



ST. MARY'S
UNIVERSITY

Digital Commons at St. Mary's University

Faculty Articles

School of Law Faculty Scholarship

1988

The Politics of Law (Teaching) (book review)

Michael S. Ariens

St. Mary's University School of Law, mariens@stmarytx.edu

Follow this and additional works at: <https://commons.stmarytx.edu/facarticles>



Part of the [Law Commons](#)

Recommended Citation

Michael S. Ariens, *The Politics of Law (Teaching) (book review)*, 13 *Law and Soc. Inquiry* 773 (1988).

This Book Review is brought to you for free and open access by the School of Law Faculty Scholarship at Digital Commons at St. Mary's University. It has been accepted for inclusion in Faculty Articles by an authorized administrator of Digital Commons at St. Mary's University. For more information, please contact sfowler@stmarytx.edu, egoode@stmarytx.edu.

The Politics of Law (Teaching)

Michael Ariens

MICHAEL LEVIN, *The Socratic Method*. New York: Simon & Schuster, 1987. Pp. 304. \$17.95.

I

I enjoy novels about the legal profession,¹ and I delight in reading satiric novels about the academy. Kingsley Amis's *Lucky Jim*, and David Lodge's *Changing Places* and *Small World*² bring the sense of academic absurdity ("It's all academic") to the general reader. The satiric novel, as a "message" novel, can provide unvarnished truths about the object of satire. Institutions of higher learning, particularly law schools, and the

Michael Ariens is an assistant professor of law, St. Mary's University School of Law, San Antonio, Texas. J.D. 1982, Marquette University; LL.M. 1987, Harvard University. The author thanks his colleagues Victoria Mather and Geary Ramey for their many useful suggestions and comments on previous drafts. He also thanks Dean Frederick Snyder of Harvard Law School, whose course focused his interest in legal education.

1. See generally John H. Wigmore, "A List of One Hundred Legal Novels," 17 *Ill. L. Rev.* 26 (1922); Richard H. Weisberg, "Wigmore's 'Legal Novels' Revisited: New Resources for the Expansive Lawyer," 71 *Nw. L. Rev.* 17, 27-28 (1976); Richard H. Weisberg & Karen L. Kretschman, "Wigmore's 'Legal Novels' Expanded: A Collaborative Effort," 7 *Md. L.F.* 94, 99-103 (1977). My list would also include Andre Brink, *A Dry, White Season* (London, 1979); John Casey, *Testimony and Demeanor* (New York, 1979) (a novella from a book of the same name); John William Corrington, *All My Trials* (Fayetteville, Ark., 1986) (a brace of novellas); John Gregory Dunne, *Dutch Shea, Jr.* (New York, 1983), and *The Red, White and Blue* (New York, 1987); Nadine Gordimer, *Burger's Daughter* (New York, 1979); George V. Higgins, *A Year or So with Edgar* (New York, 1979), and *Kennedy for the Defense* (New York, 1980); Walker Percy, *Lancelot* (New York, 1977); Geoffrey Wolff, *Providence* (New York, 1986). For those uninterested in reading legal novels, one can always turn to television or the movies. See Steven D. Stark, "Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Televisions Heroes," 42 *U. Miami L. Rev.* 229 (1987); Anthony Chase, "Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys," 1986 *A.B.F. Res. J.* 281.

2. Kingsley Amis, *Lucky Jim* (London, 1954); David Lodge, *Changing Places* (London, 1975); David Lodge, *Small World* (London, 1984). The anti-hero of Lodge's novels, Morris Zapp, has made inroads into the legal literature. See Daniel A. Farber, "The Zapp Complex," 5 *Const. Comm.* 13 (1987); Pierre Schlag, "Fish v. Zapp: The Case of the Relatively Autonomous Self," 76 *Geo. L.J.* 37 (1987).

denizens of those institutions, are prime subjects for satire because they take themselves so seriously.³

Unfortunately, *The Socratic Method* takes itself as seriously as the law school it is criticizing. Instead of an anarchic romp through the decaying groves of legal academe, or a delicate skewering of the law school tottering in its ancient "Harvardized" age, or a straight-faced account tinged with ironic references, *The Socratic Method* bullies the reader into writing "Law schools [and professors] are bad" one hundred times on the blackboard. This is unfortunate not only because it makes for tedious reading of the book, but because law schools are more ripe than ever for denunciation. The rage that author Michael Levin has for the law school as structured is not unimportant; it is simply misdirected.

One of the hazards of the satiric novel is that the message may overwhelm the plot and characterization. Levin, in his zeal to awaken the reader to the torture of the law school, and, in particular, to the torture of the law school variant of the socratic method of pedagogy, has failed to avoid this hazard. All the characters are two-dimensional, and the story line is picked up and laid down seemingly at random. In an apparent effort to make the novel more interesting, the author introduces several B-grade subplots designed to elicit a Pavlovian response. For example, one of the novel's characters, a professor of "Ethics and Legal History" symbolically named Jackson Ward, must choose whether to breach a rule of legal ethics in order to "do the right thing," or to follow the written legal standards, which will result in an injustice. As in all B-grade plots, this "choice" between justice and law is foreordained. Of course he will do the right thing, and of course all will end well for Jackson Ward and our heroine. There is no real dilemma, no choice to be made.

A quote on the flyleaf at the beginning of the novel says:

Law school is like Korea, like Vietnam. You can't explain it to someone who hasn't been there. GIL SNIDERMAN, A REAL-LIFE VETERAN OF ALL THREE.

I read this epigraph in two ways. First, this novel would tell a story to those who spent (or are spending) three years in law school. This made sense, for the most likely readers of a novel like *The Socratic Method* are going to be those with some understanding of the object of satire. There was also a second, more intriguing way to read the statement. It suggested that Levin was going to attempt to depict the actual state of legal education in the late 1980s. This sounded plausible, since fiction often reaches the heart of the matter more piercingly than any other method of commu-

3. Anyone who has watched the new television show "thirtysomething" will note how seriously Gary, the English professor up for tenure, takes himself.

nication.⁴ A novel like *The Socratic method* can shape the view of law schools (and law professors) in popular culture.⁵

I believe that Levin intended the quotation to convey both meanings, so I will address both in this review: First I will capsulize what Levin believes is wrong (and, implicitly, what is right) with the present structure of the law school. Then I will critique legal education based on Levin's picture of the law school.

