

CLS in Buffalo

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To talk about CLS in Buffalo is to talk about Section 3, a group that began when, in the early Seventies, Al Katz, who taught Criminal Law, and Bob Gordon, who taught Contracts, began teaching together in the same section. They then accreted first Jan Lindgren, who taught, Torts, and, a year later, me, who taught Civil Procedure. On Thursday, after the last of our classes each week, we would regularly gather in my kitchen to drink and to talk about the week's teaching, as I was on childcare duty that afternoon. Katz had recently received tenure, but the three newbies were trying to figure out what we could teach that students couldn't get by just reading our casebooks. And, of course, how to get tenure.

Part of our search was regular attendance at a weekly Friday seminar supported with money that Marc Galanter had somehow acquired. Marc's seminar mostly brought in social scientists as speakers and so gave us all a good foundation in existing Law and Society research. Luckily, Marc was eclectic in his taste and so, probably at Bob's suggestion, brought in Duncan Kennedy who gave a chapter of his long manuscript, "The Rise and Fall of Classical Legal Thought." I actually couldn't hear the presentation because I had childcare duties that Friday, but Katz saw to it that Duncan was dropped off at my place after seminar. Duncan seemed not to be bothered by my small kid crawling around and wanted to talk about legal realism, which I was beginning to work on at the time. Later I learned that Al, who had a low tolerance for humans in general, also needed to get relief from a person whom he described as able to talk full-tilt until late at night, only to get up in the morning and start over full-tilt, even before the first cup of coffee. Conveniently, I provided that relief.

Apparently that conversation was enough to get me invited to the first CLS conference in Madison in 1977. I enjoyed it. The ideas offered there were really interesting and the group seemed open and friendly except for its obvious wish to toss out of the group the likes of Stewart Macaulay, Joel

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Handler and Marc Galanter, who by then had moved to Wisconsin. CLS was to be the not social sciencey part of the legal academic left.

After several years together Bob moved to Madison and he was replaced in Section 3 by Fred Konefsky who was more than a bit angry at Duncan and Morty for not having invited him to the first CLS meeting and lying about the reason. However, he was not angry not enough to keep from attending several CLS meetings including the "Summer Camp" at Santa Cruz. In 1980, our small crew next accreted a former student, Betty Mensch. She met Alan Freeman, who was then at Minnesota, at that Summer Camp. A year later, Alan, who in the aftermath of a divorce had sought to move to Buffalo where we were perfectly happy to secure his manic energy, moved in with Betty and her two children. The following year the next generation arrived when Guyora Binder and Errol Meidinger joined our crew. A few years later Frank Munger came from the short-lived Antioch Law School.

The original Section 3 group managed to pull off a CLS Conference in the Spring of 1980, but I would not call it a great success. What we learned from the effort was that, while several of us disliked the traditional conference format of plenaries and panels, most of our CLS friends found them more comfortable than the weird, if not dangerous, formats we had chosen. What even the larger Buffalo CLS group could not manage was first year, first semester curricular reform. We all agreed that something needed to be done. By recruiting non-CLS colleagues, mostly law and society scholars, we pretty much controlled that semester and set to work. The result was a grid that, if followed – all the teaching materials would have had to be rewritten, would have linked law, society and practice loosely together. But the rigidity of the form and limitations based on minimal cross course familiarity with doctrinal subject matter, especially in criminal law, were real problems that would require hard work if the project was to succeed. However, before we could try, Katz came up with a spiral shaped form that most of us could not comprehend and made it clear that he would only work with us if we restructured our materials to fit his form. The project and the group fell apart.

All of which is not to say that thereafter CLS at Buffalo quickly disappeared. Anything but. The Law School was very hospitable to the CLS project, such as it was, and across two quite different deanships, even if the local bench and bar was quite dubious. Many of us continued to attend CLS conferences and offer courses inflected with CLS insights. For several years Alan and Betty

