Introduction

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Legal Education and the Reproduction of Hierarchy: A Polemic against the System was published (self-published) as a pamphlet in 1983. Over the next ten years or so, I gave away or sold (through the Harvard Book Store in Cambridge or "mail order") about three thousand copies. The readers were law students and law teachers. In retrospect, they seem to have been drawn to one or more of the following aspects of the book. Starting from a very negative view of American life, it offers an analysis of how legal education participates in the production of what sucks about the system. It does this partly through a novelistic, subjective evocation of the social-psychological pressures that work to make entering students into lawyers and citizens who will participate willingly in the reproduction of the system, making it seem like something natural. The book proposes a radical egalitarian alternative vision of what legal education should become, and a strategy, starting from the anarchist idea of workplace organizing, for struggle in that direction.

The New York University Press Critical America series has graciously agreed to reproduce the book in its original pamphlet form in this reprint, with commentary by Paul Carrington, Peter Gabel, Angela Harris and Donna Maeda, and Janet Halley, and an Afterword. In the Afterword, I attempt to situate the pamphlet, describing how I came to write and publish it in its peculiar form and where it fits in the history of Critical Legal Studies. The pamphlet was addressed to first-year law students who had what we then vaguely called "progressive" sympathies. Its audience is the same today. I have at least a sense of who it appeals to, because I still teach in the first year, and some of my students have managed to get a hold of it even

though I long since stopped selling it. In this Introduction, I try to give a picture of who its audience seems to be.

In my first-year Torts course, I use a casebook but also photocopied materials that teach the same rules the other sections cover, but through cases that raise gender, race, and class issues. As I face the class of eighty-five students, they seem only half aware that I am watching them at the same time that they are watching me. Sometimes I catch a look, a fleeting expression hidden from the other students in the room, on the face of a student listening to another student, maybe in the next seat over. The look says, "I can't believe he (or she) just said that."

Sometimes it's surprised, sometimes disgusted; sometimes there is a shrug of contemptuous familiarity. The remark that provokes the look won't be overtly racist or homophobic or anti-Muslim. It is that the class's discussion of the race or class or gender or religious issue comes from deep in the "mainstream," so deep that it is just assumed that being hit on by another man would naturally really really freak you out, or that abused women should just leave their husbands, or that poor people have an unfortunate tendency to financial irresponsibility. The students for whom these mainstream moments are alienating don't realize how many other students in the room are alienated too, or will be alienated when the topic shifts to another enraging cliché. There are even socially conservative students who are feeling the same thing from the other side: "Where *am* I?"

I have my own rough categories to describe potential resisters, although I am constantly surprised that people who "should" don't, and that people who you'd never expect to be radicals turn out to be just that. For example, there are people who are in law school looking to do international human rights work. Often they've traveled abroad, independently, between college and law school, rather than going to work as a paralegal in a big city law firm the way everyone else did. They are very aware that the world is full of extreme poverty and brutal oppression, by states and by cultures, of the poor, of children, of women, of dissenters, of minorities of all kinds. And they are aware that in the United States, we either ignore it or sense that it is the fault of the people who suffer it, that we rich Americans are absolutely and unequivocally not implicated ourselves. In the rest of the world, it is clear to just about everyone that we are implicated, or even ultimately responsible. For some students in this group, international human rights means an unbudgeable commitment to victims because they are "the other." For children of the African American, Latino/a, Asian American, or Arab American middle class, the same commitment can be

motivated by the possibility or reality that the sufferers are close or very distant relatives.

Another, maybe overlapping category includes people who have thought, from high school on, that there is a lot that is vicious in the way the boys treat the girls (not that the girls are necessarily always innocent)—people who know something about stalking or rape or sexual harassment or sex work, who have worked in a shelter. The class discussion seems out of a fifties sitcom, combining "none of this could ever happen to me" naïveté among the women, especially the cocky conservative women, and a too-sharp eye out for political correctness from even the liberal men. You might be the only out lesbian in the class, or the only closeted lesbian you know in the class, and not believe for a minute that the norm of nondiscrimination that everyone claims to believe in will stop them from treating you differently when they think of you as gay.

There are children of African American or Latino/a professionals or small-business people, wary of the overwhelming whiteness of the milieu, determined to master it by working like a dog. Mainstreamers speak as though everyone comes from a middle-class white suburb or a gentrified urban neighborhood. The all-black community and the barrio are alien and invisible to them. Perhaps they are alien to you as well, but not invisible, never completely outside consciousness; something to which you have a connection, like it or not. The idea is to take advantage of the reality of opportunity while somehow getting past the implicit humiliations of affirmative action, avoid appearing to be an "angry black," hoping that a really outrageous, denigrating stereotype about your community won't force you into the fray, and then to "give back."