II

The main story of *The Socratic Method* is quite simple. Will Professor Rebecca Shepard succeed in becoming the first tenured woman professor at prestigious McKinley Law School?⁶ In this kind of novel, that is never really in question. What the reader is supposed to learn in a satire like *The Socratic Method* is why this question is even being asked.

To set the stage, some "facts" about McKinley Law School and Professor Shepard: According to the author, McKinley Law School was founded around the time of the Civil War, and in his words, "[m]ost observers placed McKinley among the top three law schools in the country, the other two determined by the geographic location of the speaker. Easterners would include Harvard, Yale, or Columbia; Midwesterners Chicago and Northwestern; and Californians Stanford and Berkeley" (at 15–16).⁷ Professor Shepard is beginning her fifth year as a teacher at McKinley. She teaches torts, a course in securities law, and two seminars in securities law. She has all the necessary credentials of a "traditional" law professor: proper Anglo-Saxon heritage (her father is a famous British appellate judge and author of more than 20 books on law), education at elite schools, including graduating first in her law school class and being an editor of the law review, employment with a large (read important) Washington, D.C., law firm, and prolific author in securities law (itself an "important" subject). There are two reasons why there is a question about

4. Professor Thomas Shaffer regularly uses novels to convey the insights he is making. See, e.g., *Faith and the Professions* (Provo, Utah, 1987). See also Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (New York, 1987).

5. See Chase, 1986 A.B.F. Res. J. (cited in note 1) for an excellent review of efforts in movies and novels to shape the popular image of lawyers—but he didn't discuss my two favorite movies involving lawyers, *They Might Be Giants* (1971) and *Body Heat* (1981).

6. The librarian, an elderly woman named Miss Pander (not Professor Pander), has tenure but not as an academic. Professor Shepard is the only woman on the faculty besides Miss Pander.

7. This comparison is both enlightening and harmful. It is enlightening because it confirms my view that many, including Levin, believe nothing happens in legal education unless it happens at an "elite" school. It is harmful because the comparison of law schools is not intended to tether the reader to a comparable "real" law school, but to give the reader a false sense that "this is how it's done at the best schools."

Professor Shepard obtaining tenure at McKinley Law School: First, she is a woman in a "male" institution; second, she abhors the Socratic method. Her vices also include refusing to take attendance, requesting volunteers to answer her questions, and asking pointed rather than vague questions. In the jargon of legal education, she refused to "hide the ball."

The first kind of difference is an important topic in legal education.⁸ Many people perceive the "female" voice⁹ as a threat to the workings of the law school.¹⁰ However, Levin fails to make the case that this is the real reason for Professor Shepard's problem in obtaining tenure, in part because the faculty villains in the novel are so thinly drawn, and in part because the instances of sex discrimination are too blatant and obvious, not subtle and insidious. For example, one of the subplots of *The Socratic Method* involves a male professor, Ronald Blotchett, trading clerkship recommendations for sex. There is general knowledge within the law school community that he has a "clerking couch." The author "solves" this problem by wiring a microphone to a clerkship applicant who, as president of the Women's Law Caucus, then privately blackmails him.

And another thing, Professor Blotchett. I've got news for you. I'm wired for sound. Every word you've said—well, every word in the last minute or so, anyway—it's all on tape. And if you ever seduce another clerkship applicant and the Women's Law Caucus hears about it, we're going straight to Dean Strong. And you and your damned clerking couch will be out in the street. (At 97)

Having the Women's Law Caucus give the professor a private reprimand seems a ludicrous way to "solve" this problem. The reader should not be offended, though, because Professor Blotchett is just confused about how to "relate" to women, which the author corrects in him by the end of the novel. The characters created by the author to do evil are not shaded, and this makes it impossible to portray the sinister nature of the evil to be

8. See generally "Women in Legal Education—Pedagogy, Law, Theory, and Practice," 38 *J. Legal Educ.* 1 (1988).

9. See Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Mass., 1982); see also Donna Fossum, "Women Law Professors," 1980 *A.B.F. Res. J.* 903. See, e.g., Mary Joe Frug, "Re-reading Contracts: A Feminist Analysis of a Contracts Casebook," 34 *Am. U.L. Rev.* 1065 (1985).

10. The denial of tenure to Professor Clare Dalton at Harvard and the denial of tenure to Professor Drucilla Cornell at the University of Pennsylvania are apparent instances of the fear of difference at well-known law schools. See Debra Cassens Moss, "Would This Happen to a Man?" *A.B.A. J.*, June 1, 1988, at 50; "Down and Out in Cambridge," *Newsweek*, April 4, 1988, at 66. As usual, these articles focus on the tenure decisions at "prestigious" law schools, suppressing similar happenings at "less important" ones. This review essay itself makes disproportionate use of materials concerning legal education at Harvard and Yale because these two schools have been deemed important, so more is written about them. This selective reporting of arbitrary or suspect decision making in academia is criticized by Russell Jacoby in his book, *The Last Intellectuals* 135–39 (New York, 1987).

fought. Instead, the reader is exposed to the kind of discriminatory actions about which there is no dispute.

It is highly unlikely that even overtly sexist male law professors would permit a colleague to condition his recommendations for a federal clerkship upon sexual intercourse. If only for economic reasons (this would harm the school's reputation, cause a drop in alumnae/i donations, and subject the school to a lawsuit), it is silly to think that other professors (much less the university or the student body) would condone this action. This is the most harmful kind of straw man (wordplay intended), for it diverts our focus from a number of real problems facing women law students and women law professors. It is far more likely that faculty colleagues would refuse to prohibit a male law professor from quizzing only female students when discussing rape or "family" issues. After all, it is arguable whether that really is sex discrimination or just a permissible method of pedagogy. Additionally, the required casebook used in class can be filled with prescriptions about the proper role of women in American society.¹¹

Further, there is the catch-22 for many women law students and professors in the curriculum. If a female law professor teaches and a female student studies family law, sex discrimination, or trusts, wills and estates, those courses might be viewed as unimportant compared with courses in the "important" corporate area; the professor and student may also be viewed as studying only from a woman's perspective (as distinct from some kind of total perspective), all of which may have an impact upon their future careers in law. Of course, if no woman will teach a course like sex discrimination in order to avoid this tag, then it is unlikely that a course in sex discrimination will be taught.¹² The woman law professor or student who ventures outside these so-called women's areas also might be branded as a traitor to the feminist cause. Because the author makes Rebecca Shepard a heroine without any real doubts, there is little discussion of these issues. Levin also attempts to avoid this paradox by making Professor Shepard a teacher of securities law, a "male" subject if there ever was one. He wants it both ways: sympathy for Rebecca Shepard because she is the only woman teacher at McKinley Law School, and untenured at that, but with the implicit understanding that she's just "one of the guys" in terms of her academic interests.

