

Legal Education & the Legal Profession

“Because students believe what they are told, explicitly and implicitly, about the world they are entering, they behave in ways that fulfill the prophecies the system makes about them and about that world.” – Duncan Kennedy (1983)

Legal Education as Training for Hierarchy

A cursory examination of the marketing materials produced by law schools will reveal an odd trend: from websites to admissions brochures, schools promise the knowledge and tools for students to, in some way or another, contribute to and better society. The rhetoric used is not one of corporate takeovers and industrial mergers, of enabling white collar crime and mass evictions, but one of lofty justice-oriented goals. For many people with progressive political commitments, law school thus seems to provide an avenue to use the law as a vehicle for lasting social change. Upon our arrival, however, many of us are disillusioned at finding that legal education not only fails to contribute to remedying injustice, but reproduces and perpetuates it. This section seeks to arm students with a nuanced understanding of this process by analyzing the curricular, pedagogical, and institutional commitments of the legal education institution and, ultimately, the legal profession.

As future legal advocates, we must critically examine the socialization process that we undergo during our legal training so we can both resist the mores and assumptions our education is founded upon and commit to a rigorous unlearning process that outlasts our time as students. In addition to questioning the underlying assumptions of legal education, we must also undertake our own parallel political education in order to complement (and at times undermine) the knowledge and practices that law school instills in us. Finally, we must continually ask ourselves how to practice law in a way that challenges the status quo of a profession steeped in tradition so that we may be effective allies to struggles for collective liberation.

The following sections are: (1) *Understanding the Socialization Process*, (2) *Substantive Critique: The Curriculum*, (3) *Procedural Critique: The Pedagogy*, (4) *Institutional Critique: The Alliances*, (5) *Navigating Law School with Radical Politics*, (6) *Entering the Legal Profession*.

1. Understanding the Socialization Process

- [Article] **Dean Spade**, [*Be Professional*](#) (2010)
 - This piece challenges the socialization of elite spaces, especially three particular messages from that socialization. One, people with marginalized identities should point out marginalization only to the extent that it does not implicate the people to whom we are talking. Two, we should be sure to flatter them that they are enlightened and inoffensive and unoppressive in order to encourage them to tolerate and include us and to avoid the dangerous power they wield when defensive. Three, we should avoid making them uncomfortable or drawing too much attention to our difference. The

article provides a space for thinking about the invitation to be institutionally recognized and included. What does it mean to be invited in? To be included, to be the first (or to appear to be the first)? What are the terms of that inclusion, its costs, its motives?

- [Article] **Duncan Kennedy**, [Legal Education as Training for Hierarchy](#) (1983) ○ In this seminal piece, Kennedy argues that legal education reinforces oppression, including race, class, and gender inequality. He reasons that despite presenting themselves as politically neutral trade schools, law schools are actually intensely political places where students undergo “the ideological training for willing service in the hierarchies of the corporate welfare state.”
- [Article] **Bill Quigley**, [Letter to a Law Student Interested in Social Justice](#) (2007) ○ Quigley argues that social justice lawyering is counter-culture both in law school and in the legal profession itself. Although many are drawn to law school because they want to be of service to society, two-thirds of the students who enrolled in order to pursue some form of public interest work end up in a different field. Quigley points out that while our profession pays lip service to justice, “that is the extent of it,” given that justice work is not the essence of the legal profession. Instead, “our professional essence is money, and the overwhelming majority of legal work consists of facilitating the transfer of money or resources from one group to another.” Quigley attempts to map out a path for progressive law students while recognizing that a shamefully large part of our profession in fact consists of “the opposite of justice – actually taking from the poor and giving to the rich or justifying some injustice.”
- [Article] **Lani Guinier**, [Legal Education: A Culture of Competition and Conformity](#) (2007)
 - Guinier analyzes different attempts at reforming the law school curriculum and pedagogy while acknowledging a difficult tension: the worldview reflected in many curricular innovations “does not square easily with the shared cultural assumptions embedded in the law schools’ routines and values.” She argues that law schools breed a culture of competition and conformity that includes dominant rituals and unspoken habits of thought that define interpersonal, institutional, and cognitive behaviors within law schools. As a result, the requirement to conform will often trump the invitation to explore.

