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The Faculty Workshop

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ESSAY

The Faculty Workshop

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The fever is back. And I'm out of laudanum. Plus there's a faculty workshop in about an hour or so.

Still, bear with me.

The thing I want to talk about is a dream I had last night. Actually, this morning. And frankly, it was less a dream than delirium. And it was less delirium than the last wisps of laudanum evanescent.

There were law professors in my head.

And homeless persons. Curiously, most of the homeless carried copies of *Law's Empire*. Equally curious, it was the law professors who were sleeping under bridges. Some professors—about a dozen or so—were already awake, delivering their lectures in a garden next to a river. It looked a lot like the Seine, but for some reason it was the Volga. Soon there were more law professors—some reading from notes, others pacing, lecturing to no one in particular, speaking to the air. It was a sunny spring morning—white clouds in the sky with an intimation of a gentle afternoon

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rain. The law professors smiled. It all felt very cheery—like a well-run rest home. Or an asylum.

One of the professors was a bit loud: "Stop, look, and listen," he kept saying. Over and over again. And sometimes he paused in between. "Stop." "Look." "And listen." The phrase was apparently very meaningful to him. He seemed to expect some sort of reaction. He grabbed an old bag lady by the arm and said, "Stop, look, and listen." She became very frightened and ran away. A couple of men in white uniforms gently ushered him away.

A kindly gentleman with a grizzled stubble of white beard and a slight stoop walked up to me very slowly. He was carrying a crinkled yellow pad filled with densely packed small script. Old school—notebook lined. "Have you seen my podium?" he asked.

"But what would you do with a podium?" I asked.

"I would lecture, of course."

"But there's no one here to hear you."

"But look," he protested, waving down the length of the garden towards the east, "there are all these other law professors here. Surely, you can see that. Can't you?"

"Yes, but they're all busy giving their own lectures. I don't think they will listen to you."

He smiled knowingly, like a mischievous child about to pull a magic trick on a grown-up. "That doesn't matter," he said. "No one understands anyway."

He tottered away.

Another one claimed to be quoting Holmes: "Law sleeps. The masses pass by."

"But that's not Holmes," I said.

"Yes, I know, but it could have been."

"But—"

"Reason is the last gasp of a dying idea!"

"That's not Holmes either!"

"I'm trying to improve him. I've got hundreds of these. 'Surety is the first refuge of scoundrels.' 'Justice is law in its Sunday best.' 'Morality is the crutch of the feeble and infirm!' I have hundreds, I tell you."

"But, look you can't just claim to quote Holmes and make him up out of whole cloth."

"Well, I'm not claiming it's Holmes. And it's not out of whole cloth. I'm just saying it's *as if* Holmes had said it."

"Yes, but he didn't!"

"That's why there's an 'as if' part."

"This is all fraudulent!" I said.

It was at that precise moment that one of the other professors came up to us, asking, "Is this the faculty workshop?" The man was visibly excited. He wore a black suit. "I want to ask a four-part question, followed by a comment and I have been told this is the place to do it. Please, they said I could." The man was speaking very quickly. He had an Eastern European accent I couldn't quite place.

"If you want, I could cut it down to a three-part question followed by a comment," he offered. "It doesn't have to be four."

He pleaded with us. "Please, I have traveled a long way. And there are not many places where one can do this. I could ask my question quickly. It's appropriate for almost any paper. Which of you is giving the paper here?"

"We're not giving papers," I said. "He's quoting Holmes."

"Oh, I see," said the man, visibly taken aback. "This quoting Holmes—does that replace the workshop? Is that the new thing now?"

I awoke with a start. The heating ducts were clanking. My forehead was moist and my cheeks clammy. I had obviously fallen asleep in my office chair. Immediately, the anxiety kicked in. There was something I had to do or find.

It didn't matter, however, because it was at precisely this moment that I was downloaded from SSRN by a Max Something or Other. Or perhaps I downloaded him. One of us was clearly in the other's head. In the moment, it was hard to tell. These days the author/reader distinction is so passé. Oh sure, you can tell whether the PDF file is in your download directory or not. But that's just a physical sign. And a sign of *what* really? One PDF file begets another. And vice versa. Change the names, tweak the topics, replace the nouns, and it's all the same. The action that is. Oh sure, there's lots of diversity at the noun level. But at the level of action—of verb—it's all pretty much the same. Because let's face it, if Max Something or Other and I are generic legal academics (and let's just say for the moment we are) then Max is trying to satiate my expectations just as I am trying

to satiate his. And, of course, our expectations are virtually identical. And that's increasingly so these days, now that we're all New Haven boot-camped, Palo Alto-mentored, ADR-prepped, job-talk-experienced, and young scholar workshop-hardened. The crucibles bear different names, but the grind is uniform. In the future . . .

