavals eventually lose their critical energy and attract adherents who become simplistic and dogmatic. Perhaps these tendencies can be avoided, particularly if we (Continued p. 6)
LETTER TO A SENIOR COLLEAGUE

(continued from p. 1)

realism split into "responsible" policy scientists, reasoned elaborators, and principled adjudicators; and all the others, with their participant and Marxist analyses, got dumped. Turning it all into an apology for the status quo. A moment of glitching from flowing through that's too painful to face? The fifties.

We're still reading your old stuff, though. And the burst of creative energy is bogging. Field after field trashed, unrefined intellectually, blows against the empire, even against private property and other ideologies of domination, the stuff taken apart piece by piece. Not jazz in the background, musk,

First lesson in trashing this stuff was from you.

The others snicker behind your back, muttering the fancy language of efficiency and original positions and settling for second best. We just wonder. Why are you so quiet? Was the whole thing to get the U.C.C.? To get a "Remedies" section meeting at the AALS convention? To change the order of the chapters in the Contracts book?

I'm not trying to put you down, it's just that I wonder what happened. Because it is clear your vision was deeper. And you seem unhappy in the hall.

You know, they've already got your story in the books, abstractly. You are described in formal intellectual terms; your group has a beginning date and an ending date. "The Realists attacked the conceptualization of the late 19th and early 20th century legal thought." But all that misses the heat that's obvious in the articles. And you are right here. It need not end that way. In cool scientific complicity with "the way things are."

Is it that you really came to believe in expertise positivism, bureaucracy and the status quo? Burned with the best and the brightest. And now the experts, referring to specialists, And to the bloodless LSAT.

You don't have to say anything. But we don't see the reason for such quiet. And we know you can identify the murdering heir holding the same smoking gun—I mean just in the background, must—of course, the market (no, I didn’t mean myself) that you recognized so clearly before. Why not continue the project and reject coercion? Is this ten years too late?

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Excited chatter in the lobbies.

Someone else is running it. "We haven't been around long, or haven't been to a meeting in years. Maybe there are officers of the Association, really big wiggs who understand how it works, how to organize the rooms and what to do if someone gets seriously ill. Thanks another thing that makes it such a delicious rip off. How can growups let other growups get away with this? Everyone says in advance, "I'm not going for the sessions. I'm just going to hang with my buddies and check out Mill Valley."

Being privatized into little affinity groups is fun. Fooling around while the boring growups mind the boring store, set the agendas, decide on policy for the Association, for law schools, for law teachers as a professional group ... is not a crime.

But the way they set it up, in spite of the wild chatter, it is a ceremony, a ritual, a celebration of reactionary values. Of the value of hierarchy, deference to superiors, gerontocracy, mind-numbing conventionality of speech and dress and thought.

And it does involve just plain forfeiting the experience of SELF-GOVERNANCE.

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The Duke of Tuscan

Joseph R. Jules
President-Elect

Address AALS House
Cultural Terrorism and the Faculty Cocktail Party

Everyone who "hates those things" keeps going, grasping community. Even in this petrified form.

The group, ritual, the rules. Rules assigning costumes. We're dressed alike because we're a shared project, group self-recognition distinct from the bartender's serving jacket. Proper forks—conversations shot through with fork selection—don't use curse words—yes, not here, at the production. (Continued p. 4)

Lizard is an emanation of a small faction within the critical legal studies movement, sometimes referred to as the True Left. Lizard does not in any way, official or unofficial, represent the views of the Conference on Critical Legal Studies. The contents of Lizard have not been discussed within CCLS, and it does not conform to the general attitude of the membership, which is far more responsible and boring than anything we would be interested in printing. Since most CLS people would dislike this paper anyway, they, to become familiar with it, it would be gross guilt by association to treat them as co-conspirators.

(Continued p. 5)
of group identity. Stylized group interaction right down to the last detail. That's what I'd call it. Hard to remember anything particular. The weather. Sports. Bullshit about teaching, not serious—that would be work, or politics. Just enough to ensure exclusion of the other. Like most of the women there with faculty husbands. But for sure no anger, or intimacy, or vulnerability, the conversations have rules with clear boundaries not to be crossed. Nothing emotional. And for sure no music or dancing, not even music you don't like.