2. Substantive Critique: The Curriculum • [Book] **Patricia**

Williams, [The Alchemy of Race and Rights: Diary of a Law Professor](#) (1992)

- This beautiful book challenges the legal academy’s obsession and reliance with “objectivity” and “rationality” through prose and story-telling. Williams explores how the legal system and legal education institutions perpetuate and justify racism through “objective” legal discourse. You can find an article adaptation here: [Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law’s Response to Racism](#) (1987).
- [Article] **Angela Harris**, [“A\(nother\) Critique of Pure Reason”: Toward Civic Virtue in Legal Education](#) (1993)
 - Harris outlines how the law school’s training to “think like a lawyer” requires the suppression or denial of one’s feelings and personal experience in order to put forth a “cold” analysis of the “facts.” She argues that this devaluation of emotions distorts legal thought and re-entrenches power dynamics along the lines of race, class, gender and sexuality in the legal profession.
- [Article] **Lani Guinier, Michelle Fine, et. al**, [Becoming Gentleman: Women’s Experiences at One Ivy League Law School](#) (1994)
 - Guinier and Fine share how women experience the law school’s socialization of “becoming gentleman” in which they are trained to act “rationally”, rather than “emotionally”; are committed to

“neutrality” rather than “politics”; and are raised to aspire to deeply entrenched hierarchical competition, rather than collaborative and community-based learning.

- [Article] **Lani Guinier**, [Of Gentleman and Role Models](#) (2003)
 - Guinier shares her own experiences as a law student and professor and the emergence of her “multiple consciousness” in order to survive the legal education institution that normalizes the white male perspective as universal and objective. She continues to describe how professors of color, particularly women of color, are tokenized in that very same institution in an attempt to preserve the status quo.
- [Book] **Elizabeth Mertz**, [The Language of Law School: Learning to “Think Like A Lawyer”](#) (2007)
 - Mertz conducts an ethnography of her time as a law student to uncover the deep socialization processes of the legal education system. She studies the structure, traditions, and seemingly mundane practices of the law school, including the case method, cold-calls, grading curves, and how and when students are allowed to participate in the learning process.
- [Article] **Derrick Bell and Erin Edmonds**, [Students as Teachers, Teachers as Learners](#) (1991)
 - Bell and Edmonds respond to common critiques of “non-traditional legal scholarship” -- i.e. legal scholarship that accounts for the ways power and oppression inherently influence the law -- and outlines how analyses of power in legal education are necessary for the legal profession to train lawyers able to respond to our unjust society.

3. Procedural Critique: The Pedagogy

- [Article] **Benjamin Spencer**, [The Law School Critique: A Historical Perspective](#) (2012)
 - Spencer provides a historical study of legal education to show that despite law schools’ ongoing claim that the traditional pedagogy and methods are essential to the effective training of lawyers, law schools have been critiqued for the past 130 years for failing to fulfill their obligation to prepare students for legal practice. He finds that the focus through most of law school is on teaching legal doctrine, using principally a method of limited effectiveness, with too few students being thoroughly instructed in the practice, skills, and core competencies needed to be a successful lawyer.
- [Article] **Erwin Chemerinsky**, [Reimagining Law Schools](#) (2011)
 - Chemerinsky asks, first, whether law schools are necessary, and second, what their purpose is: to train lawyers, to produce scholarship, or to provide legal services to communities in need? Next, he questions whether law schools are succeeding at any of these goals, and attempts to identify the reasons why. Finally, he explores some possible ways for legal education to change.
- [Book] **Paulo Freire**, [Pedagogy of the Oppressed](#) (1968)
 - Considered one of the founders of critical pedagogy, Freire proposes a form of teaching predicated on a different relationship between the student, the instructor, and society. Freire includes a Marxist class analysis in his exploration of the relationship between the colonizer and the colonized in the context of education. Traditional pedagogy sees the student as an empty vessel to be filled with knowledge, whereas his model treats the learner as a co-creator of knowledge.
- [Article] **Paul Teich**, [The Case Against the Case System](#) (1996)
 - Teich analyzes the century-old pedagogy of most law schools, finding that the case method and the doctrinal law course dominate the law school curriculum. He presents empirical evidence that these pedagogical methods have not been found to be uniquely effective at law teaching. He further argues that students respond best to “individualized” teaching systems that “adapt to each student’s separate and idiosyncratic learning characteristics,” which is the squarely opposite

