The Ultimate Critical Legal Studies Article: A Fissiparous Analysis

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The reason I'm sitting down in front of my word processor is that I've been invited to give a talk at a symposium somewhere in Greater Los Angeles on or about the Critical Legal Studies Movement, and so I figure the best thing is to write up the talk before class this morning, and then ship the whole thing to a law review so that I can get a publication out of it even if the symposium turns out to be a crock. All I need is a cup of coffee to stimulate me and I'll be ready to plunge ahead. Great! That must be my secretary Susan knocking at the door . . . .

It's three minutes later and I've had my cup of coffee but I'm feeling guilty. Why should my secretary be making me coffee? Granted, without it I could not write this significant article. Nevertheless, it's clear she's being oppressed. Making coffee for the boss! If she were less impressed by the Law which every day and in every way oppresses her, she probably wouldn't be making me coffee every morning. She views me as some kind of magisterial embodiment of the Law, some sort of god who must be placated with coffee. And I, fool that I am, do absolutely nothing to discourage her in this belief.

She wouldn't be so oppressed if she were making as much money as I make. And why shouldn't she? Is her work any less important than mine? Not at all. True, she doesn't know how to write a publishable article nonstop the way I can, but on the other hand, I don't know how to brew coffee. And who's to say, from a cosmic perspective, whether the article or the coffee ultimately will prove more satisfying? What grounds would anyone have to assert that—ha ha. I will buzz her on the phone and in a few simple sentences with a recondite word or two casually slipped in to keep her off balance, briefly explain my theory of salary egalitarianism to her . . . .

Well, what do you know! Some of the brightest people in the whole world are secretaries for law professors. When I told Susan that I was in favor of every employee in the law school getting the same salary, guess what she said? She said, "that's great, but won't they have to reduce your salary in order to raise mine?" And she hasn't even studied economic analysis of law!

I wonder why that point hadn't occurred to me. I suppose it just seemed to me that we could simply raise the salaries of secretaries and janitors up

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to the level of law professors, with the latter salaries staying exactly where they are now. And I wouldn't mind that; I'm not an elitist. I don't get any kicks knowing that I'm making more money than my secretary. I sincerely want for her to make every bit as much as I make.

But in my concern not to appear elitist, I confess that I hadn't quite come to grips with the point that Susan raised. What she's trying to say, and it's critically important, is that this is a world of Finite Resources. In such a world, a pluralistic world of winners and losers, there is no such thing as a Free Lunch. Hence, what goes into your pocket comes out of my pocket, because it's catch as catch can and dog eat dog, even if I'm scratching your back while you're scratching mine.

Where does that leave my theory of egalitarianism? It's actually a lot richer now because of Susan's insight, and I have decided to write it up and send it in to a law review. What can I call it? "Perpetuation of Elitist Oppression in Law School Remunerative Schedules." Pretty good, but it's missing something. What? I know, a colon. After the word "Schedules: A Hermeneutic Analysis." Maybe. Herman gets too much credit these days, I'll have to think of something different. Maybe something with "Phenomenology" or "Prolegomena" or their equivalent after the colon. Still, Susan's point troubles me.

Not that such an article doesn't deserve writing. And I write so powerfully it's sure to be implemented. Equal salaries for everyone, maybe even starting right here, in my own law school.

I really must write the article. I will. I'll put an outline in my file. The Long-Term File. It will be a brilliant article when I publish it. On the day I retire. That's it, on my retirement day the article will come out—a ballantine blast at all the inequalities of the law school system, starting with the oppressive differentiation in salaries. My retirement present to all the laborers in the law school. It'll be great because between now and the day I retire I'll have forty years to hone the article into terrific shape.

The forty years reminds me of this symposium business, because I have just about forty minutes before class starts. What shall I write about? It's a symposium on critical legal studies. I could write about critical legal studies, and in fact I will, because every article I write is an article about critical legal studies, but I have to cope with a certain recent amount of overdoing this particular subject. The thing to do is to write about critical legal studies, but slip it in, sort of indirectly, making it look like you're groping around trying to write about something else, so that the reader gets the point in the middle of the night after he's read the article, like a revelation.