I looked at my watch; it was 11:12 a.m. The keening of anxiety still prickled. I decided to go for a short walk down the hall.

Already, I could smell the lunch food from five offices away. And that was not a good sign at all. It was way too early. Very likely Chicken Kiev. By the time the workshop started, it would be a cream-soaked E. coli challenge.

Plus, the aroma was not comforting. In law, aromas are generally not: Smell in law is almost always a sensory gateway to disgust and thence to sanction and punishment. It was not reassuring at all.

Neither was my sudden realization—it finally broke through—that I didn't know whether I was giving the workshop or whether it was someone else.

And then I realized that it didn't really matter.

As I'd written somewhere (I'm almost sure of it), the faculty workshop is a rigorous disciplining institution. Most legal academics think that in workshops, it's the speaker and his paper that matter. But, that has to be an overstatement. The speaker is a prop, an accessory.

He has to be. It has to be that way. Most papers, despite the varying axiomatics and methodologies, have a highly stylized and rigidly observed common structure. It's basically an enterprise where legal thinkers try to perform a two-step procedure. Step 1 involves fashioning or reforming legal regimes so as to establish or sustain a desirable X (where the desirable X is something presumed to be appealing—a rule, a process, an interpretation, a political desiderata, or some combination thereof). Step 2 involves advocating, within the accepted discourse of law and the perceived audience preferences, for the chosen desirable X. Meanwhile the speaker tries to accomplish Step 1 and Step 2 by enacting or resisting a series of equally stylized argument-forms (e.g., rules v. standards, institutional competence, capture concerns, etc.).

Occasionally, there are some more ambitious pieces that present as descriptive, empirical, or theoretical. But not

many and these are almost always transparently shaped by Step 1 and Step 2. Then there are, of course, the historians. I'm always mildly amused by (though also empathetic towards) the historians. They have a devil of a time because no one else knows how to engage with them:

"So, do I understand you correctly to be saying that, in the period 1776-1788, some farmers in New Jersey exported grain to New York—is that right?"

"That's right."

"Well, that's wrong. They didn't."

"But . . . But they did!"

"Well, let me ask you this then: What would you say if I said they didn't?"

Fascinating. Absolutely fascinating. Like . . . oh, never mind.

So if we can put the small number of historians and interesting people aside for a moment, what we have in most faculty workshops are extremely stylized (and formally redundant) presentations. One can easily begin to suspect then that it's not at all about the speaker. And to say it outright: Most of the time it isn't. Instead, what matters most is the disciplining effect enacted through the highly stylized questions that the speaker is asked to answer. Again, most people think that it is the speaker who is being disciplined (and surely some speakers may feel that way on occasion). But the speaker is merely the occasion for the reciprocal disciplining of audience members by each other. We are signaling to each other via our questions and thereby constructing for ourselves and each other the appropriate genre for the law review article/faculty workshop performance.

Much of this reciprocal disciplining is a subtle negotiation—performed largely by way of non-verbal cues (smiling, nodding, sighing, sitting up, reclining back, dropping the eyelids down to half mast, taking care of email, whispering in a neighbor's ear, reading faces, and so on).

The non-verbal cues effectively valorize or devalorize the questions asked by the audience members. The speaker (being an outsider) is often oblivious to the specific meanings engendered: Not knowing the identity of the faculty characters (or the institutional dynamics), he or she

can only make educated guesses as to where the valences of faculty power may lie.

Law professors, of course, will have a hard time thinking that such non-verbal cues matter much. Life of the mind and all that. But the cues actually do—because everyone (at least at non-dysfunctional law schools) refrains from saying what they actually think. If one of your colleagues asks a dumb question, for instance, you can't really be expected to say, "Well, that's pretty fucking stupid—isn't it? Work on that one ahead of time—did you?" And likewise if the speaker drones on, you can't really say, "So your paper—it's kind of boring. Actually, chew-on-the-furniture hurt-yourself-boring." What could a speaker possibly say to that? "No, it's not?" "Well, it's interesting to me?" "I've got a lot of smart people on my side?" You see the point. Besides, it's not nice. That's why the infinitely more delicate (even if not altogether *conceptually* nuanced) non-verbal cues are so important.

