Legal Education and the Reproduction of Hierarchy

Duncan Kennedy

Law schools are intensely political places, in spite of the fact that the modern law school seems intellectually unpretentious, barren of theoretical ambition or practical vision of what social life might be. The trade-school mentality, the endless attention to trees at the expense of forests, the alternating grimness and chumminess of focus on the limited task at hand—all these are only a part of what is going on. The other part is ideological training for willing service in the hierarchies of the corporate welfare state.

To say that law school is ideological is to say that what teachers teach along with basic skills is wrong, is nonsense, about what law is and how it works; that the message about the nature of legal competence and its distribution among students is wrong, is nonsense; that the ideas about the possibilities of life as a lawyer that students pick up from legal education are wrong, are nonsense. But all this is nonsense with a tilt; it is biased and motivated rather than random error. What it says is that it is natural, efficient, and fair for law firms, the bar as a whole, and the society the bar services to be organized in their actual patterns of hierarchy and domination.

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. This is the link-back that completes the system: students do more than accept the way things are, and ideology does more than damp opposition. Students act affirmatively within the channels cut for them, cutting them deeper, giving the whole a patina of consent, and weaving complicity into everyone's life story.

In this article, I take up in turn the initial first-year experience, the ideological content of the law-school curriculum, the noncurricular practices of law schools that train students to accept and participate in the hierarchical structure of life in the law, and the problem of deciding what

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implications for political practice we can draw from the analysis of the existing structure of hierarchy. The next part suggests ways in which progressive or left students who are determined not to let law school demobilize them can deal with the experience. A final section gives an example of a utopian proposal for the transformation of one law school.

I. Ideology and Hierarchy in Legal Education

A. The First-Year Experience

A surprisingly large number of law students go to law school with the notion that being a lawyer means something more, something more socially constructive than just doing a highly respectable job. There is the idea of playing the role an earlier generation associated with Brandeis, the role of service through law, carried out with superb technical competence and also with a deep belief that in its essence law is a progressive force, however much it may be distorted by the actual arrangements of capitalism. There is a contrasting, more radical notion, that law is a tool of established interests, that it is in essence superstructural, but that it is a tool which a coldly effective professional can sometimes turn against the dominators. In the first notion the student aspires to help the oppressed and transform society by bringing out the latent content of a valid ideal; in the second the student sees herself as part technician, part judo expert, able to turn the tables exactly because she never lets herself be mystified by the rhetoric that is so important to other students.

Then there are the conflicting motives, which are equally real for both types. People think of law schools as extremely competitive, as a place where a tough, hard-working, smart style is cultivated and rewarded. Students enter law school with a sense that they will develop that side of themselves. Even if they disapprove, on principle, of that side of themselves, they have had other experiences in which it turned out that they wanted and liked aspects of themselves that on principle they disapproved of. How is one to know that one is not "really" looking to develop oneself in this way as much as one is motivated by the vocation of social transformation?

There is also the issue of social mobility. Almost everyone whose parents were not members of the professional/technical intelligentsia seems to feel that going to law school is an advance, in terms of the family history. This is true even for children of high-level business managers, so long as their parents' positions were due to hard work and struggle rather than to birth into the upper echelons. It is rare for parents actively to disapprove of their children going to law school, whatever their origins. So taking this particular step has a social meaning, however much the student may reject it, and that social meaning is success. The success is bitter-

sweet if one feels one should have gotten into a better school, but both the bitter and the sweet suggest that one's motives are impure.

The initial classroom experience sustains rather than dissipates ambivalence. The teachers are overwhelmingly white, male, and deadeningly straight and middle class in manner. The classroom is hierarchical with a vengeance, the teacher receiving a degree of deference and arousing fears that remind one of high school rather than college. The sense of autonomy one has in a lecture—with the rule that you must let the teacher drone on without interruption, balanced by the rule that he can't do anything to you—is gone. In its place is a demand for pseudo-participation in which one struggles desperately, in front of a large audience, to read a mind determined to elude you. It is almost never anything like as bad as *The Paper Chase* or *One-L,* but it is still humiliating to be frightened and unsure of oneself, especially when what renders one unsure is a classroom arrangement that suggests at once the patriarchal family and a Kafka-like riddle-state. The law-school classroom at the beginning of the first year is culturally reactionary.

