

fundamentals of the academic enterprise, they are to be commended. As that greatest of British conservatives, Edmund Burke said of 18th Century France, "A state without the means of some change is without the means of its conservation."

The means of change have been greatly improved at Stanford,  
and while that does not disarm the more extreme radicals,  
it does make harder their task of radicalizing the uncommitted,  
or making non-violent radicals collaborate in the use of  
violence.

Count the achievements of the past three years in this regard. There is now an effective faculty deliberative body, the Senate of the Academic Council, big enough to be representative, small enough to manage a coherent debate. Two years ago there was no such thing.

This year, the entire structure of standing committees in the University has been reformed. They have been streamlined and their purposes clarified. They all include student members--which is no panacea, since the student  
members of committees have difficulty remaining in close

and convincing touch with their constituents, but it is a help. Student committee members have generally given a very good account of themselves; often the very fact that they do come to the committee unburdened by a surfeit of previous experience is an asset. It makes them able to ask important questions about things that jaded faculty members long since took for granted.

The Board of Trustees, as you know, has undertaken revisions and improvements of its own practices and composition. These are certainly far from radical. Most universities have had elected alumni trustees for years, and even the provision that half of these must be 35 years old or less is not likely to convert the Stanford Board of Trustees into a nursery school. There remains much uncertainty and confusion as to the proper functions and purposes of the Board--or even as to its actual functioning today. To the extent that it can still plausibly be maintained that the Trustees "run the University," the Board remains

vulnerable to the attacks of the would-be wreckers. I'm sure that it must be the most unkindest cut of all for a Trustee to hear himself charged with responsibility for the day-to-day administrative management of the place when first of all he isn't, and second his accusers are often those who are doing the most to jeopardize the long-run survival of the University--for which the Trustee does feel a responsibility.

Finally, we have developed new institutional devices to deal with new problems, or new aspects of old problems.

A University Ombudsman has been appointed, to provide that independent and unfettered investigation of bureaucratic muddle without which the citizen, be he student or not, so often must flounder in frustration. (The fact that the first Ombudsman happens also to be a Professor of Psychiatry is, I assure you, wholly coincidental.)

Various staff members have been appointed to assist in matters pertaining to disadvantaged minorities; a search is currently underway for a person to devise and administer an external Affirmative Action program.

The Stanford Judicial Council, with a Chairman from

the Law faculty and otherwise an even division between faculty and student members, is also less than two years old. While in my judgment it has sometimes been surprisingly lenient in its treatment of those who disrupt the University, it has certainly worked conscientiously, often against formidable meaningful odds, and it has imposed more/penalties than most non-campus people realize. Its legislative counterpart, the Student Conduct Legislative Council, was totally frustrated in its first year of operation by internal disagreements and the pressures of last year's events, but it has now begun to function, and there are grounds for hoping that we may before long emerge from our present state of having to live under interim regulations promulgated by the President, and can have a code of campus conduct that is the more authoritative for having been the product of a formal deliberative body charged with this specific responsibility.

The catalogue could be extended, but only at intolerable risk to your patience. Besides, I cannot in all conscience end on a wholly cheerful note. The unbridled

and infantile ferocity of the past two weeks represents too  
ominous a threat for that. Furthermore it would, I believe,  
be a mistake to imagine that what has happened in this most  
recent outbreak does not have roots in our not quite so  
recent past.

Many would argue that a crucial turning point came  
at Stanford with the forcible occupation of Encina Hall, the  
rifling of files there (and subsequent publication of  
confidential materials from them), and the summoning of  
massive police power to remove the demonstrators from the  
building.

Speaking for myself, I wonder if the more crucial  
shift did not come during the earlier, supposedly peaceful  
sit-in at the Electronics Labs. True, that was a considerably  
milder occupation than Encina, and only desks, not confidential  
files, were rifled, for whatever comfort that is worth. But to me  
the saddest and most ominous feature of the AEL sit-in was  
the shift from responsible to irresponsible dissent.

