of the AALS s.f. 1.5.84

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(Go to p. 5)

36 Ways To Help You Qualify For The Job You Want!

Annals of Academic Freedom: I

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achieve laudable goals because they are uncivil? At the recent AALS meat market, I overheard two school hiring reps agreeing that it was a bad idea to take on CLS people because they destroy the collegial atmosphere and promote factionalism.

<u>Lizard</u>: Kiss my ass, cigar-i breath. You guys sound more and more like an organ (you) know which) of the Pinochet regime. Neo-conservatism uber. alles. Let Go to p.

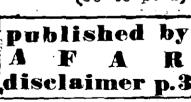
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"What we mean by freedom the social order to the natural order." T.P. Sartre

garbage

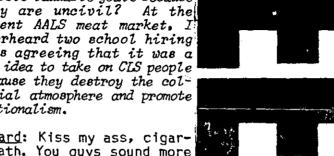
For many liberal law teachers, to pose the question, "Must legal education share responsibility for perpetuating a social order that is to one degree or another unjust?" is to answer it in the affirmative. And many of these (Go to p. 2)







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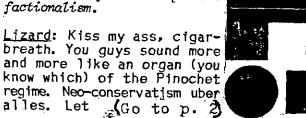


Is superkid just a murdering brate



The Civility Issue in Critical Legal Studies: A Dialogue Between The Times and Lizard

The Times: You do realize. Lizard, that CLS people frustrate their own efforts to







Civility from p. 1

the Grenadians thrive on Coca-Cola and pimp for the GIs, so long as the press is there to cheer them on.

The limes: See what I mean? Responsible people agree that legal education is much in need of change to bring it into line with modern conditions. What you fail to see is that immature, downright rude invectives just alienate people who would otherwise be sympathetic to change. Turning people off is ineffective.

<u>lizard</u>: Your idea of being effective is to suck-butt your way to head of the Washington Bureau. No more lectures on effectiveness from people who couldn't organize a monopoly game, let alone a law faculty.

The Times: CLS people are on their way to being formulaic radicals who get more hysterical the further they get from any commitment to making a difference in the real world.

Lizard: Your idea of "change"

is upgrading the Faculty Toilet with grant money for proving that there is poverty in America. You make a difference by doing things so reformist, so captured, so deferential to the powers that be (or maybe you are the powers that be), so co-opted and so god-damned careerist that of course the right way to go about it is to TOADY. Your tactics just get you ingested by the system and shat out as a wimp.

The Times: May I point out that every time you speak, you use some kind of bathroom, anal, scatalogical expression? This is kid stuff. At age two you smear it all over everything. It's just exhibitionism to go on doing it at your age.

Lizard: I used to be more varied but I've decided I should give up old-fashioned genital, fuck-oriented, manwoman or anti-gay kinds of abuse. What is the incivility issue, anyway? Everyone I know in CLS is so lily-livered and pure-mouthed and up-tight that it's all they can do to protest when their colleagues propose lynching black students who get C's.

The limes: I can't reveal my sources. But the criticism has nothing to do with the so-called left politics of the group. These people are deeply sympathetic to the goals of the group, but also deeply alarmed by its tone. I'd also like to point out there's some personal animus in your constant careerism jabs. Are you jealous?

<u>Lizard</u>: Probably. But why are you collaborating with the

incivility attack? You know perfectly well they're just looking for an apparently non-political handle to end the challenge by refusing appointment and denying tenure to people who easily meet their so-called standards.

The Times: Life has taught me that if you engage a person in real political argument. they'll think you uncivil. especially if they have bureducratic authority over you. Submissiveness is a condition of employment. But you people deserve to be purged. You're just screwing things up for the rest of us, making it look like everyone to the left of center is a flaming odd-ball. We need to get back to approaches that have a chance of working.

Lizard: We are not uncivil, unless as you say it's uncivil ever to argue with people in authority. We are polite (most of us, most of the time). When you challenge people in a way they take seriously, especially about things like "what is good academic work," or "are you perhaps very political though you see yourself as very neutral?" some of them get mad. They get mad no matter how you formulate it. People who say they can be really challenging without enraging some of the people challenged tend to be people who never quite make it to being really challenging at all. Everything is so hedged the other person can reinterpret it and scale it down and qualify it away to, nothing.