Of course, it's not just the non-verbal cues that matter. The actual questions asked are important as well. But you already know the standard questions. As a gentle reminder here, I will simply list them as rapidly as possible in a single paragraph. Please do read as quickly as you can. Here goes: the rules v. standards question, the institutional competence question, the this-bit-of-history is against you question, the have you considered . . . question, the on page 18 you say . . . and yet in footnote 262, you say . . . question, the capillary trench warfare question, the I've actually worked on this as a lawyer question, the real law/real politick question, the rational utility maximizer would have done otherwise question, the cognitive error/bias of your choice question, the where's your empirical support question, the *in terrorem* effects question, the perverse incentives question, the institutional design question, the but you have not dealt with . . . question, the how would you deal with . . . question, the nastier, wouldn't you have done better arguing that . . . question, and, of course, the ubiquitous what should the courts do question. All these questions function to construct and delimit the "ideal" law review article—the one that will successfully negotiate the gantlets of faculty workshops everywhere and score five million-plus downloads. There are actually several genres that conform to these requirements, but life is brief, patience is thin, and time is fleeting, so here very quickly

then is the formula for the Mother of all Law Review articles (circa 2000-2010). This is what you must write:

(1) In the article, pick a fight with a certain accepted legal approach, tradition, whathaveyou which, as you are about to show, is on at least one significant point demonstrably wrong. Bonus points if the approach, tradition, whathaveyou is already not well liked.

(2) Deploy a mid-level but intellectually non-trivial theory as your framework. It should come from some extra-legal field (e.g., psychology). It should not be so forward-leaning as to make your audience feel cognitively challenged, but it should nonetheless be sufficiently aggressive as to imply the breaking of new ground. (Stay away from the French.)

(3) Make the mid-level theory yield (this is extremely important) what is at once a common sense and a center-liberal solution. This greatly increases your (incredibly marginal) chances that some official body will actually adopt your solution—adoption being something that is oddly treated as a sign of good scholarship as opposed to what it is (or might be)—namely, a sign of good service. Hewing to a common sense center-liberal solution also greatly increases your chances that the immediate audience will believe you are right.

(4) Leave enough ambiguity in your text to prompt and sustain a maximum degree of self-gratifying audience projection. A relatively crude way of doing this (though it works) is to take a fairly well settled common law notion (e.g., "decide cases narrowly") which people already know and extrapolate it to a vastly more self-inflated version of itself—to which you will then attach a fancy new Latinate name. In terms of symbolic economy, it's a win/win: the old knowledge of law is made to feel hot and new while the hot and new is made to feel solidly grounded in the law. Remember: No one in the legal academy has ever gone wrong by regressing towards the mean unless, of course, 1) they overdo it, or 2) they're too obvious about it—as in actually announcing it: "Regressing to the Mean—A Proposal for . . . ." Even then, apparently, there's not much risk.

(5) In terms of tone, you basically want the stylistic equivalent of (4) above. That is to say that you want to appear servile—while nonetheless making it obvious to others that this servile affect is in service of establishing

your dominance. In sharp contrast to when you were a lawyer, you want to make sure everyone understands this.

That's it. I got all of these by reading old works (actually new works, too) by Professor Cass Sunstein.

Also key to the disciplining aspect are some obvious questions that are never (and can never) be asked as they will draw immediate and overt acts of discipline themselves. These questions are those that would undermine the collective suspension of disbelief that enables the speaker and the audience to pretend that their research agendas are at once intelligent, meaningful, and normatively efficacious.

Anyway, I'm sorry for this digression. I'm pretty sure I've published all this before. Actually, come to think of it—maybe not. I think it's all on a hard drive attached to a PC slowly decomposing in a muddy wind-swept lot somewhere in Eastern China. In any event I apologize. To you. To China.

So before all this started, I was trying to find my bearings. I believe I was trying to figure out whether I was today's workshop speaker or not. I walked back to my office to see if my email could clue me in. Yes!

> **From:** Jennifer Halper <jennifer.halper@tba.edu>
> **Subject:** Works-in-Progress today:
> **Date:** February 17, 2012 11:56:37 AM MST
> **To:** law-permanentfaculty@lists.tba.edu <law-permanentfaculty@lists.tba.edu>
> **Reply-To:** Jennifer Halper <jennifer.halper@tba.edu>
>
> ---
>
> Dear Faculty:
>
> This is a reminder that today Professor Z will be presenting a current Works-in-Progress in the Colloquium room at noon. As usual, lunch will be served in the foyer. Hope you can make it!
>
> Jennifer

Yes. I felt relieved. More than expected actually. I sighed and the anxiety all but dissipated. I went through my desk drawers to see if perchance I had misplaced a vial of laudanum. No luck.