But it is also engaging. You are learning a new language, and it is possible to learn it. Pseudo-participation makes one intensely aware of how everyone else is doing, providing endless bases for comparison. Information is coming in on all sides, and things that you knew were out there but you didn't understand are becoming intelligible. The teacher offers subtle encouragements as well as not-so-subtle reasons for alarm. Performance is on one's mind, adrenalin flows, success has a nightly and daily meaning in terms of the material assigned. After all, this is the next segment: one is moving from the vaguely sentimental world of college, or the frustrating world of officework or housework, into something that promises a dose of "reality," even if it's cold and scary reality.

It quickly emerges that neither the students nor the faculty are as homogeneous as they at first appeared. Some teachers are more authoritarian than others; some students other than oneself reacted with horror to the infantilization of the first days or weeks. There even seems to be a connection between classroom manner and substantive views, with the "softer" teachers also seeming to be more "liberal," perhaps more sympathetic to plaintiffs in the torts course, more willing to hear what are called policy arguments, as well as less intimidating in class discussion. But there is a disturbing aspect to this process of differentiation: in most law schools, it turns out that the tougher, less policy-oriented teachers are the more popular. The softies seem to get less matter across, they let things wander, and one begins to worry that their niceness is at the expense of a metaphysical quality called "rigor," thought to be essential to success on bar exams and in the grown-up world of practice. Ambivalence reasserts itself. As between the conservatives and the mushy centrists, enemies who

scare you but subtly reassure you may seem more attractive than allies no better anchored than yourself.

There is an intellectual experience that somewhat corresponds to the emotional one: the gradual revelation that there is no purchase for left or even for committed liberal thinking on any part of the smooth surface of legal education. The issue in the classroom is not left against right but pedagogical conservatism against moderate, disintegrated liberalism. No teacher is likely to present a model of either left pedagogy or vital left theoretical enterprise, though some are likely to be vaguely sympathetic to progressive causes, and some may even be moonlighting as left lawyers. Students are struggling for cognitive mastery and against the sneaking depression of the preprofessional. The actual intellectual content of the law seems to consist of learning rules, what they are and why they have to be the way they are, while rooting for the occasional judge who seems willing to make them marginally more humane. The basic experience is of double surrender: to a passivizing classroom experience and to a passive attitude toward the content of the legal system.

The first step toward this sense of the irrelevance of liberal or left thinking is the opposition in the first-year curriculum between the technical, boring, difficult, obscure legal case, and the occasional case with outrageous facts and a piggish judicial opinion endorsing or tolerating the outrage. The first kind of case—call it a "cold" case—is a challenge to interest and understanding, even to wakefulness. It can be on any subject, so long as it is of no political or moral or emotional significance. Just to understand what happened and what's being said about it, you have to learn a lot of new terms, a little potted legal history, and lots of rules, none of which is carefully explained by the casebook or the teacher. It is difficult to figure out why the case is there in the first place, whether one has grasped it, and what the teacher will ask and what one should respond.

The other kind of case—the "hot" case—usually involves a sympathetic plaintiff, say an Appalachian farm family, and an unsympathetic defendant, say a coal company. On first reading, it appears that the coal company has screwed the farm family, say by renting their land for strip mining, with a promise to restore it to its original condition once the coal has been extracted, and then reneging on the promise. And the case should include a judicial opinion that does something like awarding a meaningless few hundred dollars to the farm family, rather than making the coal company do the restoration work. The point of the class discussion will be that your initial reaction of outrage is naive, nonlegal, irrelevant to what you're supposed to be learning, and maybe substantively wrong into the bargain. There are "good reasons" for the awful result, when you take a legal and logical "large" view, as opposed to a knee-jerk passionate view, and if you can't muster those reasons, maybe you aren't cut out to be a lawyer.