I could write about Symposia. What does it feel like to be a symposiast? I can write about my internal mental processes in deciding to participate in an oppressive symposium, wherein the audience is degraded by the passive, receptive, and subservient nature of their position in the room. Not to mention being blinded by the intellectual flashes emanating from the speakers. It's a shame and an inequity that there is more intellectual brain power in front of the room than there is in the rest of the room, even
though the audience outnumbered the speakers by sometimes as much as 2 to 1.

Inequality of intellect is perhaps the last frontier of discrimination in this country. Why should somebody get more of the good things in life because she is brighter? On the other hand, wouldn’t it be really dumb to give more of the good things in life to someone because he’s dumber? It’s an acute problem. But at least, I believe, we can all take comfort in the fact that when it rains, it rains on the bright people just like it rains on the dumb people. Unless they’re so dumb that they don’t know to come in out of the rain.

I’m not sure the L.A. audience wants to hear me talk about how it feels to give a symposium. It’s a sort of downer. Let’s face it, they’re coming to hear thunder and lightning. They want me to blast somebody. Whom should I blast?

Melvin Mudd, that’s who. Okay, Melvin, this blast is for you; you’d better duck. Professor Mudd, for those of you who don’t know, is a renegade crit. He started out as a card-carrying member of Critical Legal Studies, but lately he has gone off the deep end, and in his last article (reminder to Susan: look up the cite and stick it in right here as a footnote—I think it was in a law review beginning with “J”) Mudd had the nerve to say good things about traditional legal analysis.

Melvin, not only won’t I defend your right to speak even if I don’t believe in what you believe, but in fact I want to prohibit you from speaking at all. I want to do everything I can to make sure that you never get another forum to express your pernicious views. The First Amendment stops at your doorstep. Your dean should confiscate your paper and pencils. You are a vicious, rotten liar, a peddler of reactionary rot, and a disgusting chauvinist to boot. Your thesis is not worthy to serve as fish-wrap. With one exception, I hope you are barred from writing for the rest of your natural life.

The one exception is that I would sincerely appreciate it, Mel, if you could spare a few moments from your busy schedule to write a rebuttal to what I’ve just written. It’s important that we keep attacking each other in print; it’s the only way our Movement will gain headway. No one would have paid any attention to Critical Legal Studies in the first place if we hadn’t devised the strategy of creating dialogue in the law reviews.

Ah yes, I well remember when the Movement was founded, that memorable evening in Pete’s bowling alley off Brattle Street in 1968 in Cambridge, Mass. We were all making impassioned speeches to each other that Law was irrelevant. Then someone brilliantly observed that even in denouncing law we were lending it credibility, at which point Pete said from behind the bar then why don’t you guys shut up. After a thoughtful silence during which you could hear a pin drop, one of our leaders, Donald Krensky, stood up to agree with Pete. Announcing his Final Speech, Krensky said we will henceforth cease speaking the Language of Law, and take to the streets whereupon we shall establish the rule of the proletariat with fist cuffs instead of festschriffts. (Don had a lot of credibility because earlier that same evening he had christened our movement “Critical Legal
Studies,’” and everybody thought that was a wonderful slogan because it was so thoroughly self-contradictory, like the Holy Roman Empire.) Still, a few of us were uneasy. We met in a corner over a few drinks and decided that Krenskey was a menshevik. Although we bolsheviks also believed that Law was irrelevant, we saw that we could make a good living as long as we said it without doing it. Because if we once acted upon it, we’d become irrelevant ourselves. That’s what mensheviks never understand. So we decided to form our own minority cell within Critical Legal Studies, write blistering theses and even more blistering antitheses back and forth, and that way eventually take over the entire Movement.

The historic unfolding of our strategic plan and its glorious achievement is best left to intellectual historians who write about dominant movements in twentieth century thought. Suffice it to say here that I am available for an Oral History Project.