The group bond is the silent conspiracies and exclusions. Most obviously the bartender, not on par with the partygoers, a drink dispensing function like the coffee machine in the lounge. "How are you doing?" is the gentlemanly, civil limit. Being in the group means participating in the exclusions, all without decision, moving silently like the weather. What's not self is other. Out there. Them. It. (Unless you create the group, in every moment of group existence. Without rules.) The conspiracy extends to subgroups, first the non-low people, women, senior faculty to junior faculty, star seniors to plodding seniors. Ranks overlapping in the complicated game of the晋升—intellectual scaffolding. That it's more than kissing ass. It's profession as a whole, parents to society general. The personnel of the national big brother. To bartenders everywhere.

(My brother is a bartender, you goddam assholes—and I bussed with the hang and watched—you stared at Debbie's legs as she took your order and pretended you were charming. You didn't see me either. Invisibly the Salesman—I fought by the sheet clearing function. At the car wash waiting for tips after vacuuming your Bullets, our hands open, (stick it anywhere), wondered at you, so tight as it seemed a good five-minute laugh would kill you. Yeah, snapping the towels at the seat to scan you. Wonder how they party, can't imagine them cranking the music up and getting sweaty.)

And it's not just the formal class, all the new faculty go through it. The gradual process of passing as one of the "in" ceiling the students. Kids), Paramouts about passing in the car going home, did I talk too loud, laugh too long, forget to laugh. Passing up at be not passing anymore, then becomes you. But the lack of music is still deafening. And there's music to it all.

On a spectrum of parties ranging from artist parties and black folks' parties to astronomy parties, the faculty cocktails party is real close to how astronomers must party. No music, no conversation where any emotion is at stake, this is the head, not the body. This group is rational, scientific, not passionate and physical, manager, not worker; the fantasy of community built on the identification as scientists so the parties project rationality through and through, even "socially" by you can imagine brain surgeons getting sweaty on the dance floor, it's the law/politics distinction. Fear and Tooth of the mob and sexuality. Cleaver had that part right. You don't groove like you don't get angry or sad or intimate. The faux cultural life involved by journals and foot notes, the pseudo-data of the legal scientist.

Backed up by the threat of social violence, exclusion. The way you were before is illegitimate here. Objectify yourself to meet the invisible demands of the group. And join the new community. (Every time at the bar the practice of recognition, the treachery that you are them, so you say how you doing, the bartender calling you by your name. There's no party to go to after working here because you're not working here, this is your party.)

And this: that it's not just new teachers, or ones from other social classes, or the excluded spouses and servants. As far as I can tell, everyone's inveighed, playing out the role ritual. Relationships mediated through the fantasy imagery of upper-middle-class professionals. The fantasy of community played out in the denial of any possibility for community except through these folk rules, everyone feels it's out of control. But any violation of the rules will be punished in unity by the group, because any disruption violates the fantasy that the group is a group and not people waiting for a brand of terrorism. Thinking that what goes on at cocktail parties is separate from what goes on in the classroom and law journals is bullshit. The claim to legitimacy of the class, the law/politics distinction, the bizarre rankings of meritocracy, are all connected up with cocktail parties, the reproduction of the fantasy of rationality which a class hierarchy seem appropriate.

Civility here means accepting the structure in which civility occurs, turning law school into people for community means smashing all this stuff. In every crevice, academic freedom cannot exist with social rape. Taking risks that expose how quickly civility gets ugly. The power of negation.

—Pratt Boyston
teaching jobs will dry up as the contestants fight back. New classes begin at last. Up to now, people who went to elite schools but didn't do well could get jobs, but not those who did well at middle-level schools and satisfied themselves with Harvard or MIT in the future. There is no encouragement for anyone without elite or elite credentials to get away with overt.cls self-identification.