Most students can't fight this combination of a cold case and a hot case.

The cold case is boring, but you have to do it if you want to become a lawyer. The hot case cries out for a response, seems to say that if you can't respond you've already sold out, but the system tells you to put away childish things, and your reaction to the hot case is one of them. Without any intellectual resources, in the way of knowledge of the legal system and of the character of legal reasoning, it will appear that emoting will only isolate and incapacitate you. The choice is to develop some calluses and hit the books, or admit failure almost before you've begun.

B. The Ideological Content of Legal Education

One can distinguish in a rough way between two aspects of legal education as a reproducer of hierarchy. Much of what happens is the inculcation through a formal curriculum and the classroom experience of a set of political attitudes toward the economy and society in general, toward law, and toward the possibilities of life in the profession. These have a general ideological significance, and they have an impact on the lives even of law students who never practice law. Then there is a complicated set of institutional practices that orient students to willing participation in the specialized hierarchial roles of lawyers. In order to understand these, one must have at least a rough conception of what the world of practice is like. Students begin to absorb the more general ideological message before they have much in the way of a conception of life after law school, so I will describe this formal aspect of the educational process first. I will then try to sketch in the realities of professional life that students gradually learn about in the second and third year, before describing the way in which the institutional practices of law schools bear on those realities.

Law students sometimes speak as though they learned nothing in school. In fact, they learn skills, to do a list of simple but important things. They learn to retain large numbers of rules organized into categorical systems (e.g., requisites for contract, rules about breach). They learn "issue spotting," which means identifying the ways in which the rules are ambiguous, in conflict, or have a gap when applied to particular fact situations. They learn elementary case analysis, meaning the art of generating broad holdings for cases, so they will apply beyond their intuitive scope, and narrow holdings for cases, so that they won't apply where it at first seemed they would. And they learn a list of balanced, formulaic, pro/con policy arguments that lawyers use in arguing that a given rule should apply to a situation in spite of a gap, conflict, or ambiguity or that a given case should be extended or narrowed. These are arguments like "the need for certainty" and "the need for flexibility," "the need to promote competition" and the "need to encourage production by letting producers keep the rewards of their labor."

One should neither exalt these skills nor denigrate them. By comparison with the first-year students' tendency to flip-flop between formalism

and mere equitable intuition, they represent a real intellectual advance. Lawyers actually do use them in practice. And when properly, consciously mastered, they have "critical" bite. They are a help in thinking about politics, public policy, and ethical discourse in general, because they show the indeterminacy and manipulability of ideas and institutions that are central to liberalism.

On the other hand, law schools teach these rather rudimentary, essentially instrumental skills in a way that almost completely mystifies them for almost all law students. The mystification has three parts. First, the schools teach skills through class discussions of cases in which it is asserted that law emerges from a rigorous analytical procedure called "legal reasoning," which is unintelligible to the layman but somehow both explains and validates the great majority of the rules in force in our system. At the same time, the class context and the materials present every legal issue as distinct from every other, as a tub on its own bottom, so to speak, with no hope or even any reason to hope that from law study one might derive an integrating vision of what law is, how it works, or how it might be changed (other than in an incremental, case-by-case, reformist way).

Second, the teaching of skills in the mystified context of legal reasoning about utterly unconnected legal problems means that skills are taught badly, unselfconsciously, to be absorbed by osmosis as one picks up the knack of "thinking like a lawyer." Bad or only randomly good teaching generates and then accentuates real differences and imagined differences in student capabilities. But it does so in such a way that students don't know when they are learning and when they aren't and have no way of improving or even understanding their own learning processes. They experience skills training as the gradual emergence of differences among themselves, as a process of ranking that reflects something that is just "there" inside them.