4. Institutional Critique: The Alliances

Social Reproduction & Rankings

- [Book] **Wendy Nelson Espeland, *Engines of Anxiety: Academic Rankings, Reputation, and Accountability* (2016)**
 - Two sociologists analyze the way law school rankings permeate every aspect of legal education. The authors find that prospective law students not only rely heavily on such rankings, but also internalize rankings as expressions of their own abilities and flaws. Because job placements play a major role in the rankings, many schools have shifted their career-services resources toward tracking placements, and away from counseling. In turn, law firms regularly use school rankings to recruit and screen job candidates, perpetuating a cycle in which highly ranked schools enjoy increasing prestige. As a result, rankings create and reinforce a rigid hierarchy that penalizes lower-tier schools that do not conform to the restrictive standards used in rankings. As law schools compete to improve their rankings, their programs become more homogenized, less accessible to non-traditional students, and less focused on skills training and support for public careers.
- [Book] **Lauren A. Rivera, *Pedigree: How Elite Students Get Elite Jobs*, (2016)**
 - People in the US are often taught to believe that upward mobility is possible for anyone who is willing to work hard, regardless of their social status, yet it is often those from affluent backgrounds who continue to accumulate wealth and access. The book looks behind the closed doors of top-tier investment banks, consulting firms, and law firms that hire most law school graduates. The author shows how, at every step of the hiring process, the ways that employers define and evaluate merit are strongly skewed to favor job applicants from economically privileged backgrounds. Rivera reveals how decision-makers draw from ideas about talent that are deeply rooted in social class and that problematize the myth of wealth-making and social mobility as a justification for corporate law jobs.
- [Article] **ABA, [The Effects of USNWR on Law Schools](#) (2007)**
 - This study examines how rankings transform activities and work within law schools, and how rankings influence external audiences' perceptions of legal education. It finds that rankings lead to (a) increases in marketing expenditures aimed toward raising reputation scores in the US News survey and (b) increases in merit scholarships intended to improve the statistical profile of incoming classes. It also finds that rankings transform authority relationships within and outside the law schools by creating a new avenue through which constituents can question and influence decisions made by the administration, which diminishes their autonomy to support programs that do not have a high effect on rankings. Finally, it looks at job requirements for staff positions within the law school, many of which now emphasize the management of rankings, while lessening the importance of other forms of expertise previously associated with these jobs.

Debt & Economic Coercion

- [Article] **Christa McGill, [Educational Debt and Public Service Careers](#) (2006)**
 - It is frequently suggested that law school debt is preventing graduates from entering public service careers. The basis for this contention is largely anecdotal, however. This study puts the presumption to empirical scrutiny. Aggregate data from law schools and individual-level data from law students both point to the same conclusion: law students may indeed be competing in a money chase, but it is not because of their indebtedness. Private firms with prestige and high salaries are appealing to many students regardless of their debt burden. This undermines the often quick-cited yet under-explained rationale many administrators, lawyers, and law students put forth when asked

about low rates of public interest graduates. This is not to say debt is not a reason for decisions to go into corporate law. Rather debt is one of *many* reasons that funnels students to corporate law. • [Article] **ABA Commission on Loan Repayment and Forgiveness, [Debt as a Barrier to Public Service](#)** (2003)

- Many law students face a disheartening dilemma. Despite their deep commitment to social justice, many find that the rising cost of a legal education seems like a barrier from any form of public service. According to the ABA, “The legal profession cannot honor its commitment to the principle of access to justice if significant numbers of law graduates are precluded from pursuing or remaining in public service jobs.” The study examines the law student debt burden issue and its impact on law graduates’ ability to serve their communities by accepting and remaining in public service careers. It also issues some recommendations for solutions.
- [Article] **Paul Campos, [The Crisis of the American Law School](#)**, (2012) ○ This article describes the increase in the cost of legal education over the past four decades and explains some of the factors that have driven that increase. It then explores the consequences this increased cost has had for graduates and law students in the context of the employment market. It closes with recommendations for long-term changes for what the author argues “has become a fundamentally unsustainable institution.”
- [Article] **Brian Tamanaha, [The Failure of Critics and Leftist Law Professors to Defend Progressive Causes](#)** (2013)
 - The author argues that a huge economic barrier has been erected to encumber the path to a legal career, which precludes people from middle-class and poor families from access to a profession with an enormous impact on their communities. The author focuses his critique on law school academics, specifically “progressive” ones who argue that traditional legal academia has had a hand in perpetuating an unjust legal system. The article argues that these law school professors are partly responsible for perpetuating the profoundly warped and harmful economics of legal education.