Levin also can be criticized for eliding the "tokenism" question. Will

11. See Frug, 34 *Am. U.L. Rev.* (cited in note 9); Mary Irene Coombs, "Crime in the Stacks, or A Tale of a Text: A Feminist Response to a Criminal Law Textbook," 38 *J. Legal Educ.* 117 (1988). See generally Nancy S. Erickson, "Sex Bias in Law School Courses: Some Common Issues," 38 *J. Legal Educ.* 101 (1988) (reporting on a study of sexual bias in classroom teaching and casebooks).

12. See Erickson, 38 *J. Legal Educ.* at 103 ("[M]ost schools still offer no course in sex-based discrimination").

anything at McKinley be better once it offers tenure to the one woman on its faculty? Or will this offer of tenure suppress the deeper, more intractable problems in legal education for women? My tentative answer is that most law schools believe that tenure to a few women who meet the traditional "highest standards of excellence in teaching and scholarship" will silence these questions, even if it begs the questions of what are the standards of excellence in teaching and scholarship and who sets those standards.¹³ So, too, if the curriculum is expanded to include a few "Women and the Law" courses, that will not be viewed as detracting from the "core" legal subjects. Levin's disinterest in shaping the plot with any of these buried structural issues suggests strongly that his guns are aimed more at the socratic method than at the discrimination suffered by women in legal education. There is a book to be written about the trials and tribulations of women law professors, but this is not it.

Since this book is really about one law school graduate's hatred of the socratic method, and not about the machinations of a law faculty, and since that book has already been written,¹⁴ the author tried to convince the reader that the *real* problem lies in Rebecca Shepard's gender. The author tries to make us believe that it is not that Shepard is not playing the law school tenure game correctly (with the exception of not using the socratic method), but that she is a woman. After all, Professor Shepard's curriculum vitae would be the envy of most traditional law professors. If the plot followed this path, the novel would have been at least a middling success, although it would beg the question of the validity of the traditional law faculty credentials for appointment and tenure decisions.¹⁵ Instead, we receive a few instances of rude conduct by male faculty members toward Rebecca ("Bad boys!"), who appear to be rude to everyone. It would have been more realistic (and entertaining) to show the tenured faculty showering honeyed encomiums upon Rebecca when she ate at the

13. See generally Philip C. Kissam, "The Evaluation of Legal Scholarship," 63 *Wash. L. Rev.* 221 (1988) (noting the divergent views of good legal scholarship).

14. Scott Turow, *One L* (New York, 1977); John Jay Osborn, Jr., *The Paper Chase* (Boston, 1971).

15. For articles noting the credentials traditionally deemed necessary to be admitted to a law faculty, see Thomas Reed Powell, "The Recruiting of Law Teachers," 13 *A.B.A. J.* 69 (January 1927); William L. Prosser, "Lighthouse No Good," 1 *J. Legal Educ.* 257 (1948); David F. Cavers, "How to Become a Law Teacher," 8 *Harv. L. Sch. Bull.*, Feb. 1957, at 9; Cullen Murphy, "Want a Low-paying, High-Prestige Job? Sorry," *Juris Doctor*, Oct. 1974, at 34; Donna Fossum, "Law Professors: A Profile of the Teaching Branch of the Legal Profession," 1980 *A.B.F. Res. J.* 501, 507 (reporting that as of 1975, five law schools—Harvard, Yale, Columbia, Michigan and Chicago—conferred the first law degree upon 33.1% of all faculty members, and 60% of all faculty members were graduates of less than 15% of all law schools). See also Jon W. Bruce & Michael I. Swygert, "The Law Faculty Hiring Process," 18 *Hous. L. Rev.* 215, 243–60 (1981) (discussing the "selection criteria" for hiring new law faculty members, including kind of law school attended, class rank, law review experience, clerkships, and other professional and teaching experience).

faculty dining room and knifing her in the back when she left for her office.

The personification of the socratic method in the novel is Professor Sanford Clapp (whose very name suggests that he gives students an unwanted dose of traditional law school teaching), a contracts professor who likely studied under the fabled (and fictional) Professor Kingsfield. In the novel, Clapp (and hence the socratic method) is blamed for a number of things that go wrong at McKinley Law School, including the suicides of three first-year law students in his contracts class. I find this episode the most troubling, manipulative part of *The Socratic Method*.

It is manipulative because Levin first asserts that the suicides were caused by the classroom machinations of Clapp. A McKinley Law School student, Daniel ("Saint") Conway, in discussing the last of the three suicides, tells Dean Strong, "It's Clapp. He did it. I mean, she hanged herself, but he pushed her over the brink" (at 166). Later in that same conversation, Conway says, "Each of the three students who committed suicide was in Clapp's class, and each one told me that he [Clapp] was *humiliating* them in the classroom before they . . . before they [committed suicide]" (at 167). Clapp doesn't refute this assertion when the Dean informs him of this student's suicide. "I never thought she'd do that. I was just having fun with her. You know, strictly Socratic method stuff" (at 181-82). Levin seems unwilling, however, to push this notion too far. He makes certain to mention that all three students who committed suicide had "emotional problems", and he has a faculty colleague who dislikes Clapp, the aforementioned Jackson Ward, explain that "students don't kill themselves because of the way someone teaches a class" (at 275). Again, it appears that Levin wants it both ways. He wants the reader to believe that the socratic method of teaching in law school can cause horrible things; yet he quietly absolves the socratic method of the wrongdoing with which he has charged it.

The episode is troubling because of the manner in which Levin portrays the suicides. The first person to commit suicide at McKinley is a woman, who dies from a self-inflicted gunshot wound. Then a male student dies from an overdose of pills (at 132). As quoted above, the third student hangs herself. This is troubling because it appears to be a gratuitous attempt to show that women can kill themselves in the same ways men usually do, and vice versa.¹⁶ It is out of character for Levin to alter what he likely perceives as stereotypes about men and women in this context, and it is ironic, considering the conventional manner in which he treats the other characters.