Third, the schools teach skills in isolation from actual lawyering experience. "Legal reasoning" is sharply distinguished from law practice, and one learns nothing about practice. This procedure disables students from any future role but that of apprentice in a law firm organized in the same manner as a law school, with older lawyers controlling the content and pace of depoliticized craft training in a setting of intense competition and no feedback.

1. *The Formal Curriculum: Legal Rules and Legal Reasoning.* The intellectual core of the ideology is the distinction between law and policy. Teachers convince students that legal reasoning exists, and is different from policy analysis, by bullying them into accepting as valid in particular cases arguments about legal correctness that are circular, question-begging, incoherent, or so vague as to be meaningless. Sometimes these are just arguments from authority, with the validity of the authoritative premise put outside discussion by professorial fiat. Sometimes they are

policy arguments (e.g., security of transactions, business certainty) that are treated in a particular situation as though they were rules that everyone accepts but that will be ignored in the next case when they would suggest that the decision was wrong. Sometimes they are exercises in formal logic that wouldn't stand up for a minute in a discussion between equals (e.g., expectations damages represent the will of the parties).

Within a given subfield, the teacher is likely to treat cases in three different ways. There are the cases that present and justify the basic rules and ideas of the field. These are treated as cursory exercises in legal logic. Then there are cases that are anomalous—"outdated" or "wrongly decided" because they don't follow the supposed inner logic of the area. There won't be many of these, but they are important because their treatment persuades students that the technique of legal reasoning is at least minimally independent of the results reached by particular judges and is therefore capable of criticizing as well as legitimating. Finally, there will be an equally small number of peripheral or "cutting edge" cases the teacher sees as raising policy issues about growth or change in the law. Whereas in discussing the first two kinds of cases the teacher behaves in an authoritarian way supposedly based on his objective knowledge of the technique of legal reasoning, here everything is different. Because we are dealing with "value judgments" that have "political" overtones, the discussion will be much more free-wheeling. Rather than every student comment being right or wrong, all student comments get pluralist acceptance, and the teacher will reveal himself to be either a liberal or a conservative, rather than merely a legal technician.

The curriculum as a whole has a rather similar structure. It is not really a random assortment of tubs on their own bottoms, a forest of tubs. First, there are contracts, torts, property, criminal law, and civil procedure. The rules in these courses are the ground-rules of late nineteenth-century laissez-faire capitalism. Teachers teach them as though they had an inner logic, as an exercise in legal reasoning with policy (e.g., promissory estoppel in the contracts course) playing a relatively minor role. Then there are second- and third-year courses that expound the moderate reformist program of the New Deal and the administrative structure of the modern regulatory state (with passing reference to the racial egalitarianism of the Warren Court). These courses are more policy oriented than first-year courses, and also much more ad hoc. Teachers teach students that limited interference with the market makes sense and is as authoritatively grounded in statutes as the ground rules of laissez faire are grounded in natural law. But each problem is discrete, enormously complicated, and understood in a way that guarantees the practical impotence of the reform program. Finally, there are peripheral subjects, like legal philosophy or legal history, legal process, and clinical legal education. These are presented as not truly relevant to the "hard," objective, serious,

rigorous, analytic core of law; they are a kind of playground or a finishing school for learning the social art of self-presentation as a lawyer.

This whole body of implicit messages is nonsense. Teachers teach nonsense when they persuade students that legal reasoning is distinct as a method for reaching correct results from ethical and political discourse in general (i.e., from policy analysis). It would be an extraordinary first-year student who could, on his own, develop a theoretically critical attitude toward this system. Entering students just don't know enough to figure out where the teacher is fudging, misrepresenting, or otherwise distorting legal thinking and legal reality. To make matters worse, the two most common kinds of left-wing thinking the student is likely to bring with her are likely to hinder rather than assist in the struggle to maintain some intellectual autonomy from the experience. Most liberal students believe that the left program can be reduced to guaranteeing people their rights, and to bringing about the triumph of human rights over mere property rights. In this picture, the trouble with the legal system is that it fails to put the state behind the rights of the oppressed or that the system fails to enforce the rights formally recognized. If one thinks about law this way, one is inescapably dependent on the very techniques of legal reasoning that are being marshalled in defense of the status quo.