The Times: The CLS people at

the Harvard Law School have polarized the faculty and made a large number of their colleagues miserable through ad hominem attacks and denigrating others scholarly work.

Lizard: The lefties criticized people who were used to adulation, but refused to back down. The criticism was political, but also intellectual and pedagogical. The people attacked respond by citing incivility, without even a pro forma attempt to answer the substantive charges made against them. They think thevill get more sympathy by claiming to be abused than they could get by going into the merits. But the so-called abuse turns out to be refusing to toe the conservative Har-'vard line.

The Times: I don't believe a word of that. Though most of the incivility charges do come from Harvard.

Lizard: I just want to say in my own defense that it's natural for me to be jealous of you. We're the same age, and you've come to and crossed a lot of bridges I've burned. But remember the story isn't over yet.



stinkeroo!

Editorial from p. 1

liberal teachers would offer this "yes" as sharply distinguishing them from their more conservative colleagues. So the prominence of the question in the announcement of Friday's AALS plenary session looks like an ideological victory over those who would bias legal education in the very act of restricting it to the "narrowly technical."

It is even possible that the composition of this year's panel reflects the emergence of a new center composed of emboldened liberal deans and ex-deans who will henceforth alternately denounce and ally with the extremists on their left and right in order to keep the <u>Vessel Education</u> on a smooth course of "change with continuity," or "continuity with change," depending on the exact heading of the breeze.

It's hard to take any of this seriously, for one simple reason. The liberal deans and ex-deans lack the political vision, the political will and even the political skills to do anything about the responsibility of legal education for our unjust society. At events like this one, speakers like those scheduled for Friday simply mouth off plously, making themselves and the liberals in the audience feel good, perhaps vaguely irritating the conservatives. The minute someone proposes any action that might actually upset anyone's apple cart, you will hear a lot about the shared character of the responsibility (so the schools

Onward to p. 6

Likes & Gripes

CONFUSION blooms

Feminism and Critical Legal Studies

The relationship between! feminism and critical legal studies or between women and the critical legal studies movement is a difficult topic to address in conventional, expository form. The difficulty is that to do justice to the topic one must totally contradict oneself. Still there is really nothing new the idea that anything interesting and complex enough to be worth saying is likely to be both true and not true at the same time.

Critical legal studies is terrible for women. Most of the women with any power or. influence in the movement are the wives of critical legal studies heavies. The accepted leadership style is macho (sexy-macho, but still macho). Proportionally very few women are in the organization. Basic issues of sexism haven't been worked out. Some women assert that they get a feeling of





REVELATIONS

Ann Slanders--Advice to the Forlorn

Dear Ann: I have accepted a teaching job at a very conservative law school. It pays really well, I like the location, and jobs are hard to find. They don't know my politics, and, at least until I get tenure, I think they had better not find them out. My problem is that I feel that I am living a lie, and I am afraid that I may wind up changing in ways I don't want to. Is it true that we continually remake ourselves, and that if I pretend to fit in, I may incorporate into myself may incorporate into myself all the things I don't like at my school? What shall I do? And please, Ann, don't tell me to come out of the closet politically and live an oppositional existence vis-a-vis my school, because I know that if I do I'll be fired, and I can't afford that at this point in my career. --- A Nice Guy

Dear Nice Guy: Opposition isn't an

'Oh my God, it's alive!

Debates About Theory Within Critical Legal Studies

This is a partial sketch of the core tension animating many of the disputes within critical legal studies. The sketch exaggerates disagreement and should not obscure the shared commitment to the transformation of society; it should suggest different visions of what the struggle entails.