When I arrived at the Aetna Life & Casualty Colloquium Room, it was already buzzing with conversation—I made a point of bypassing the Chicken

Kiev, leaving a wide sanitary cordon. Therese, our ADR (Associate Dean for Research) had already taken the podium.

"O.K. so once again, let's get started. We're very pleased to have Professor Z with us today. I won't go into his prodigious accomplishments, other than to note . . . ."

(She went on for quite some time.)

"As usual, there is no paper. We'll start right in with questions and Professor Z can step in whenever he feels that a paper is beginning to take shape. Today's topic is, The Optimal Precision of Rules for the STB."

"Yes, Tony."

"I have a two-part question. If by precision we mean exactitude in the sense that all cases would be treated similarly, then a bright line rule might be preferable. On the other hand, if precision has reference to the social field—the actual transportation industry—then it's really not clear and it's possible that a standard might be appropriate. So which is it? Is it possible to deal with both aspects? Or must we choose between the two?"

"Thank you, Tony. That is a very nice start. And an issue that will no doubt have to be addressed. David?"

"I think Tony has put his finger on it. I would just add that there is a preliminary question, namely—who should decide? The discourses that can be brought to bear in assessing optimal precision will differ depending upon whether we are talking about a legislature, an agency, or a court. I guess my question would be: how can we make that particular determination—that is, who should decide?"

"And of course, who decides who decides?" someone piped up.

"Very good. Susan?"

"Building on David's question, wouldn't we want to do a comparative analysis of which legal actor here is least likely, in light of the particular subject matter, to suffer from grievous cognitive errors, institutional bias, or to put it crudely, capture?"

"Thank you Susan. That is a great question. Plus, I believe, it can be broken down into three parts."

"Mary?"

"Never mind, I'll ask it later."

"We'll come back to you. Sam?"

"If we can get back to the subject, I would like to know how much the speaker's analysis is going to be informed by the substance of the subject matter here (STB rulemaking) as opposed to more generalizable ideals of form? Can we get a fix on this or am I asking too much?"

"Very nice, Sam. But I do want to remind you that we are not necessarily dealing with the STB engaging in rulemaking here. That's still very much in question and up for debate."

"No, it's not."

"Yes, it is, Sam," David said. "You can't just assert your opinion like this and take the conversation wherever you want to go! Everybody gets a chance here."

"No, they don't."

"Sam, you don't even know whether the STB has rulemaking authority."

"Well, neither do you."

"Gentlemen, please. Let's just move on, shall we? Frank?"

"I think we are all operating in a vacuum here. If you want to understand the optimal precision issue, you have to go back and deal with the actual history of the ICC which was the predecessor agency for the STB. When the ICC was first founded back in 1887, it was decided that . . . ."

Frank went on at some length, recounting the history of the ICC and the revolving door between the ICC and crack Washington DC Law Firms. He then went on to recount a few offhand statements by Felix Cohen who, while working at Interior, really had nothing to say about the ICC. (Neither did Justice Douglas.) One could tell that Therese was looking for a way to cut Frank off because, given his superannuated emeritus status, his comments could be expected to go on at great length. They could also take bizarre and occasionally disjunctive turns. In the end, however, he would invariably wrap things up with a didactic (albeit didactically vacant) account of his termination as a member of the ALI. Something which he felt was truly unjustified.

"O.K. Moving along. We have a lot of balls in the air. Can we make some effort here at some sort of synthesis? I

don't want to chill anyone's view. But I do think we are heading towards something."

"No, we're not."

"Professor Z, would you like to intervene at this point and suggest whether you can see a paper taking shape yet from all this?"

"Well, I think the questions and comments are all truly excellent. But I think there is yet much more to be asked here."

"Barbara?"

"I would like to ask whether the topic is itself appropriately stated? Why precision? And why the STB?"

"Professor Z?"

"I do think there are some questions that will be beyond the scope of the paper. My sense is that this may be one of those. And I hope you understand, Barbara, that I say that as a deep compliment." Professor Z bowed his head and leaned towards Barbara.