16. See Arlen J. Large, "Suicide Research Gains As Curbing Depression Becomes More Feasible," *Wall St. J.* Aug. 10, 1983, at 1, col. 1 (64% of all male suicides are by gunshot and three times as many men kill themselves as women).

The socratic method cannot bear the weight of Levin's charges. As far as I can tell, the socratic method is dead. From the *Journal of Legal Education* to the *Association of American Law Schools Teaching Methods Newsletter*, there is little, if anything, to say in favor of it.¹⁷ Instead, the author should have charged that the entire structure of the law school is inimical to learning. The charge is an old one: Classes are too large, the emphasis on private law courses in the first year is outdated, and teachers are promoted based only on their scholarship, which takes time away from students in both classroom preparation and office hours. This may not be as "exciting" a target as the socratic method itself, especially since the publication of *The Paper Chase* and *One L*, but it is more realistic because these complaints are closely related to the socratic method.

The socratic or case method of teaching law was largely developed by Dean Christopher Columbus Langdell, who was appointed dean of Harvard Law School in 1870. Langdell believed "first that law is a science; secondly, that all the available materials of that science are contained in printed books."¹⁸ Law consisted of a few principles that were best mastered by studying appellate case opinions.¹⁹ These were decisions involving the private (and common) law subjects of contracts, property, and torts. Because these subjects were where the "real" law was found, public law courses were banished from the law curriculum as "impure" law.²⁰ A systematic study in the university law school of the few cases that properly explicated these scientific principles was the best way to learn law; it was a mistake (unscientific?) to learn law as an apprentice to a practicing lawyer, as most lawyers had been trained. Since the same cases would be used year

17. See Richard A. Posner, "The Jurisprudence of Skepticism," 86 *Mich. L. Rev.* 827, 847 (1988) ("I am led to wonder whether the highly inductive, case-oriented, analogy-saturated "Socratic" method actually teaches legal reasoning at all" (footnote omitted)). Cf. Anthony D'Amato, "The Decline and Fall of Law Teaching in the Age of Student Consumerism," 37 *J. Legal Educ.* 461, 466 (1987) (defending the use of the socratic method). Even at Harvard Law School, where Langdell and his followers nurtured the socratic method, this pedagogical method is used by relatively few professors.

18. Arthur E. Sutherland, *The Law at Harvard: A History of Ideas and Men, 1817-1967*, at 175 (Cambridge, Mass., 1967) (quoting *Record of the Commemoration, November Fifth to Eighth, 1886, on the Two Hundred and Fiftieth Anniversary of the Founding of Harvard College 97-98* (1887)) ("Sutherland, *Law at Harvard*").

19. *Id.* at 174 (quoting the preface to Langdell, *Cases on Contracts* (1871)).

20. When the University of Chicago prepared to open its law school at the turn of the century, a political scientist named Ernst Freund suggested that it "cultivate and encourage the scientific study of systematic and comparative jurisprudence, legal history and the principles of legislation." Harvard Law Professor Joseph Beale, a disciple of Langdell who had been proposed as the first dean of the law school at the University of Chicago, objected that Harvard taught none of those subjects, and Harvard Dean Ames stated, "We are opposed to the teaching of anything but pure law in our department." Robert Stevens, *Law School: Legal Education from the 1850s to the 1980s*, at 40 (Chapel Hill, N.C., 1983) ("Stevens, *Law School*"). See also Morton J. Horwitz, "Are Law Schools Fifty Years Out of Date?" 54 *UMKC L. Rev.* 385, 385-87 (1986) (concluding that Langdell and his followers believed that private law was "real" and public law artificial).

after year to explicate these immutable principles of law, faculty members had to prepare casebooks for use by students to avoid wear and tear on the case reporters in the library.²¹

Further, in Langdell's view, a "socratic" discussion between a law professor and one student could "educate as many men in a lecture hall as are well prepared and eager to follow with critical interest the dialogue between instructor and student."²² The financial advantages of a high student-to-teacher ratio permitted by the socratic method made a law school attractive to a number of universities (as well as unaffiliated proprietary law schools), and law schools flourished from the late 19th century on.²³ Just as importantly, the search through the socratic method for the immutable scientific principles of law, and the concomitant view of "pure" private law as the "real" law helped give rise to classical legal thought, or legal formalism.²⁴

Legal formalism, in large part through the universal adoption of the case method in American law schools, dominated legal education for the next 50 years.²⁵ Beginning in the late 1920s, a loosely knit group of scholars called legal realists, teaching at Columbia, Yale, and other law schools, challenged the view that law was a science and that it consisted of principles.²⁶ From the vantage point of the 1980s, their attack on the jurisprudential bases of legal formalism succeeded. In the 1940s, however, the issue of the realists' perceived belief in the relativity of value, or morality, muted their criticisms.²⁷

The realists understood the relationship between Langdell's curricular, pedagogical, and scholarly innovations and legal formalism. They attacked the emphasis on pure, private law in the first year, the socratic method and the casebook.²⁸ These charges were not successful for three reasons: the difficulty of radically altering the structure of legal education, by then strongly supported by the bar and the financial officers of the universities; the departure of many realist law professors for government

21. See Sutherland, *Law at Harvard* 176.

22. *Id.* at 177.

23. See Stevens, *Law School* 73-91.

24. For an insightful discussion of Langdell's influence on the reaction and nurturance of legal formalism, or classical legal thought, see Thomas C. Grey, "Langdell's Orthodoxy," 45 *U. Pitt. L. Rev.* 1 (1983). For a general overview of the history of American legal thought, see Grant Gilmore, *The Ages of American Law* (New Haven, Conn., 1977).

25. Stevens, *Law School* 59-61 (discussing the triumph of the socratic method or the "Harvardization" of law schools).

26. See generally Laura Kalman, *Legal Realism at Yale, 1927-1960* (Chapel Hill, N.C., ("Kalman, *Realism at Yale*"), for a history of the development of legal realism. See also *infra* note 49.

27. *Id.* at 121; Edward A. Purcell, Jr., *The Crisis of Democratic Theory: Scientific Naturalism and the Problem of Value* 159-78 (Lexington, Ky., 1973).