The recurring tension is between two approaches: instrumentalism and irrationalism. The instrumentalist critical legal scholar sees power in society exercised in the domination of specific

groups over others (say owners over workers) and reflected in the distribution of wealth and decisionmaking authority. Legal rules are an instrument of this domination by class, race and gender. Their content mirrors the prevailing interests and they are backed up by the power of the state. That is, , the legal order is adaptive to social formations, so that particular legal rules are needed, for example, in developing capitalism, other rules in monopoly capitalism and so on. The real world effect of the rules is masked by ideological rhetoric casting them as universal principles of justice or necessary implica-

tions of efficiency.

The rhetoric is pierced by exposing the distributional consequences of the abstract rights on groups whose interests conflict. The instrumental focus is moderated by the concept of "relative autonomy": since it is in the



longterm interests of the powerful to have the system perceived as legitimate, occasionally the weaker groups must be permitted to win within the system, to make the claim to equality plausible. Some instrumentalists see in the ideological rhetoric valid ideals, such as the concept of rights or the rule of law.

The irrationalist finds ledai rules too marginal in their effects and to indeterminate and incoherent in their content to be instrumentally necessary for any particular social formation. Doctrine embodies contradictory ideals of freedom for the self and security from the other so that any right to be free from social regulation violates a right to be free from social harm. Nothing in the content of the rules dictates which side of the

Lizard is an emanation of a small faction within the critical legals 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 were they to become familiar with it, it would be gross guilt by association to treat them as coconspirators.

Oh my God, it's alive!

Feminism from p. 3

from 10-15 years ago-can women meet separately from men, or is this divisive; how can leadership be shared; etc. Child care is sporadic. There are virtually no openly gay people in the movement.

people in the movement.

On the other hand, more women are becoming involved in critical legal studies all the time and more women are assuming positions of power and leadership. The wives are neither an auxiliary nor in power through nepotism; most of them were actually in the movement before they married their critical legal studies husbands. Since critical legal studies is composed mainly of law professors, it should be no surprise that there are few women and even even fewer gay men or lesbians. The number of women in law teaching is still very small, and there are hardly any law professors yet who are openly gay. At least there is no evidence of homophobia at critical legal studies conferences; newcomers have been surprised by the amount of hugging that even the men engage in.

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Critical legal studies is also wonderful for women. The basic challenges of critical legal studies to conventional legal studies to conventional legal theory are feminist challenges. Law is supposed to be rational, intellectual, objective, abstract, and principled, just as men are; not irrational, emotional, subjective, contextualized and personalized, the way women are supposed to be. Critical legal studies challenges this de-scription of law, and it displaces the hierarchy of rat-ional over irrational, intellectual over emotional, objective over subjective, abstract over contextualized, and principled over personalized. The intellectual upheaval of critical legal studies and the dislocation caused by this upheaval opens the space necessary for women to try to reorient the profession.

On a more mundane level, critical legal scholarship was the first to legitimate he generic use of female pronouns and other anti-sexist conventions. Finally, if there is a warm, supportive community to be found anywhere in academia, it is in critical legal studies.

Theory from p. 3

liberal contradiction between community and autonomy will prevail in any particular instance. Rather, legal "rationality" is based on underlying structures of meaning, the cultural codes of "common sense" which limit the play of analogy by categorizing similarity and difference. Legal reasoning is ultimately irrational because there's no way to justify these categories for perception and communication; it's just a metaphor that property is some thing in the world with necessary traits, that the mind is qualitatively different from the body so physically forced sex is rape while sex occurring in the context of what being in the role of "wife" means is consensual.

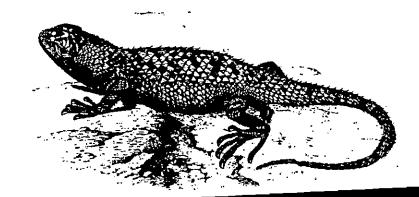
"Rationality" in general refers only to a felt necessity once particular structures for categorizing the world have become frozen. The irrationalist wants to unfreeze the social structure of meaning, to free up the possibilities for new ways to think and act in the world. In this view, law is merely

In this view, law is merely an instance of social mythologizing. And it's not that there is some way of "reasoning" that is immune to the critique; there is no "true" analysis that comports with the way things really are, because there is no hard social reality separate from our social construction of meaning. This applies to instrumentalist discourse about the logic of "monopoly capitalism" as well as to the formalist vision of free contractual

parties. Domination is deeper than the vision of the powerful posed against the poor, minorities and women reveals. It's reflected in every crevice of social relations as people subordinate themselves to the reigning metaphors and act them out in their everyday lives.