She beamed. From my seat in the rear, I thought I could even detect the mildest blush on her cheeks. In truth, it might have been the lighting.

It was at this point that I noticed Stan, the torts maven, up at the front of the room. I could detect the beginning of what we call "Stan's routine." And I was a bit surprised to see it emerge, because it did not seem to me that things had taken a left-wing turn yet. Yes, Barbara was on the left and yes, it was well known that Professor Z often traveled the same paths, but still it did not seem to me obvious that any left turn had been taken. At least not yet.

The initial moves of Stan's routine, however, clearly suggested that he thought otherwise. Stan had obviously finished eating—an enterprise which he keyed closely to the speaker's politics and jurisprudential style. For anyone on the left (and especially any theorist) Stan would make a point of eating rather loudly, the fork and knife clinking joyously on the white porcelain plate. Inexorably, these demonstrative table manners would sooner or later cause some food to spill. Then the real show would start. The spill would be treated with acutely choreographed multi-stepped procedures—a perfectly scaled and finely tuned response ideal for a miniature hazmat incident. Stan would invariably begin by rubbing the rosewood table with large, slow circular motions far removed from the site of first

contamination. From there, the sweeping action would proceed in an inward spiral towards the hot zone—a piece of salad or meat, perhaps spilled dressing. When contact was made, the offending culinary debris would be scooped up with the napkin and brought up to Stan's face for inspection—presumably for identification. Sometimes, further efforts at decontamination would be indicated and the circular motions would recommence with renewed vigor. Some were of the view that Stan actually intended to polish the table, while others stuck to the decontamination narrative. In any event, whenever Stan felt the hygienic exigencies had been met, he would suddenly cross his arms, recline brusquely in his chair and stare blankly at the speaker. This would signify the end of the routine. Unless, of course, the speaker was extremely far left, in which case, Stan would display what we around the law school called "speaker-specific narcolepsy."

Going on and on at such length was precisely the point of Stan's elaborate exercises. He was expressing a view on the subject and the speaker, and his expression, when one thinks about it (I invite such), was symbolically, performatively, and metaphorically congruent—indeed so perfectly congruent that all who noticed were of the view that it was unconscious. No one believed Stan had the wherewithal to do this consciously.

With the workshop sufficiently disrupted, I heard Professor Z ask if the last question could be repeated.

"Yes, my name is Charles Bedford, and I have a three-part question. First, I just want to say that I think your paper will be brilliant. But there are a number of problems or challenges, as we might call them, that seem to be in the offing. First, how do we define "rules?" I think if I were doing it, I would do a search to discern the prevailing definition. Second, when we define precision, how precise should we be?" Charles's eyes twinkled. They were wet and blinking. His voice lowered down to a whisper—as if he were about to impart a delicious secret, some insight so ethereal it is seldom ever thought, much less ever spoken: "You see what I'm getting at don't you?"

Professor Z seemed perplexed. Known to be a consummate professional, however, his right hand quickly went up to his chin and commenced the classic pensive stroking. His gaze lifted to the ceiling and fastened on the back of the room (where surely, if an answer were to be found, that is the place it would be located). His left hand

gracefully found its respective coat pocket, and he began to leave the safe harbor of the podium to take up a slow motion pace.

Roughly one third of faculty in attendance were entranced—no doubt fully convinced that they were in the presence of deep thought happening. Another third was very likely evaluating Professor Z's performance for credibility, style, and originality. And another third was no doubt trying hard to commit to verbal and motor memory Professor Z's performance of the "I-am-sent-into-very-deep-thought-by-your-brilliant-question," routine.

"I'm not sure I see what you're getting at," said Professor Z. "Can you help me?"

Charles was flustered. His moment of public intellectual intimacy—the moment that was supposed to reveal to all present that Professor Z and he operated on the same exalted intellectual plane, now lay in shards. How to recover? "What I mean is that—Well, perhaps we should talk about it at dinner."

"O.K. One more question?"

Barbara again.

"What if there were no STB?"

Everyone laughed.

"No I mean . . . . Well, look, the ICC was abolished in 1995. It could happen again, you know."

"Professor Z, do you see a paper now taking shape?"

"Yes, I believe I do. As I said before, the comments are truly excellent. And certainly the law school is living up to its well-deserved reputation."

"So, can you tell us a bit about the paper as you see it?"