28. Kalman, *Realism at Yale* 67-97.

jobs in Washington during the New Deal; and the hostility of many academics and lawyers to the jurisprudential thought of the realists.

While the novel makes a faint effort to bring up these connections, they are subsumed by the attack on the socratic method. This seems ironic, since law schools are “Langdellian” more in their curricular (torts, contracts, and property are still required first-year courses) and scholarly aspects (many schools still emphasize doctrinal, “casebook” style scholarship to the detriment of other kinds of scholarship) than in their pedagogical aspects.²⁹

In the novel, the tenured faculty have an almost proprietary interest in the socratic method. This provides the necessary conflict (a standard narrative is divided into three parts—exposition, conflict, and resolution), which we all know will be justly resolved. This will not deter our heroine, however, because she is a person of principle. She will publish her tenure piece condemning legal education³⁰ despite the consequences. Like most professors at elite law schools, she is publishing the piece in her school’s law review. Unlike most professors at *any* law school, she has carefully secreted the text so that the faculty tenure committee will have very little time to read it before voting on her tenure application. While this may have been necessary as a plot device, since the novel is based on five days at the McKinley Law School, it is ridiculous to have tenured professors send out spies to track down an article that will destroy “legal education as we know it.” Her action gives the tenured faculty members the old “collegiality” excuse for denying her tenure.

Of course, as the tenured faculty learns at the end of the book, this article will fall into the black hole of legal scholarship (an interesting resolution, at least).³¹ After reading Levin’s synopsis of Professor Shepard’s article, I think it deserves to be forgotten.

The title of her tenure article is “The Socratic Method: The Unexamined Curriculum” (at 269), but she is really condemning a number of aspects of legal education that have nothing to do with the socratic

29. See note 48.

30. From the description given in the book, it appears that Professor Shepard (and her creator) are unaware of the numerous critiques concerning legal education. From the mainstream in legal education, see Herbert T. Packer & Thomas Ehrlich, *New Directions in Legal Education* (New York, 1972); Harold D. Lasswell & Myres S. McDougal, “Legal Education and Public Policy: Professional Training in the Public Interest,” 52 *Yale L.J.* 203 (1943), and Myres S. McDougal, “The Law School of the Future: From Legal Realism to Policy Science in the World Community,” 56 *Yale L.J.* 1345 (1947); from the left, see Duncan Kennedy, “How the Law School Fails: A Polemic,” 1 *Yale Rev. L. & Soc. Action* 71 (1970); *id.*, “Legal Education as Training for Hierarchy,” in David Kairys, ed., *The Politics of Law: A Progressive Critique* (New York, 1982) (“Kennedy, ‘Legal Education’ ”); and Joel Seligman, *The High Citadel: The Influence of Harvard Law School 201–16* (1978) (“Seligman, *High Citadel*”).

31. See E. Joshua Rosenkranz, “Law Review’s Empire,” 39 *Hast. L.J.* 859, 860 n.8 (1988) (citing articles which indicate that law reviews annually publish between 150,000 and 160,000 pages).

method. Apparently, this is simply an attempt to tie the various strands of the plot. Professor Shepard's tenure article strikes blows for bored law students everywhere. Make law school two years instead of three; offer more clinical education; eliminate the socratic method (and, of course, all large classes); eliminate "curved" grading; and use interview fees from large law firms to subsidize public interest recruiting (at 269-71). Except for the first proposal, some law schools have implemented these suggestions.³² This immediately deradicalizes Shepard's proposals.

The Socratic Method is a book probably first written either during or immediately after the author's years at Columbia Law School, in the late 1970s. That is an extraordinary problem for the author of a satiric novel. A message novel must attract a number of readers already familiar with or interested in the subject and address *current* problems with the object of satire. In a country with 700,000 lawyers and 35,000 law graduates each year, this core readership is substantial; however, if the novel reads as a farce rather than a satire, the message will not come through. While I will grant that this novel may appear "current" to the large number of lawyers graduated before the late 1970s, it is not current for anyone who has been involved in legal education in the past ten years. Levin's failure to make the novel current skews the picture of law schools in the 1980s.

If you were a dean of a prestigious law school, what would you think about this proposal? According to Levin, the response of McKinley's Dean Strong (get it?) is, "Rebecca's not a reformer. She's a bombthrowing radical" (at 271). I wonder what Strong would think of a real live member of critical legal studies. If Rebecca is a radical, then are members of critical legal studies anarcho-syndicalists?³³

The absence of any mention of critical legal studies (or law and economics, or, for that matter, even law and literature³⁴) is another giveaway

32. See generally Seligman, *High Citadel* at 10-19 (cited in note 30) (discussing previous proposals for a two year program in legal education, the problems at Harvard Law School with integrating clinical studies into the curriculum, the problems with the grading system and proposals to incorporate a pass/fail system, and student resentment of the socratic method). See Edward A. Adams, "Yale Placement Office Ups Ante For Firm Interviews on Campus," *Nat'l L.J.*, Sept. 28, 1987, at 4 (Yale Law School increasing and scaling interview fees based on size of private law firm).

33. This is a rhetorical question. I often use them in class. When I use them, I tell my students not to answer. Some faculty members seem eager to answer this question. See Paul D. Carrington, "'Of Law and the River,'" 34 *J. Legal Educ.* 222 (1984). The responses are found in Correspondence, "'Of Law and the River,'" and of Nihilism and Academic Freedom," 35 *J. Legal Educ.* 1 (1985).

34. See Brook Thomas, *Cross-Examinations of Law and Literature: Cooper, Hawthorne, Stowe, and Melville* (New York, 1987); James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (Madison, Wis., 1985); Robert A. Ferguson, *Law and Letters in American Culture* (Cambridge, Mass., 1984); Richard H. Weisberg, *The Failure of the Word: The Protagonist as Lawyer in Modern Fiction* (New Haven, Conn., 1984); see generally "Symposium: Law and Literature," 60 *Tex. L. Rev.* 373 (1982). The author does introduce an assistant professor who is a performance artist. This professor is interested in law and the arts.

that this novel is not about what is really going on in law schools today, especially in "prestigious" law schools.³⁵ This novel vents the complaints of a law school graduate who, ten years later, still doesn't like law school.