Power & Colonialism

- [Article] **Kalen Goodluck, Tristan Ahtone and Robert Lee, [The Land-grant Universities Still Profiting off Indigenous Homelands](#)** (2020)
 - While not specific to law schools, this piece -- and the larger [LandGrant Universities](#) Project -- illuminates the role of higher education institutions in the physical and symbolic erasure of indigenous communities. Legally codified and justified as the 1862 Morrill Act, “approximately 10.7 million acres [were] taken from nearly 250 tribes, bands and communities through over 160 violence-backed land cessions, a legal term for the giving up of territory.”
- [Article] **Tony Platt, [The Yokayo Vs. The University of California: An Untold Story of Repatriation](#)** (2012-13)
 - Platt specifically looks at the active role of the University of California in stealing Native land, artifacts and even buried remains. This piece illuminates how UC Berkeley Anthropologist Alfred Kroeber actively constructed images of the “savage” Native Other through his “scientific” research to justify colonization and cultural genocide.
 - A very quick summary: [Kroeber Hall and Berkeley Anthropology: What's in an Un-Naming?](#)

5. Navigating Law School with Radical Politics

- [Article] **Dean Spade, [Law as Tactics](#)**, (2011)

- “It seems to me that the real political task in a society such as ours is to criticize the workings of institutions that appear to be both neutral and independent, to criticize and attack them in such a

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manner that political violence that has always exercised itself through them will be unmasked so that one can fight against them.” --*Foucault*. This article calls us to reject a limited framework of fighting for our rights under the law. Instead, we are invited to consider how we come to understand ourselves as subjects of various legal regimes, how certain things come to be governed, how certain disciplinary and regulatory knowledges and practices congeal into institutional forms, and how resistances can be conceived from within power relations that are never transparent or centralized.

- [Lecture] **Duncan Kennedy**, [*Address to NUSL*](#) (1978)
 - This lecture walks people through the process of enrolling in and starting law school as someone with progressive politics. It does a really amazing job at walking you through the harmful socialization that happens and to the internal mechanisms of rationalization and avoidance we all use to get through what he calls “liberal intellectual socialization.” The lecture is directed at a subset of first year students: those who start out with some sense that they are going to law school because they want to do good for somebody other than themselves. That is, people who are vaguely altruistic in their motivation, or vaguely left liberal, or radical, or hyper-radical. It is an attempt to come to grips with some of the concerns that people in that situation have in the beginning of law school.
- [Article] **Robert Chang and Adrienne Davis**, [*Race, Gender, and Sexual Orientation in the Law School Classroom*](#), (2010)
 - We included this article because you will see these trends play out during your time at law school and it will fall on you to confront the institution, your peers, and yourself when such situations arise. The authors compare the experiences of African American women and Asian American men in trying to perform as law professors, considering how makeup and other gender tools simultaneously assist and hinder such performances. They hypothesize that the mechanism by which bias manifests itself is a variant of stereotype threat, which they call *projected stereotype threat*, where stereotypes of incompetence are projected onto the bodies of teachers marked by difference. They examine how institutions respond or, as is more typically the case, fail to respond to these problems.
- [Article] **Margaret Montoya**, [*Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*](#) (1994)
 - Using personal narrative, this article examines the various masks (“mascaras”) used to control how people respond to us and the important role such masks play in the subordination of Outsiders. The articles “braids” together the personal with the academic voice, legal scholarship with scholarship from other disciplines, narrative with expository prose and poetry, and English with Spanish. It seeks to challenge conventional paradigms within the legal academy and subvert the dominant discourse.
- [Article] **Mari J. Matsuda**, [*When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*](#) (1989)
 - Matsuda describes how “outsiders” to the legal academy, including feminists and people of color, develop “multiple consciousnesses” in order to use the law as a tool of necessity while simultaneously recognizing how the law is entrenched in white supremacist and patriarchal understandings of control and order.