Since there is no ultimately rational way to think about or organize the world, there is no ultimate irrationalist program, no attempt to substitute "truth" for "ideology." Only the message that every structure is provisional and none is necessary. When pressed, some irrationalists will offer a vague vision of transcending the self/other contradiction in a festival of life where power is abolished and the social group is not held together by collective fantasies that it's ruled by abstractions external to the group, like law or the logic of economic production, but instead each member sees herself in the other and each contributes to the constant creation of the group, and unity is not imposed but lasts as long as the intersubjective zap continues.

The instrumentalist fears that the irrationalist is a utopian idealist, thinking that the world will change simply by imagining it differently. The instrumentalist ently. The instrumentalist finds the preoccupation with alienation merely a program for the middle class with leisure to worry about psychic injury. And the irrationalist lack of a program seems irresponsible, destroying the ability to rank political tasks or distinguish qualitatively difdistinguish qualitatively different forms of domination. The irrationalist doesn't understand that meaningful transformation requires a disciplined battle against the dominant groups. The instrudominant groups. mentalist secretly fears that the irrationalist organization around the release of subjective energy fails to guarantee tive energy falls to guarantee that repressive emotional frenzy based simply on charisma won't take hold. Is irrationalism a form of fascism? is the question that seems to be in the back of the instrumentalists' mind. The irrationalists' only answers seem to be impacted eightypage articles working the position ticles working the position out in narrow specific contexts (400 footnotes), or an enxious smile. Each response can be irritating, or reassuring, . . depending.





Annals from p. 1

jurisprudence course to students who don't interest him. When he focuses on me, which fortunately is rare, he is reptilian. he thinks I'm a loose-brained left-wing fruit-cake, earnest but dumb, unable to understand his superior way of looking at things. He conveys this with a particular over-shaven tilt of chin, a close-cropped but depressed angle of the head.

He wants out (and up). But while he's here, he's for standards, and he thinks my article "falls between two stools," since it's neither philosophically "sophisticated" nor a doctrinal "pathbreaker." Sometimes I have. fantasies of B-- on his knees sucking each toe on the feet of Dworkin, Rawls and Nozick. There's some panicked homophobia in that reaction, I suppose. But in real life I have become steadily more deferential to B--. Sometimes after I've spoken in a faculty meeting he will lean sideways and whisper a word or two in G--'s ear, though he considers G-to be a moron and wouldn't usually allow himself to be seen publicly associating with

Although I detest B--, I also fear him. I can't tell

him what I think of him. I can't even strongly contradict his opinion about how we should reduce the size of the clinical program and create a school program in international law. Is it just that B- is not warm to me? That he sees he will be against me. and so can't let there be any intimacy between us? I don't know. But the flick of his sarcasm, his disappointed, irritated longing to be rid of all of us is like the doctor's fingernail on my bare sole. curling my foot against its will. My only hope is that he will have no investment in fucking me over, if I say nothing when he's around, try

to nod sagely when he speaks. Oddly, Professor M-- also teaches Contracts. But there's no hope that he will ignore me. He is a 55-year-old Northwestern graduate, a traditional teacher much loved for all his severity, the man from whom you "really learn the law." He and I teach the same students, and every year they; tell both of us how much better at it he is than I, be-! cause he teaches them the rules and all I teach is policy. M- doesn't think I'm dumb. He thinks I'm a smartass kid commie, with no respect for him or for the school he's given his life to or for the students I'm doing my best to mislead about life in the law. But he's probably a much nicer person than B-. He wears attractively wornsmooth worsted suits, impeccably clean white shirts with: sort of slightly stiff longtipped collars, silk neckties with a stickpin. He is plump, physically quiet, almost serene, though not at all mild. His face is smooth and very white, with hooded eyes and thin lips that smile with surprising quick warmth when he stirs from his posed, seated, squat self into motion of some kind.