This wouldn't be so bad if the problem with legal education were that the teachers misused rights reasoning to restrict the range of the rights of the oppressed. But the problem is much deeper than that. Rights discourse is internally inconsistent, vacuous, or circular. Legal thought can generate equally plausible rights justifications for almost any result. Moreover, the discourse of rights imposes constraints on those who use it that make it almost impossible for it to function effectively as a tool of radical transformation. Rights are by their nature "formal," meaning that they secure to individuals legal protection for arbitrariness—to speak of rights is precisely not to speak of justice between social classes, races, or sexes. Rights discourse, moreover, simply presupposes or takes for granted that the world is and should be divided between a state sector that enforces rights and a private world of "civil society" in which atomized individuals pursue their diverse goals. This framework is, in itself, a part of the problem rather than of the solution. It makes it difficult even to conceptualize radical proposals such as, for example, decentralized democratic worker control of factories.

Because it is logically incoherent and manipulable, traditionally individualist, and willfully blind to the realities of substantive inequality, rights discourse is a trap. As long as one stays within it, one can produce good pieces of argument about the occasional case on the periphery where everyone recognizes value judgments have to be made. But one is without guidance in deciding what to do about fundamental questions and fated

to the gradual loss of confidence in the persuasiveness of what one has to say in favor of the very results one believes in most passionately.

The other left stance is to undertake the Procrustean task of reinterpreting every judicial action as the expression of class interest. One may adopt a conspiracy theory, in which judges deliberately subordinate "justice" (usually just a left liberal-rights theory) to the short-run financial interests of the ruling class, or a much more subtle thesis about the "logic" or "needs" or "structural prerequisites" of a particular "stage of monopoly capitalism." But however one sets out to do it, there are two difficulties. The first is that there is just too much *drek,* too much raw matter of the legal system, and too little time to give everything you have to study a sinister significance. It would be a full-time job just to give instrumental Marxist accounts of the cases on consideration doctrine in first-year contracts. Just exactly why is it that late nineteenth-century capitalism needed to render an uncle's promise to pay his nephew a handsome sum, if he didn't smoke 'til age 21, a legal nullity? Or was it the other way around: that capitalism needed such promises to be enforceable?

The second difficulty is that there is no "logic" to monopoly capitalism, and law cannot be usefully understood, by someone who has to deal with it in all its complexity, as "superstructural." Legal rules the state enforces, and legal concepts that permeate all aspects of social thought, constitute capitalism as well as responding to the interests that operate within it. Law is an aspect of the social totality, not just the tail of the dog. The rules in force are a factor in the power or impotence of all social actors (though they certainly do not determine outcomes in the way liberal legalists sometimes suggest they do). Because it is part of the equation of power rather than simply a function of it, people struggle for power through law, constrained by their limited understanding and limited ability to predict the consequences of their maneuvers. To understand law is to understand this struggle as an aspect of class struggle and as an aspect of the human struggle to grasp the conditions of social justice. The outcomes of struggle are not preordained by any aspect of the social totality, and the outcomes within law have no "inherent logic" that would allow one to predict outcomes "scientifically" or to reject in advance specific attempts by judges and lawyers to work limited transformations of the system.

Left liberal-rights analysis submerges the student in legal rhetoric but, because of its inherent vacuousness, can provide no more than an emotional stance against the legal order. The instrumental Marxist approach is highly critical of law but also dismissive. It is no help in coming to grips with the particularity of rules and rhetoric, because it treats them, *a priori,* as mere window dressing. These theories fail left students because they offer no base for the mastery of ambivalence. What is needed is to think about the law in a way that will allow students to enter

into it, to criticize without utterly rejecting it, and to manipulate it without self-abandonment to an alien system of thinking and doing.