Critical legal studies is securely institutionalized only at Buffalo, Harvard and Stanford, for the simple but brutal reason that only those schools are there three or more tenured cls people with little reason for a basic political problem is that at the other schools, most of the people are on tenure and the tenured may be partially held by tenor places looking for token cls people, or by other cls if the groups at middle-level schools are unstable, and there is no prospect that this will change in the near future.

Finally, the "mode of thought" already sclerotic. Firm institutionalization at two prestigious schools means that cls will almost certainly be unimportant in the near future. But the glory days are already over, and all science is all that's left. It is unlikely that anything will happen during those twenty years except the classics are less challenging, trying out of by-now-familiar themes. Anyone for a tour of the vineyards?

Garbage Glamor
LETTER

Brown-Nosing the Radical Big-Wigs: Hierarchy in CLS

In yesterday's paper, you published a self-righteous article about how assistant professors don't have "real" academic freedom because they have to ass-kiss to get tenure. I thought the remark about Dworkin, Rawls, and Nozick was offensive, not just because it was homophobic (it was!), but because it appropriated the identities of real people for its nasty point. The author is a typical CLS person—hypocritical toward others but unable to see the extent to which he falls into exactly the same kind of behavior he deplores. CLS is full of nastiness at least as severe as that of Professors D and N (if they really exist), and also full of implicit hierarchies that are far more damaging, politically and spiritually, than those of the average law faculty. At the two recent CLS conferences I attended, there was an unmistakable pecking-order, a barnyard star system, with Kennedy, Horwitz and Klare at the top, surrounded by crowds of groupies, and then a middle echelon. The top people treat everyone condescendingly, allocating their time as though they were fathe healers, just like academic big wigs of more conservativ or (worse yet!) liberal proclivities. The way they approach them is heinously, or not at all. They just don't brood a conversation among equals, and especially not a conversation in which their own ideas are questioned. But the middle echelon is even worse. They are competing among themselves, trying to scramble up. They are jealous of each other and possessive of their special relationships with the stars. For example, at Cornell when Horwitz signed up to go a particular Chinese restaurant for dinner, about thirty other people did, too. They put each other down (e.g., Kelman takes a jab at Gabel in the Stanford Law Review) and marinate in bile. This may show the impossibility of a real social organization without hierarchy. Sometimes I think it's just that radicals are among the least self-conscious, most hypocritical people in the world. But I'm not a liberal, at least not anymore, so I'm stuck with you all. I think the answer is to avoid organizations, period. There should be no more large meetings at which people can act out their neuroses. Let us form small work groups, putting all the big wigs together to tear each other to pieces if that's the only way they can relate, and yet the small groups together only when there is some very specific reason. If it turns out that only the big wigs dare call the groups together, so much the worse for us. Is this what the Buffalo critics, who haven't shown up at any meeting I know of in the last few years, have decided? If so, more power to them.

Name withheld by request

Notes from the Margin (continued from p. 1)

are willing to examine ourselves and challenge one another.

As Critical Legal Studies develops institutional power, it may become entrenched more deeply within its narrow institutional structure. Almost all of us are law teachers and for most of us Critical Legal Studies is important to the way that we define ourselves in our opposition to other legal academics. There is a comfort in this opposition that may limit our willingness to problematize the basic institutional conditions under which we teach and write. While we question and challenge many aspects of our institutional structure, this very process serves to confirm all the more strongly all those aspects that we do not question.

By and large we acquiesce in a legal scholarship dominated by the law review article format. Certainly, we congratulate ourselves for writing funny unconventional articles that are hard to get published, but we rarely write newspapers or anything else so bizarre. Moreover, writing in expository forms too often give in to the pressure to conform to binary notions of "clarity." We write in a flat linear style and use over-simplified categories that we allow to ossify as we use them. Irrationalism, for example, has been domesticated into a clear, stable, defensible intellectual stance. But it is not enough to displace rationalism by exalting irrationalism. We must also rework the terms of the rational/irrational opposition and dispense not just rationalism but also the present conventional understanding of both terms and of the opposition between them. We must not simply make irrationalism a new orthodoxy but open up the ways in which what it means to be irrational can be necessarily and unpredictably different from what it means to be irrational. [The author insists that there is no omission or misprint in the last sentence. We agree.]