He might be avuncular toward

me, or even love me, if I hadn't violated so many unanticipated rules of good behavior. (He's not like B--, who cares only for himself.) Buti has he been close to any young teacher? He often seems ill at ease with "us," the relatively new, "nationally" oriented types who have invaded the school partly because of the way he exercises his influence in the Committee (he is chair). He thinks we look down on him, as he looks down on us. He is uneasy that wel are "fancy," and will ultimately ruin the school because; we can't-make contacts with. the local bar, don't understand our students, have been corrupted by permissive ideology. But the real problem is that in his mind there is the category of the young person who just won't comply with the minimal requirements of collegial respect. A bad apple. And that is me. He smells rot off me at 20 paces. In the Faculty Lounge, on a recent Friday evening, he approached me for the first time in two and a half years, where I hovered, beginning with an awkward, ' challenging, "Say, did you read where 6000 Grenadians petitioned Uncle Sam for pol-... itical association for a few years till they can be sure they're rid of the so-called progressive forces?" And he ·laughed.

He had heard me bemoaning, imprudently in this same Lounge, that some imaginary progressive "we" hadn't "done something" about Grenada. I didn't dare say to him my bitter, complicated thought about that petition, or spit in his foxy, gratified face, at his "gotcha, commie." He was provoking me, I thought, not with any ulterior end in view, not even realizing that if he goaded me into speaking my mind he would <u>have</u> to skunk me for tenure. Which he could do with just a nod to his cronies who have hated the whole idea of us bright young things from the very begin-

ning. I swallowed (saliva burned my throat), shrugged, directed my shamed alter ego to smile blandly at M--'s blandly smiling friends, didn't leave until a decent interval had passed. When I got home, I wrote an op-ed piece about Grenada for the metropolitan daily hereabouts. My mentor at school (I'm not totally without resources) told me I'd be an assimple to publish it, just asking for trouble, trying to make an examble of myself. When the paper turned it down ("no longer topical"), I was so relieved I felt close to tears. So I may get tenure vet. Tune in next week.



MORNING SESSION (continued)

Prof. Curtis J. Berger of Columbia was described as a "Renaissance person" because the breadth of his interests extended beyond corporate tax all the way to partnership.

One of the law professors who attended th Taxation Session was asked by your reporter where Andrews, Bittker and Wolfman were? "At Harvard, Yale and Harvard, of course," he replied. "No," the questioner asked again, "I meant, why didn't they represent their own camps?"

'Listen, young fellow,"
the professor replied, 'why
did medieval lords employ
knights?" Ha, ha.

Advice, from p. 3

all-or-nothing matter. Without risking your job, you can engage in a great deal of truly subversive activity. Relish this activity, no matter how minor it may seem in the overall scheme of things. The more conservative your school, the more significant

is the slightest opposition. You're absolutely right to be concerned about what you might become. Look around you; most of the old, dead codgers you see were probably once bright young men-eager and committed. Like amoebas, we assimilate what is around us. Also, however, we reform what we assimilate. It's a two-way process. The best way to protect your integrity, perhaps the only way, is through some form of oppositional existence. So let me give you some more specific advice on this.

First, go ahead and conform in all the ways that have absolutely no importance to you-dress, lunch, sports talk, office decor, moral appearances—whatever matters least to you. Just be sure not to compromise yourself regarding anything that does matter to you. If you have to be civil or even discreet in your deviation, that's okay.

deviation, that's okay.

Next, find an ally. No matter how oppressive an environment you are in, it is always possible to locate someone who shares some of your beliefs. Even if your alliance is only around feminism or if your ally is terrible on Latin America, it is important to have someone you can talk to at your school.

If you know people from

If you know people from other schools who you agree with politically, keep in touch with them. It is important to have a firm foot in friendly political territory. If possible, develop a sanctuary you can visit regularly. At the first sign that your school is driving you crazy, flee to your sanctuary. A single weekend will be enough to get yourself back on track.