Studying "theory" in college, meaning any kind of postmodern critical stance—Cultural Studies, perhaps—might be a route to resistance. But it often seems to disable rather than empower in the first year law school classroom, because teachers and fellow students are exactly the people whose ideas and whole way of thinking you have rejected and gotten beyond. Two students in a class of a hundred have even heard the names Foucault or Derrida. The teacher has heard the names, period. If the theoretically sophisticated student decides to stick with what seemed the blinding illuminations of college, she will have to deconstruct law *starting from scratch all by herself.* All that is solid melts into air, you learned, but your four casebooks weigh fifteen pounds. You studied privileging, hegemony, the subaltern, silencing, and now that is you, not in your identity-politics identity but in your po-mo identity.

There are also the first American-born children of professional-class immigrants from countries where politics, religious and ideological, is a deadly business, and people know and care about it in a way that seems eerily absent here. Perhaps the parents are secular Muslims. Or the student might have grown up in the Iranian post-Pahlevi cosmopolitan diaspora, or in a small town in the Middle West where a Catholic Tamil father was the only doctor. "White" test scores got you into the Ivy League where your dark skin caused you to be mistaken for a burglar trying to rob your dorm. These students aren't bound by whatever Cuba or Vietnam or Lebanon meant to their parents, but the simple-minded or repressive parochialism of the mainstream, especially after 9/11, has no place for them. On the other hand, your parents may think an arranged marriage would be the perfect way to celebrate a graduate degree.

"The sixties" is present in the law school classroom through children marked by their parents who were marked by their times. Parents who were radicals, hippies, veterans, civil rights workers, musicians, poverty workers, social workers on reservations, Peace Corps volunteers. For their children, the question is whether to turn from their parents' ghosts, or to live their parents' lives right this time, or to do the opposite this time. The parents are often Jewish and/or WASP, or of different races, divorced sometime in the eighties as the tallest divorce wave in American history hit, and the sexual revolution crashed, and married men came out and left their wives, and the AIDS epidemic got under way. Your mother raised and pushed and supported you, but she also needed your support in return, big time. Your father was gone or dead or just never recovered from Vietnam or from his brother's descent into schizophrenia. Maybe you lived in the country, without electricity and with water hand-drawn from a well, and now find yourself tossed up on the shore of middle-class lawyer success in a kind of daze, given what it was all like just a few years ago. Worried about betraying those fragile forebears, worried about betraying the universe of people you have been a part of but that your fellow classmates treat as more remote than Afghanis. Also worried about having been betrayed, perhaps crippled, by the strangeness of the childhood they inflicted.

These types aren't mutually exclusive, of course. One thing that binds them together is that for many resisting students, not just the children of sixties parents, it turns out that there is something in the past that is marking or scarring or revelatory, involving mental illness, disability, crime, al-

coholism, drug addiction, AIDS, suicide, domestic abuse or other violence at close range, displacement, abandonment, frequent changes of school, poverty in the midst of plenty, or relative wealth amid crushing poverty, something that somehow set the person apart in the crowd, in his or her own mind, and at the same time aligned him or her with the crowd of the lost and injured and oppressed.

The same may be true of mainstream students, but they have managed, for good or ill, to move on or deny. They are preoccupied with their careers, with getting a job, making money, getting married, deciding where to live—getting through law school as trade school, with no intellectual, political, cultural agenda of any kind for their legal education, on the way to life in the mainstream afterward. The dominant student culture is Middle American on both coasts as well as in the middle. It is closer to jock or fraternity culture than to nerd or cool-people culture.

Mainstreamers are aware that there are others than themselves, namely the conservative students, growing more self-confident every year, more and more willing to challenge the liberal elements in the mainstream's cliché-ridden discourse and to jump on anything that smells of political correctness, just as the politically correct once jumped on them. They are divided between social conservatives and libertarian conservatives, allied in law school in the Federalist Society. The scary ones are the right-wing econ jocks, who've studied some form of conservative economics in college, or business or finance or accounting, or even have master's degrees. They intimidate the liberals in the mainstream.