"We would start from the back end of course. We have to end on a normative note—the law reviews, of course." (Some faculty snickered.) "So we end on a normative note—which will, of course, entail an endorsement of optimality in precision. That, obviously, is a given. The challenge is to give some sort of novel and relatively concrete twist here on the meaning or application of optimality. How then to do that? Here I would have to do a bit of research (I'm afraid your questions don't answer everything)." A few faculty laughed politely.

"My best guess is that no one will have thought about optimality over *the longue durée*. I would argue, based on

your questions, that optimal precision ought to be seen in light of whether the rules (or standards) preserve the regime in question from exogenous effects. The rules (or standards) need to be sufficiently open to absorb, shall we say, mildly disruptive exogenous effects (hence a certain degree of vagueness) yet sufficiently closed to maintain their identity and repel exogenous subversion. You see," he said, turning his hand delicately back and forth as if he were fine-tuning the volume control on an expensive amplifier, "Open and yet closed."

"Do you believe that?"

Professor Z's response was so rapid, it spurted out unfiltered: The man was clearly aghast. "Of course not! I have no view on the issue. I try as much as possible not to have a view on the issues on which I write. That way it broadens the pool of available ideas, rhetoric, and arguments. I am simply offering the kind of thesis that I suspect no one has yet taken. If I am right about this, then there are all sorts of possibilities open here to take on the standard L&E literature, Diver & company. There will be one section—I'm thinking late—maybe Part IV, discussing cognitive errors and biases."

"But what about the STB—that seems to have dropped out?"

"Right. I think the STB here will have to be a shill—a completely compliant 'substantive terrain' on which to play out the various arguments and theories. The reason is straightforward. As you asked *your* questions, I couldn't help but notice that the STB seemed to drop out almost entirely. I think that's a fairly unequivocal sign. The great advantage here is that no one really knows very much about the STB and no one really cares—so it will be easy to convince readers that it is high time for a second look. At the same time, of course, it's the great weakness of the piece as well. To say it again: Who cares? There are no doubt some cosmetics that can be added—starting the introduction with, say, a railroading accident."

"Couldn't you dispense with the STB altogether?"

"Well, certainly. But as the topic was introduced, I did not really see that as a possibility."

"Would you plan on selling this article or would you credit yourself? Would you consider co-authorship?"

"Well, I'm sure we can discuss that with your ADR at dinner. Thank you."

* * *

I strolled back to my office. Before I even reached my desk, I could see on the monitor, the unmistakable imprimatur of the mauve and white SSRN article page—with the SSRN logo and the ubiquitous abstract. I don't know how it got there, but as I read the author line, I was quite relieved. I began to read:

Stage 4

By Max Something or Other

Stage 4 is a stage beyond the formal rationality of law described by Max Weber. It is beyond the critical descriptions of instrumental reason of the Frankfurt School (or indeed Lyotard's account of the postmodern condition). In Stage 4, legal academics do not merely perform as if in a game. Instead, the game has become the ontology of the enterprise. The game is gaming.

We can distinguish four stages leading to this development. In Stage 1—a mythical and no doubt apocryphal moment—the legal academic develops ideas in which he believes and publishes them. In Stage 2, the legal academic compromises his ideas so that they might attain a greater publicity and status. (The ideas, however, are not completely abandoned.) In Stage 3, the legal academic seeks publicity and status and thus selects and tailors his ideas accordingly. In Stage 4, the legal academic has no ideas. He is, however, willing to adopt any that will yield publicity and status.

The advent of Stage 4 signals a radical move beyond the more primitive forms of academic arrivisme. In Stage 4, the idea that belief would have anything to do with the game is a demonstration that one has failed entirely to grasp the character of the enterprise. In Stage 4, the game is gaming. There is no moment that is not itself an instance of gaming.

Stage 4 appears to be an unstable state. It is arguably self-consuming in the same way that late capitalism is self-consuming (and possibly for the same kinds of reasons). In late capitalism, the market colonizes and corrupts the coordination mechanisms (politics, morality, culture, law) on which it depends. Stage 4 appears to be the manifestation of the same pattern on the plane of thought, ideas, and beliefs.

This essay explores Stage 4 through the ubiquitous law school institution known as the "faculty workshop." Stage 4 is one that, frankly, neither we nor anyone else anticipated. What we do

anticipate, however, is that by the time this essay nears its end, there will be no one left in a position to finish writing it, let alone understand what it means. By all appearances, Stage 4 seems to be a novel, virulent, and highly advanced form of weak nihilism.

The game is gaming. There is nothing else.