If you do not know people

If you do not know people who you agree with politically, work to meet some. Whenever you read an article you particularly like, try writing a note to the author. If you don't know what else to say, you can always just ask for a reprint. Attend conferences. Specialized conferences, such as the Society for American Law Teachers (SALT) or the Conference for Critical Legal Studies (CCLS), are better places to meet people that major gatherings like the ABA or AALS. But even at such deadly dull conferences as these, you may occasionally meet good people or find interesting things to read. You will notice that the higher your school is on the hierarchy, the easier time you will have meeting people at conferences. This may be less true of CCLS meetings, since they officially oppose the hierar-

chy, but you are likely to find some snobbishness anyway. Habits change slowly and hierarchy is both deeply ingrained and self-fulfilling. Just be persistent. If you can't end the snobbishness of those from more elite schools, at least don't pass it on. Set a good example by your treatment of people from less prestigious schools. (Besides, different groups have slightly different hierarchies, and you could make a real fool of yourself by snubbing someone from New College or New England or Nova.)

Finally, give your students and colleagues enough of a thint of your politics that if there are any other isolated radicals they will at least know to seek you out. You may be very surprised. As they come to you complaining of their isolation, let them know how many others of them there are. Eventually you can form a community and develop institutional power. You may accomplish a good deal. Most schools worry about unruly disruptions and some brutally suppress them, but few schools recognize major subversion.



More Editorial from p.

by themselves are really helpless) and the <u>one degree or</u> another of injustice (so what is proposed is much too radical).

Well, what could the law schools do that would reduce the injustice of our society? Glad you asked. Here are three proposals, one aimed at hierarchy in society generally, a second at hierarchy in the bar, and a third at the hierarchy of law schools. But Whoa! Just because there's a hierarchy doesn't mean there's injustice! Ouite true. And now on to the proposals.

First, the law schools should take over principal responsibility for providing legal services to poor people in the United States. They should become primary recipients of government funds to this purpose, heavily tax

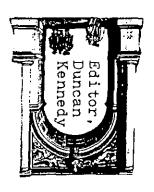
their students (according to likely future income) and develop fee-generating forms of legal services practice in large school poverty clinics. All students should undergo clinical training in a poverty office as part of their professional responsibility to those who can't afford legal services.

Second, the law schools should make a formal commitment to abolishing distinctions within the bar based on the system of class, racial and sexual discrimination. This would involve massive affirmative action, especially for working class people and blacks, or randomization of admissions procedures, and the reallocation of educational resources from students in the elite schools who arrive equipped with superb skills and superb connections to those at less fancy schools who arrive with neither.

Third, the schools should abolish their own hierarchy, so as to create social justice for law teachers, equalizing financial resources and randomly reassigning teachers (within narrow regional preferences) until all the schools in a given area are comparable in wealth and at least initial prestige. The enormous diversity that such a system would produce (far more than under the current regime in which those below must ape those above) might lead to the remergence of hierarchy. If so, the schools should rescramble themselves.

These are by no means the only or even the craziest imaginable proposals for actually doing something about the responsibility of law schools for social injustice. Perhaps the plenary speakers will defy the conventions of the genre (and their own years of accommodating the system) and propose actually doing something. If that doesn't happen, if it's just the usual moralistic, humanistic, rhetorical-question-filled pseudo-progressive mush, then the 1984 Plenary will have increased the responsibility of law schools for social injustice by making it look as though "legal educators" are concerned about social problems and working hard on them. It would be closer to the truth to say that the leader-ship of American legal education is deeply complicit in our unjust social order and has no other intention than to "perpetuate" it.





For men the black rundenezic did it all. This griment was supposed to indicate the kind of freedom from statential convention demanded by deep indicate the kind of freedom from statential convention demanded by deep thought or pute creation (usually poetic)—with overnone, always carried by maculine black clothes, of both doomed wandenings and statential states of white she to power in the actal time black to the state of the state significant changes in popular clothing in the twentieth century (V.53,

Hollander-Seeing Through Clothes