Now that I’ve wiped out Melvin Mudd, I’m not sure that it’s enough for the Symposium. Sure, it will whet their appetites, but I’ve got a few pages to go before this can count as a respectable article on my vita, and I don’t have anything more to say about Melvin unless I want to go back and actually read the article he wrote that I’ve attacked. But I can’t do that and still get my own article finished before class, and besides the law school isn’t paying me enough to read. I’m willing to write all right, but reading is something else entirely. In fact, research is just another way of supporting the Establishment, because most research consists of using establishment materials. Until the day, that is, when the crits achieve a majority of space across all law reviews. Of course, that’s the day we will succeed. We will have drowned out all other voices, so that the only thing that is printed is our own cacophonous babble—mystifying to the reader, but knowable to us because we recognize it for what it really is. Words.

And we will reach that goal. The most important advice for any would-be critical legal scholar is: once you’ve written a Word, don’t go back and change it, because the time you spend in changing one Word you’ve written can better be spent writing a new Word. That’s otherwise known as the Theory of Marginal Utility.

So, what will be my subject for the remainder of this essay? The best subject is the kind for which I do all the research by looking inward. What richer source of legal material is there in the entire world than my own mind? I will utilize the tools of introspective analysis. I would dearly love to do an article on what it is like for a judge to decide a case. No interviews or research necessary; all I have to do is to imagine that I’m a judge, which is really a joke—who would put me on a bench?—and then talk about my own mental processes, and there you are. But, no matter how much I’d like to do it, it has already been done. So if I’m going to do research into the question of what it is like to be somebody, I’m going to have to imagine I’m somebody different from a judge.

Maybe a legislator? No, too boring.

An administrator? Even more boring.
Actually, when you come down to it, anything having to do with law is boring. But that really presents a problem. What I need is a refill on that coffee right about now.

I should try to imagine something really difficult. Something that's totally outside the normal experiences that would be associated with someone like me.

Where's Susan? She doesn't answer the intercom.

I'm going to imagine that I'm pregnant and about to give birth. Will they criticize me for being sexist? No, just the opposite. I passionately maintain that the only way we can avoid being sexist is to imagine what it would be like to be a member of the opposite sex. So I imagine a dull, heavy pain. I am into the Lamaze method. In a few minutes I will fissiparate. I will give birth to a little crit. I mean critter. Well, I won't go back and change a single word.

Instead, I'm going to embark upon a mental odyssey about what it would be like to be a Legal Scholar. Authoritative. Oppressive. In the beginning was the Word. Processor. The gospel according to. Is there any class in this text? Give me your poor. Strictly from unger. Famefortune. Name in other people's footnotes. LAW PROF PENS MASTERPIECE. Library research needed. Forget it.

The attentive reader should note the process by which a Critical Legal Scholar decides what to imagine about. My initial premise was to imagine imagining. Then I went through a mental exercise. I set up an artificial dialogue in my mind, weighing numerous absolutely imponderable factors. And eventually I reached a balanced conclusion about what not to imagine.

Let me try the intercom again . . . .

Well, it was a nice refill. She sure delivers good coffee. I've had my caffeine fix and am ready at last to embark upon the substance of the present article.

I could write about Substance. Broad topic, but not broad enough to give me real freedom to maneuver. Form and substance? That is broad enough, but unfortunately it's been done.

Coffee is a good subject. How the bean-pickers are oppressed by the huge conglomerates that own the plantations that they stole from the Brazilian Indians. How it's packaged and shipped to this country and makes its way into my breakfast. Nah, sounds too much like a movie I saw in the third grade.

I'm not getting any closer to a good subject for this article. But I am getting very close to finishing it, and that's more critically important.

In conclusion, what all you folks out there reading this have to realize is that critical legal studies is what it is all about. Either you get it or you don't. If you study my article with exceptional care, you might begin to get it. And then you can write a rebuttal. Speak, man!