III

What, then, does Levin implicitly suggest is right with law schools? Most importantly, he considers events (and the people who precipitate them) important only if they occur at an "elite" law school. Allied with this suggestion is his tacit approval of the use of traditional credentials in hiring law school faculty. I mentioned that fictional McKinley Law School is presented as one of the top three law schools in the United States (but why did he omit the University of Michigan?). Levin also notes that "[a]t one point, Rebecca came close to leaving McKinley and accepting a tenured position at one of several second-tier law schools that were vigorously recruiting her" (at 36). She declined this opportunity in order to break new ground at McKinley. The implicit assumption is that the only important law schools are those deemed "elite."

The credentialism in legal education is worse now than it ever has been. The "old boy" hiring network was never a fair system for making faculty appointments and has been virtually demolished. However, it may have been replaced by a system that is no better. The Association of American Law Schools Faculty Appointments Register and Conference, which is not utilized by most "elite" law schools in their faculty recruitment efforts, seems designed simply to highlight traditional credentials, the most important of which are the "type" of law school attended, class rank, law review experience, and publications. The two studies undertaken by Donna Fossum³⁶ concerning the education of law school professors indicate that entry into law teaching and movement as a law teacher were predicated largely upon the "eliteness" of the law school from which the J.D. was awarded.³⁷ In her study of all law professors, Fossum found that nearly 60% had J.D. degrees from 1 of 20 law schools, and that 74% of all law professors had either J.D. or LL.M. degrees from one of these "producer" law schools.³⁸ Although this hierarchical system for hiring the

35. "Critical Legal Times at Harvard," *Time*, Nov. 18, 1985, at 87; Harvard Society for Law & Public Policy and The Federalist Society for Law & Public Policy Studies, "A Discussion on Critical Legal Studies at the Harvard Law School," Occasional Paper No. 1 (May 13, 1985) (on file with author); Jerry Frug, "McCarthyism and Critical Legal Studies," 22 *Harv. C.R.-C.L. L. Rev.* 665 (1987) (reviewing Ellen Schrecker, *No Ivory Tower: McCarthyism and the Universities* (New York, 1986)).

36. Donna Fossum, 1980 *A.B.F. Res. J.* 903 (cited in note 9); *id.*, 1980 *A.B.F. Res. J.* 501 (cited in note 15).

37. Fossum, 1980 *A.B.F. Res. J.* at 908; *id.*, 1980 *A.B.F. Res. J.* at 507.

38. Fossum, 1980 *A.B.F. Res. J.* at 507, 520. Harvard, Yale, Columbia, Michigan, and Chicago law schools had awarded the J.D. degrees for over 33% of all law professors as of

persons who teach future lawyers might have been too difficult a subject to fully explore in the course of a novel, Levin had ample opportunity to discuss the irony of a law school structure developed by Langdell replicating itself across the country. This was material ripe for satire, as evidenced by a comparable satire of English departments written by David Lodge.³⁹

Three final examples concerning law school elitism should suffice. In its symposium entitled *Legal Scholarship: Its Nature and Purposes*,⁴⁰ Yale Law School invited a number of scholars to a three-day conference. Participant Mark Tushnet observed that “with the exception of Professor [now Judge] Posner, who is obviously a special case, I am the only participant presenting a major paper who has not taught at Harvard or Yale (or both).”⁴¹ Ironically, both Posner and Tushnet have degrees from both schools (Posner has a bachelor’s degree from Yale and a law degree from Harvard, while Tushnet has a bachelor’s degree from Harvard and master’s and law degrees from Yale).⁴² Second, in the 1987 Harvard Law School yearbook, I found no tenured or tenure-track professors with a law degree from Stanford University or from the University of Michigan,⁴³ and only single representatives from less “elite” American law schools. Finally, this elitism has even surfaced in the allegedly nonhierarchical conference on critical legal studies.⁴⁴

1975–76. As one who has studied the teaching branch of the legal profession in order to enter it, my impression is that in the last ten years, “local” law schools have broadened their search for professors. Instead of recruiting graduates of their law schools, these “local” law schools, apparently pressed by the ABA accrediting standards, which strongly encourage educational as well as other kinds of diversity, are recruiting teachers from the “elite” law schools. My view is that an update of the Fossum study would likely show a greater percentage of law professors holding J.D. or LL.M. degrees from one of the 20 producer schools, since the “elite” law schools are recruiting in much the same way as always.

39. David Lodge, *Small World* (London, 1984).

40. “Symposium, *Legal Scholarship: Its Nature and Purposes*,” 90 *Yale L.J.* 955 (1981).

41. Mark Tushnet, “*Legal Scholarship: Its Causes and Cure*,” 90 *Yale L.J.* 1205, 1208 n.14 (1981). Tushnet also notes the “phenomenon of privileged access to law reviews. Such privileged access has three forms. A scholar at a more elite school can almost automatically get an article published in a review at a less elite school. Ceremonial addresses in formal lecture series will almost always be published. These forms of privileged access are seldom used. Much more significant is the fact that law reviews will almost always publish the work of scholars on the faculties at their own schools.” *Id.* at 1207–8 n.13.

42. If this sounds like whining, I suppose, in part, it is.

43. In 1986–87, Assistant Professor Daniel K. Tarullo, a graduate of the law school at the University of Michigan, taught at Harvard Law School. I did not include him as a tenure-track professor, because he had been denied tenure at Harvard Law School the previous year. He left Harvard at the end of the 1986–87 school year. While the faculty at Harvard is much more diverse politically, and now has some women and blacks on its faculty, it is less diverse educationally than it was in 1967. Compare Sutherland, *Law at Harvard*, at Appendix (listing vita of faculty) (cited in note 18) with 1987 *Harvard Law School Yearbook* (same).

44. See Letter, “Brown-Nosing the Radical Big-Wigs: Hierarchy in CLS,” *Lizard* No. 2 at 6. See also Carrie Menkel-Meadow, “Feminist Legal Theory, Critical Legal Studies, and

Levin does make a faint stab at questioning the validity of the “meritocracy” creating the existing hierarchy in legal education and the legal profession:

Rebecca sensed that admission to one hemisphere [the elite law school] or the other [the local law school] had less to do with merit than with the socioeconomic status of the parents of the student. She also believed that the quality of education at the prestigious law schools varied little from that of the local law schools [then why not accept an offer of tenure at a second-tier law school?]. Rebecca wanted nothing more than to find a way to end the dual-hemisphere world of lawyers. She knew it would be an impossible task, and, after all, she had already set out to redesign legal education. Rebecca was of the opinion that one revolution at a time was enough for any woman. (At 152)⁴⁵

The rest of the book is an implicit affirmation of the credentialism of the legal academic part of the legal profession. Rebecca is worthy of tenure in large part because she has the right lines on her resume. Instead of making Rebecca an excellent teacher and scholar with a slightly “flawed” resume, in order to provide some true conflict about the goals and structure of legal education and the complex hierarchy of law schools, Levin gives her everything any appointments (or tenure) committee could want, all in order to set up the socratic method as the bogeyman.