6. Entering the Legal Profession

Once you survive the legal education system, what does it mean to practice as a “radical” lawyer? Can you be radical in this profession when you are necessarily legitimizing the U.S.

legal system by your participation and work within it? Can you contribute to the liberatory goals

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of radical movements when the [limitations of the law](#) narrowly define the terms of your participation as a lawyer? It may be that at its best, even the most “radical” legal work is only [harm reduction](#)—what else can a tool of the State historically created and wielded for the oppression of the Black, Indigenous, Queer, Disabled, etc. provide for the same people? The “tools” we have gained through a law degree that we seek to use to get people legal status, release them from prisons, keep families together, are actually tools that first and foremost strengthen the police state. Therefore, if we have radical politics and we hold law degrees, the ultimate goal in the back of our minds should not be to make the legal profession better, but to make the legal profession obsolete.

And while accepting that the work we can do as radical lawyers is harm reduction, we can simultaneously recognize that legal advocacy is still necessary as we mobilize for abolition and liberation. We will constantly work within the contradictions of using a tool that was created to justify oppression and must learn how to live in these contradictions with honesty and integrity. We must constantly ask ourselves how we will utilize our law degrees or skills in service of liberatory social movements. We must ask: Does my career path contribute to these goals and reduce harm to vulnerable communities, or does it further entrench existing systems of capitalism, colonialism, racism? How are my legal arguments or the precedent I rely on further entrenching the things we seek to abolish (i.e., innocence narrative in death penalty litigation, imperialist stereotypes in deportation defense, victim-blaming in criminal defense)?

Where Do We Go From Here?

As radical lawyers, it is our objective to find where we are best situated to fight and reduce harm without prioritizing our own financial and emotional wellbeing (or that of our families) at the expense of others. From administrators, professors, lawyers, and law students themselves, we are often told our options are to either: (1) go to Big Law to pay off loans, and then maybe return to public interest work (or make a heroic effort to do “pro bono work” to appease your conscious), (2) work in a non-profit, either in direct services or impact litigation (3) work as a Public Defender or other form of state-sponsored direct service (legal aid), or (4) work at a private, plaintiff-side firm.

There is no right answer for where you will best leverage your legal skills because we all have different responsibilities and burdens under systems of oppression. This is an individualized and context specific choice that is not as simple as “don’t go to Big Law.” For instance, a white, wealthy person is likely protected from the violent material realities of surviving racialized capitalism, thus their decision to go to Big Law for “financial security” will be different from that of a person from a poor or working class background. (It should also go without saying that wealthy people should not shame poor folks for surviving capitalism and should instead focus their energies on themselves and similarly positioned wealthy people who are likely conflating financial security with loss of class privilege).

The difficulty of this decision is compounded when law students are indoctrinated with myths and misconceptions of what jobs are financially secure, legally rigorous, or effective in

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contributing to social change. The following resources address common misconceptions and myths about the options law students do or do not have when considering what form of lawyering best meets their unique needs, skills and circumstances.

- A. Power Point: [MythBusting: Debunking Myths About Public Interest Lawyering \(April, 2020\)](#) (note: this presentation was given before we knew the extent of COVID-19, thus does not account for the shifting economic order and material reality)
- B. Handout: [MythBusting: Debunking Myths About Public Interest Lawyering \(April, 2020\)](#)

[See “Movement Lawyering” Section](#)

Other Helpful Resources

- Conferences
 - [RebLaw](#) (“Rebellious Lawyering” annual student-led conference)
 - [Shaking the Foundations](#) Annual Conference
 - NLG’s Law4thePeople Convention
- National Lawyers Guild
 - [Disorientation Events](#) and [Guide](#)
 - [Radical Law Student Manual](#)
- Law for Political Economy
 - [Syllabi & Primers](#)
- Reimagining the Law Student, a roadmap to a radical reading group:
 - [Presentation](#)
 - [Post-Event Handout](#)

What do you think?

Have something to add to the guide? Let us know! Use this feedback form: tinyurl.com/B4RLform. You can also reach us via email at building4radlawyering@gmail.com. We'd love to see how we can incorporate your suggestions into B4RL. [Click here](#) to head back to the topic list and [click here](#) to head back to the B4RL landing page. *[Document Last Updated September 2020]*