2. *Student Evaluation.* Law schools teach a small number of useful skills. But they teach them only obliquely. It would threaten the professional ideology and the academic pretensions of teachers to make their students as good as they can be at the relatively simple tasks that they will have to perform in practice. But it would also upset the process by which a hierarchical arrangement analogous to that of law-school applicants, law schools, and law firms is established within a given student body.

To teach the repetitive skills of legal analysis effectively, one would have to isolate the general procedures that make them up and then devise large numbers of factual and doctrinal hypotheticals with which students could practice those skills, knowing what they were doing, and learning in every single case whether their performance was good or bad. As legal education now works, on the other hand, students do exercises designed to discover what the "correct solution" to a legal problem might be; those exercises are treated as unrelated to one another; and students receive no feedback at all except a grade on a single examination at the end of the course. Students generally experience these grades as almost totally arbitrary—unrelated to how much you worked, how much you liked the subject, how much you thought you understood going into the exam, and what you thought about the class and the teacher.

This is silly, looked at as pedagogy. But it is more than silly when looked at as ideology. The system generates a rank ordering of students based on grades, and students learn that there is little or nothing they can do to change their place in that ordering or to change the way the school generates it. Grading as practiced teaches the inevitability and also the justice of hierarchy, a hierarchy that is at once false and unnecessary.

It is unnecessary because it is largely irrelevant to what students will do as lawyers. Most of the process of differentiating students into bad, better, and good could simply be dispensed with, without the slightest detriment to the quality of legal services. It is false, first, because in so much as it does involve the measuring of the real and useful skills of potential lawyers, the differences between students could be "leveled up" at minimal cost, whereas the actual practice of legal education systematically accentuates differences in real capacities. If law schools invested some of the time and money they now put into Socratic classes into developing systematic skills training and committed themselves to giving constant, detailed feedback on student progress in learning those skills, they could graduate the vast majority of all the law students in the country at the level of technical proficiency now achieved by a small minority in each institution.

In communicating class-rank information to each student, law schools convey the implicit corollary that place is individually earned and therefore

deserved. The system tells each student that he learned as much as he was capable of learning. If he feels incompetent or that he could have done better, it is his own fault. Opposition is sour grapes. Students internalize this message about themselves and about the world and so prepare themselves for all the hierarchies to follow.

3. *Incapacitation for Alternative Practice.* Law schools channel their students into jobs in the hierarchy of the bar according to their own standing in the hierarchy of schools. Students confronted with the choice of what to do after they graduate experience themselves as largely helpless: they have no "real" alternatives to taking a job in one of the conventional firms that hires from their school. Partly, faculties generate this sense of student helplessness by propagating myths about the character of the different kinds of practice. They extol the forms that are accessible to their students; they subtly denigrate or express envy about the jobs that will be beyond their students' reach; they dismiss as ethically and socially suspect the jobs their students won't have to take.

As for any form of work outside the established system—for example, legal services for the poor, and neighborhood law practice—teachers convey to students that, although morally exalted, the work is hopelessly dull and unchallenging and the possibilities of reaching a standard of living appropriate to a lawyer are slim or nonexistent. These messages are just nonsense—the rationalizations of law techers who long upward, fear status degradation, and above all hate the idea of risk. Legal services practice, for example, is far more intellectually stimulating and demanding, even with a high case load, than most of what corporate lawyers do. It is also more fun.

Beyond this dimension of professional mythology, law schools act in more concrete ways to guarantee that their students will fit themselves into their appropriate niches in the existing system of practice. First, the actual content of what is taught in a given school will incapacitate students from any other form of practice than that allotted graduates of that institution. This looks superficially like a rational adaptation to the needs of the market, but it is in fact almost entirely unnecessary.

Law schools teach so little, and that so incompetently, that they cannot, as now constituted, prepare students for more than one career at the bar. But the reason for this is that they embed skills training in mystificatory nonsense and devote most of their teaching time to transmitting masses of ill-digested rules. A more rational system would emphasize the way to learn law rather than rules and skills rather than answers. Student capacities would be more equal as a result, but students would also be radically more flexible in what they could do in practice.