For information on the history and development of legal education I have relied upon books specifically concerning Harvard or Yale Law School.⁴⁶ These are the only resources readily available with the notable exception of Robert Stevens’s *Law School*. In Levin’s view, this is not a drawback, since the only important things in legal education happen at these kinds of schools.

IV

As I have said before, Levin has an excellent point to make about the failure of legal education. In most schools for most students, the three years spent in legal education provide little that is intellectually stimulating or practical.⁴⁷ Any continued insistence upon a first-year curriculum consisting almost exclusively of private law courses, taught mainly to a large

Legal Education or ‘The Fem-Crits Go to Law School,’” 38 *J. Legal Educ.* 61, 62–66, 70 (1988).

45. Levin obviously took this from the study of John Heinz & Edward Laumann, *Chicago Lawyers: The Social Structure of the Bar* (New York, 1982).

46. Columbia Law School has also weighed in with *A History of The School Of Law: Columbia University*, written under the direction of Julius Goebel, Jr. (New York, 1955).

47. Carrie Menkel-Meadow, “Too Little Theory, Too Little Practice? Stevens’s *Law*

group of students by use of the socratic method⁴⁸ and an upper level curriculum that generally values the business-related law courses is unsound. The schizophrenia of the law school is well documented,⁴⁹ and it will likely remain so for some time.

The reason for this is simple: The law school is governed by the faculty, most of whom are tenured,⁵⁰ and most faculties cling to the traditional.⁵¹ This includes an admiration for the present structure of law school, legal scholarship that is largely doctrinal in form, and the continued reliance upon the neutrality of law (and legal reasoning) when teaching law. Many faculty members fear that change in any aspect of the law school structure is an implicit degradation of their education, reputation and choice of career. Their attitude is much like the Roman Catholic Church's attitude toward religious toleration before Vatican II. Any agency that attempts to alter the status quo is viewed as a threat and must be stripped of its power.

The two most powerful dissenters to the traditional law school structure are usually the nontenured faculty, who have most recently experienced law school, and law students, particularly second- and third-year students.⁵² Since law students currently have very little power in the management of a law school, except as future donors, and since graduation in three years means there is very little institutional memory in the student body, students are not usually a threat to change the law school.⁵³ This

School," 1986 A.B.F. Res. J. 675 (review essay of Robert Stevens, *Law School: Legal Education from the 1850s to the 1980s* (Chapel Hill, N.C., 1983)).

48. While anecdotal evidence suggests that the socratic method is used less and less by teachers of first-year students, see Menkel-Meadow, 38 *J. Legal Educ.* at 67 n.31 ("In actual practice many law school classes now consist of brief lectures with a 'Socratic' tag question occasionally punctuating a paragraph of a lecture"), there are strong supporters of the socratic method. See D'Amato, 37 *J. Legal Educ.* at 466 (cited in note 17) (distinguishing between a "good" socratic method and a "bad" socratic method, and favoring the former).

49. See Thomas F. Bergin, "The Law Teacher: A Man Divided Against Himself," 54 *Va. L. Rev.* 637, 638 (1968) ("the modern law teacher has been suffering from a kind of intellectual schizophrenia for the past twenty-five years—a schizophrenia which has him devoutly believing that he can be, at one and the same time, an authentic academic and a trainer of Hessians"). See generally Kalman, *Realism at Yale* (cited in note 26); Stevens, *Law School* (cited in note 20); Seligman, *High Citadel* (cited in note 30). See also John Henry Schlegel, "American Legal Realism and Empirical Social Science: From the Yale Experience," 28 *Buff. L. Rev.* 459 (1979); *id.*, "American Legal Realism and Empirical Social Science: The Singular Case of Underhill Moore," 29 *Buff. L. Rev.* 195 (1980).

50. Most law faculties consist of a substantial majority of tenured faculty and a small minority of untenured faculty. See *A.B.A. J.*, June 1, 1988, at 53 (listing tenured and nontenured positions at 22 well-known law schools).

51. "If it ain't broke, don't fix it."

52. The alumnae/i rarely influence change in the law school, although there are instances of alumni attempting to get rid of faculty members who are on the wrong side of the political spectrum. See Sutherland, *Law at Harvard* 250-62 (cited in note 18) (discussing "The Trial at the Harvard Club" of Harvard Law School Professor Zechariah Chafee in 1921 and the resentment of Felix Frankfurter by alumni for his public support for Sacco and Vanzetti).

53. For example, the protest by students at Harvard Law School over the denial of

leaves the nontenured, or "junior,"⁵⁴ faculty as the most likely agent of change. This places the tenured faculty in a bind. There must be the obligatory bows to the gods of academic freedom and collegiality. However, if the nontenured faculty takes these traditional liberal credos to mean something, and they insist upon proposing changes in the law school curriculum, broadening the forms of legal scholarship, or questioning the neutrality of law, the tenured faculty must take action. This usually means denying tenure to those "troublemakers" in the nontenured faculty.

In the late 1980s, this is easily accomplished. With the baby bust already affecting law school applications,⁵⁵ tightening the historically relaxed tenure requirements is justified as economically⁵⁶ (as well as academically) necessary.⁵⁷ Most new law professors are smart enough to understand that they will have to go along to get along. Going along academically means spending an inordinate percentage of one's time writing the definitive doctrinal article⁵⁸ (except that, as we understand from David Lodge's Morris Zapp in *Small World*, there is no definitive article), avoiding students and contentious committee assignments, and criticizing the rule of law only in class.

The classroom is one place where a nontenured professor can speak freely, for in many traditional law schools, there is little, if any, attention paid to what law teachers teach. Levin is absolutely correct in criticizing the law school for its failure to reward good teaching. I do not believe that good teaching requires either the use of the socratic method or the no-hassle pass, and I believe that this debate is relatively unimportant.⁵⁹ It is

tenure to Professor Dalton had little, if any effect. Her appeal to Harvard University President Derek Bok has been officially denied. See David Snouffer, "Denied Again, Dalton Waits," *Harv. L. Rec.*, April 15, 1988, at 1.