If you are on the invisible other side of the mainstream, you are likely to be a humanist, maybe even an artist, maybe a numerophobe, or a person with a solid contempt for the cultural and intellectual style of right-wing youth. Contempt can suddenly turn to dust when you realize what a massive advantage the econ jocks have, that the teacher is almost as scared of them as you are, and that there is absolutely no way you are going to be able to catch up. The school isn't going to help, and the econ jocks themselves certainly aren't going to either.

Then there are the gunners, the students who talk all the time, pursue the teacher after class, brutally try to upstage or cut out their fellow students. Gunners can be a major obsession or a minor annoyance. They are violating a norm held by everyone in the class: the norm of not grabbing. Many students react with "projective identification"—directing at the gunners all the loathing they feel for the part of themselves that they are

barely managing to restrain, in obedience to the norm, from doing the same and maybe worse. The gunners can also be really intimidating, suggesting that there is a level of understanding of the material and an ability to talk the talk that the silent listeners will never achieve.

The faculty, although only occasionally obnoxious, are not much help. They are bland politically, concealing any passionate commitments, except that maybe once in a semester they will get exercised about a case and "break role" for an instant to let you know just how strongly they feel that it should have come out for the sympathetic losing party. They show their colors by becoming advisers to particular student organizations, or maybe by coming to hear (or themselves bringing in) an outside speaker with an overt liberal political agenda. They are better or worse, technically, professionally, in their clearly defined mission of helping you learn what they are teaching, which is just what everyone else is teaching except about a different particular doctrinal area. Some make it clear; some don't seem to be able to.

You may sense that they have dropped out of the world you're entering and that they are delighted not to have to do what you will have to do. Along with, or instead, of their bar admission certificates, they have family pictures and their children's paintings on their office walls, announcing things they care deeply about (one doubts they have students' pictures on the walls at home), things they are spending a lot more time on than you will be able to for many associate years to come. They are helping you adjust to that reality rather than resist it. There is the occasional leftover sixties person who vaguely suggests that you and your whole generation are not up to whatever it is that they were, but no longer are, up to.

If you are a potential resister, a way to give a modicum of meaning to all of this is to keep in mind that progressive lawyers do things that are interesting and ethical and political in every area of American life. They are a saving remnant. In law school, there is typically a public interest coalition generating a diffuse commonality across the different categories of resistance, and including the liberal activist part of the mainstream. Extracurricular organizations, journals, and clinics can be enclaves. If you want a long-term life project that works against loss and injury and oppression, going to law school is a way to find it. And it is worth remembering that it is not only jobs overtly associated with the public interest that count. Private law firms make money doing anti-discrimination and sexual harassment law, and the much-reviled "plaintiffs' bar" is actually the main force behind consumer protection in our country.

The drawback of this strategy is that it means treating three years of your life as a mere interim. Focusing forward to a job and inward to family and sideways to a nonacademic community, however defined, means passing up the chance to experiment with resistance to the system while you are still relatively autonomous within it. If you are an activist, you choose your area of activity based on your identity. You do women's issues only if you are a woman, civil rights or poverty or criminal justice issues if you are black or Latino/a, living wage or sweatshops if you are Asian American or have some working-class identification, gay rights if you are gay, international human rights if you are third world–identified, environmentalism or the death penalty sometimes just because you can do them, as a liberal, middle-class white person, without having to apologize for your privileges all the time.

It would be a good idea to find a way to hook up with one another and kick against the traces in the present—by analyzing and protesting *inside law school, against law school.* I had a better idea of how that might work, in student-faculty coalitions, in 1983 than I do now. But I don't feel that the opportunities for oppositionism are smaller now than they were then. Resistance is an attitude that turns into an activity, that becomes a habit, and pretty soon it's like the habit of exercise and you feel bored and unused when you aren't making trouble for someone somehow. The spiritual dimension of resistance is nonetheless positive. It is about the ecstatic moment of finding other risk takers, making plans, arguing all night long about what to do, doing something.

My sense is that the first steps I describe in the later parts of this book still have a lot to be said for them. An essential preliminary is to work against the sense that each of the identities I described above is uniquely victimized, uniquely isolated, unintelligible to all the others. In other words, I'm for some postmodernism-inspired rebellion against identity politics, not in the name of assimilation to the mainstream but in the name of a large countercultural project—cosmopolitan and original rather than inward-turning or backward-looking. In any case, it seems as certain as anything can ever be that the time of analysis and protest will come around again; that many people my age won't recognize it but some will, with cheers, as it clears the bend in the road on its way toward us; and that it will be *new.*

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