produced the CLS version of a newsletter and collected dues. They also wrote articles in David Kairys' edited volume, *The Politics of Law: A Progressive Critique*. Betty's essay in that volume, "The History of Mainstream Legal Thought," became an entrée to CLS thought for history graduate students. Both produced solo authored pieces too. Binder produced two wonderful pieces about CLS, including a still solid explanation of the implausibility of attempting to remodel law through doctrinal critique. Meidinger's work on Administrative Law helped. Fred and I published a relevant essay together; he, Betty and I published a blistering short essay in the form of an obituary about the revision of Fuller's famous Contracts casebook; and Alan and I managed to work together on an essay review of a book by Bruce Ackerman. Richard Posner called our effort an example of "sheer infantilism," though Bruce said he was not offended. I offered an historical piece about CLS that Duncan really didn't like in the 1984 Stanford CLS Symposium, and a piece about legal education and legal theory in the volume that came out of the CLS conference in Bremen in 1986. Katz, who had brought Duncan's "Blackstone's Commentaries" piece to the Buffalo Law Review, had his own work, "Studies in Boundary Theory" in the same issue of the Review. Later he wrote a wonderful piece called "Foucault for Lawyers," but pulled it in a dispute with the Review's editors and unsuccessfully tried to sell a book of essays to several presses. And there was much hall/office/phone conversation that is always essential for keeping any local intellectual project alive.

Still, as the institution that was CLS faded, so did local CLS one at Buffalo. Katz gave up teaching in 1987. Fred's interests became more eclectic after a projected book just couldn't come together. Alan and Betty became interested in the abortion question and produced a book that annoyed a lot of people. Binder focused on criminal law theory; Meidinger and Munger, sociologists by trade, followed their quite different interests -- the former on environmental policy making and the latter on poverty and low-wage work. I focused more on questions legal education, started a long project on economic development and spent a lot of time trying to figure out non-doctrinally focused ways of teaching and understanding law. For all of us, CLS's analytic insights regularly infused our work, but seldom were the center of it. In our hands CLS had become many different things, as had been the case in CLS almost since the beginning.

"Why did CLS at Buffalo fade?" you might ask. To answer that question I need to get two obvious answers out of the way. First, it would be a mistake to

blame our going separate ways by focusing on the general explanations for CLS's fading from the Academic Top 40 list. There is no question that CLS didn't have a third big idea and that the group soft-pedaled our second big idea – the critique of rights – as wives and students pushed feminist theory and critical race theory. We were left with the first, the indeterminacy thesis. There also was shift away from theory toward building “a movement.” But, just as there was no great question that killed CLS, there was no national “failure,” if such it may be called, that we in Buffalo all reacted to, each in our separate way.

Second, it would be a mistake to blame Katz for what happened. We all knew, me most of all who has stayed in touch with four of his girlfriends, that Al was more of a lone wolf than not, often rubbed people, Konefsky is a good example, in ways that might easily have been seen as hostile, and in particular, did not like anything to do with social science and its category systems. He was as much an observer as anything, as was, and still is, shown by the high quality of his photographic eye. But for some of us, me in particular to whom he introduced Foucault and Derrida with the brief thought, “The beer could be located next to the milk in the grocery cooler; after all they are both beverages,” he was crucial to our intellectual development in the CLS years. And he could be generous, incredibly generous with his time. When Alan was recovering from serious surgery, Al simply covered Alan's constitutional law course by having Alan first teach him the material. Then Al turned around and taught Alan's course to Alan's students. Al's actions and later departure probably affirmed our individual ability to think and write, rather than impeded it.

So, in hindsight, the falling apart of the great first year curriculum project was more symptomatic of an already drifting away from what was less a joint project, than a common ground. And so, a much better explanation for the fading of CLS in Buffalo is to be found in the kind of answer that Stewart Macaulay gave to me when I asked him why the promised follow-up article to his justly famous piece, “Non-Contractual Relations in Business,” had never appeared. He said something to the effect that there were other more interesting things to do, in his case going to Chile under Allende. Each of us allied with CLS found other interesting things to do and at the same time, like Stewart and his *Non-Contractual Relations* piece, later produced work that bore the watermark of CLS on each page.

in the case of three of the original Section 3 people – Katz, Lindgren and Schlegel – that watermark took a particular shape. For us the question of the categories within which law was to be understood turned out to be more central. After the great first year project fell apart, Jan Lindgren and I tried to make better sense of the first year curriculum with a course that emphasized the unity of tort and contract thinking and I separately have never stopped dreaming up alternative first year curricula for law school. More importantly, all three of us tried to write a book which thought of law in a different way, with synthetic categories, only to find that academic publishers were not open to such newness, each in our own way proving that the post-modernists were on to something about the tyranny of categorical thinking. Their insights, which seemed so hopeful to us, at a time when many in CLS saw them as sapping the political force of critique, in the end pointed up the narrowness of the light that they implied was available in between the canonical academic divisions of labor, something that I should have known for I once wrote about their common origin and structure. Oh, well, not the first time a teacher learned nothing from his own work.