By that I do not mean a change from dissent expressed

always within the law, to lawless dissent. Rather, I  
mean a shift from dissent which, when it transgressed the  
law, was willing and indeed anxious to bear witness by  
accepting the consequences, to anonymous, self-protecting,  
law-evading dissent. The AEL sitters-in refused almost to  
a man to identify themselves. By now, there seems almost  
a quaintness about the mere notion that anyone would expect  
participants in an illegal protest to stand publicly by the  
convictions that led them to break the law. That, I  
believe, is a fundamental and tragic deterioration.

It is also fraught with revolutionary implications,  
as some (though not all) who practice the new style intend.  
For by refusing to take any consequence of your misdeeds,  
you are indeed saying that the society and the institutions  
that would provide those consequences is corrupt beyond  
redemption. You are saying that the system must be subverted,  
eroded, terrorized, and coerced, if justice is ever to prevail.

And in so saying, you are subverting and eroding your own  
capacity to live a constructive life in a free society.

And this is where my third-point--education comes in. To those old enough to remember totalitarianism at its most virulent, in Hitlerite Germany; to those informed enough to perceive the world of difference between the individual's lot in China or the Soviet Union or the South African Republic and in the United States, whatever our shortcomings; to those possessed of enough perspective to know that freedom begins in the willingness of each individual to recognize the right of others to differ from him, over things that matter, and that this willingness has been a rare phenomenon in the long sweep of man's history; to all such, the dreary, doctrinaire fanaticism of the hard core revolutionary Left is really more frightening than their rocks or their dynamite tragedies or their toying with terrorist tactics.

One of the most depressing experiences of the past couple of years has been to listen to those interminable radical meetings, full of atavistic crudity, of mind and

expression alike. The intellectual poverty of their arguments  
has been more than a match for the unimaginative arrogance  
of their subsequent behavior. It is food for thought, not  
 only for lawyers but for all of us, that anyone can do well  
 enough in American schools and universities to constitute  
 part of the supposed intellectual élite of this nation, yet  
 have such manifest and shocking shortcomings as thinking men  
 and women. Thank heaven they are few; pray heaven they  
 remain so.

If that prayer is to be answered, <sup>we</sup> ~~it~~ may have to ~~be~~  
~~by~~ return once again to the America of which Burke said

(~~once again~~)

"In no country perhaps in the world is  
 the law so general a study....This study renders  
 men acute, inquisitive, dexterous, prompt in  
 attack, ready in defence, full of resources....  
 They augur misgovernment at a distance, and snuff  
 the approach of tyranny in every tainted breeze."

The American Law School has no higher duty than to help

protect the American University from the tainted breezes of  
the new totalitarianism. In this, the Stanford Law School has  
performed prodigies. These include the devoted service, in  
jobs that are thankless if ever a job was, of Law Professors  
as Chairmen of the Stanford Judicial Council--Jack Friedenthal  
last year and Marc Franklin now. They include also advice,  
freely proffered, gladly listened to, often taken, from a  
number of other Law School faculty members. They include the  
eloquently successful mission of a young member of the Law  
faculty last year at the height of the Encina occupation, a  
wholly voluntary mission, I hasten to add, which helped persuade

demonstrators not to take on the police in combat that ugly

☞ BUT

morning. They include something more: namely every effective  
effort that is made by Law School people, whether faculty,  
administrators, or students, to make the law a living, adaptable,  
socially responsive instrument. There is an anti-legalism that  
marches hand-in-hand with the anti-intellectualism I have  
been decrying. Those who wish to discredit the law these days  
enjoy no lack of ammunition. It is all the more important that

able members of a prominent law faculty be alert to opportunities --not to defend the courts and the law as they are, but to point out right directions for their improvement and reform. When Herb Packer, with characteristic force and clarity, attacks the obsolescence of many contemporary uses of the criminal sanction; when Tony Amsterdam takes on the Establishment, including the legal Establishment, on behalf of defendants who, whatever their sins and provocations, appear to have received unequal treatment under the law; when Paul Brest works to keep the law a constructive force in the long struggle for racial justice, these men are not, as some would argue, threatening the foundations of law and order. They are shoring up those foundations, and providing the basis for renewed faith in the capacity of "the system" to renew itself without resort to the barricades. That faith is in acutely short supply in many sectors of American society. To rely on the majesty of the law is not and never was enough; to buttress its humanity is always--and never moreso than now--the task of the hour.

###