54. Your elders [the senior faculty] are your betters. It's like someone saying, "I'll take care of you." Depending on its context, one is either a dependent in a relationship of power, or one is going to be crushed by another in power. I understand that tenured faculty members have been and are agents of change, but the traditional law school usually will not admit enough of those persons to the tenure club to effect change with impunity. For an example, see the current goings on at Harvard Law School.

55. Cf. "Applications Up: Who Are These People?" *Law Services Report*, Newsletter of the Law School Admission Council/Law School Admission Services, April-May 1988, at 1.

56. See note 50.

57. It is interesting to note that this is occurring when the percentage of women and other minorities applying for tenure is greater than ever.

58. See Mark V. Tushnet, "Truth, Justice, and the American Way: An Interpretation of Public Law Scholarship in the Seventies," 57 *Tex. L. Rev.* 1307 (1979) for a critical review of this kind of scholarship. See generally Kissam, 63 *Wash. L. Rev.* (cited in note 13); "American Legal Scholarship: Directions and Dilemmas," 33 *J. Legal Educ.* 430 (1983); "Legal Scholarship: Its Nature and Purposes," 90 *Yale L.J.* 955 (1981); see also Richard Danzig, "The Death of Contract and the Life of the Profession: Observations on the Intellectual State of Legal Academia," 29 *Stan. L. Rev.* 1125 (1977) (reviewing Grant Gilmore, *The Death of Contract* (Columbus, Ohio, 1974), and bemoaning the current state of legal scholarship).

59. Whether you side with Professor Duncan Kennedy, see his "Legal Education" (cited in note 30), or Professor Anthony D'Amato, see his 37 *J. Legal Educ.* (cited in note 17)

important to address the suppositions most law students have about law and the legal profession.⁶⁰ As long as faculty members at a number of law schools are promoted for their scholarly (read "doctrinal") work, or punished for their political leanings, law students will never get the education they deserve.

V

If the response of the powers that are in law schools is to deny tenure to critics advocating changes in legal education or to brand them heretics and banish them to parts of the university other than the law school,⁶¹ another, better novel than *The Socratic Method* will shortly be written. The opportunity for another novelist may exist because it may be that legal education cannot be changed. The Harvard model nurtured by Langdell, in part because it permits a high student-teacher ratio, may be with us always.⁶² The doctrinal article is certain to be with us always.⁶³ Yet, there is something to be said for a true collegiality, which is best understood as a tolerance (I think it is too much to say "celebration") for difference and for discussion about the law school without name calling.⁶⁴ I am pessimistic about this happening not only because I question the utility of the rule of law in faculty governance, but because this discussion is too close to the heart of the matter: The structure of the law school is intertwined with one's most treasured jurisprudential and political beliefs.

The law school and legal education have muddled along quite nicely from the 1940s, when legal realism's slight grip on the academy was loosed,

on the socratic method and the no-hassle pass, it seems clear that both professors insist upon the importance of learning in the classroom. Cf. Catharine W. Hantzis, "Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching," 38 *J. Legal Educ.* 155, 162 (1988) (criticizing Duncan Kennedy's "jeering cynicism").

60. See John Henry Schlegel, "Searching for Archimedes—Legal Education, Legal Scholarship, and Liberal Ideology," 34 *J. Legal Educ.* 103 (1984).

61. See Carrington, 34 *J. Legal Educ.* at 227. I think it is a mistake for me to analogize the actions of those determined to root out critical legal studies adherents or fellow-travelers to McCarthy's tactics, since I have chided Levin for taking himself too seriously. Cf. Frug, 22 *Harv. C.R.-C.L. L. Rev.* (cited in note 35). Nevertheless, there seems to be a lack of understanding of critical legal studies in some quarters. See Report of Dean Gellhorn, *In Brief*, published by Case Western Reserve University School of Law, vol. 37, at 2, 3.

62. Cf. CUNY Law School Queens College 1983–84 Catalog (the first year curriculum consisted of courses entitled "The Work of the Lawyer," "Adjudication and Alternatives to Adjudication," "Liberty, Equality, Due Process, in Historical and Philosophical Context," "Law and a Market Economy," "Responsibility for Injurious Conduct," and "Law and Family Relations").

63. See Kissam, 63 *Wash. L. Rev.* (cited in note 13), for a schematization of different kinds of legal scholarship. See also Richard A. Posner, "The Present Situation in Legal Scholarship," 90 *Yale L.J.* 1113, 1113 (1981) (arguing the centrality in legal scholarship of doctrinal analysis).

64. No more calling faculty members "crits," unless they approve, or "mushy left-liberals," or "Neo-Nazis."

to the present. Universities and faculty members have profited financially by the continued use of large classes and the emphasis on private law (torts, contracts, property), even after the realist critique of the formalist view of the law and lawyers. Bar organizations have benefited since law schools became the third-party gatekeepers to the profession.⁶⁵ The fact that students for several generations have left law school wondering why they went was a small price to pay for this academic boom (and boon). I doubt that tenured faculty members will engage in dialogue with those who apparently want to disrupt this pleasant, satisfying life.

The message of the legal realists concerning legal education was connected to their jurisprudential beliefs. The Nazi threat that resulted in World War II provided the opportunity to inter the legal realist challenge to jurisprudence and legal education.⁶⁶ A renewed challenge today that the legal education (and implicitly, the economic) system is unfair, not a true meritocracy and that it does not afford its students the best education available is a challenge not only to one's views about legal education, but to one's political and jurisprudential views. To persons who have dedicated their lives to the law school, this must appear as a vicious and cruel (as well as wrongheaded) attack. Instead of the battle being fought on jurisprudential or political grounds, a substitute is found in legal education. It is easier to fight back on the playing field of legal education not only because the traditional law faculty members wield governing power there, but because there can be a "victory." Arguments are never settled in jurisprudence, and rarely in politics, and it isn't as sweet when one can't point out that one has won and another has lost.

65. See generally Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York, 1976).

66. Edward A. Purcell, Jr., *The Crisis of Democratic Theory* 159–78 (Lexington, Ky., 1973).