A second incapacitating device is the teaching of doctrine in isolation from practice skills. Students who have no practice skills tend to exaggerate how difficult it is to acquire them. There is a distinct lawyers'

mystique of the irrelevance of the "theoretical" material learned in school and of the crucial importance of abilities that cannot be known or developed until one is out in the "real world" and "in the trenches." Students have little alternative to getting training in this dimension of things after law school. It therefore seems hopelessly impractical to think about setting up your own law firm and only a little less impractical to go to a small or political or unconventional firm rather than to one of those that offers the standard package of postgraduate education. Law schools are wholly responsible for this situation. They could quite easily revamp their curricula so that any student who wanted it would have a meaningful choice between independence and servility.

A third form of incapacitation is more subtle. Law school, as an extension of the educational system as whole, teaches students that they are weak, lazy, incompetent, and insecure. And it also teaches them that if they are willing to accept dependency, large institutions will take care of them almost no matter what. The terms of the bargain are relatively clear. The institution will set limited, cognizable tasks and specify minimum requirements in their performance. The student/associate has no other responsibilties than performance of those tasks. The institution takes care of all the contingencies of life, both within the law (supervision and backup from other firm members; firm resources and prestige to bail you out if you make a mistake) and in private life (firms offer money, but also long-term job security and delicious benefit packages designed to reduce risks of disaster). In exchange, students renounce any claim to control their work setting or the actual content of what they do and agree to show the appropriate form of deference to those above them and condescension to those below.

By comparison, the alternatives are risky. Law school does not prepare students to run a small law business, to assess realistically the outcome of a complex process involving many different actors, or to enjoy the feeling of independence and moral integrity that comes of creating their own job to serve their own goals. It tries to persuade them that they are barely competent to perform the much more limited roles it allows them and strongly suggests that it is more prudent to kiss the lash than to strike out on your own.

4. *The Modeling of Hierarchial Relationships.* Law teachers model for students how they are supposed to think, feel, and act in their future professional roles. Some of this is a matter of teaching by example; some of it a matter of more active learning from interactions that are a kind of clinical education for lawyerlike behavior. This training is a major factor in the hierarchical life of the bar. It encodes the message of the legitimacy of the whole system into the smallest details of personal style, daily routine, gesture, tone of voice, facial expression, a plethora of little p's and q's for

everyone to mind. Partly, these will serve as a language—a way for the young lawyer to convey that he knows what the rules of the game are and intends to play by them. Partly, it is a matter of ritual oaths and affirmations—by adopting the mannerisms one pledges one's troth to inequality. And partly it is a substantive matter of value. Hierarchical behavior will come to express and realize the hierarchical selves of people who were initially only wearers of masks.

Law teachers enlist on the side of hierarchy all the vulnerabilities students feel as they begin to understand what lies ahead of them. In law school, students have to come to grips with implications of their social class, sex, and race in a way that is different from (but not necessarily less important than) the experience of college. People discover that preserving their class status is extremely important to them, so important that no alternative to the best law job they can get seems possible to them. Or they discover that they want to rise or that they are trapped in a way they hadn't anticipated. Students change the way they dress and talk; they change their opinions and even their emotions. None of this is easy for anyone, but progressive and left students have the special set of humiliations involved in discovering the limits of their commitment and often the instability of attitudes they thought were basic to themselves.

Students learn that law teachers are intensely preoccupied with the status rankings of their schools and show themselves willing to sacrifice to improve their status in the rankings and to prevent downward drift. They approach the appointment of colleagues in the spirit of trying to get people who are as high up as possible in a conventionally defined hierarchy of teaching applicants, and they are notoriously hostile to affirmative action in faculty hiring, even when they are quite willing to practice it for student admissions and in filling administrative posts. Assistant professors begin their careers as the little darlings of their older colleagues. They end up in tense competition for the prize of tenure, trying to accommodate themselves to standards and expectations that are, typically, too vague to master except by a commitment to please at any cost. In these respects, law schools are a good preview of what law firms will be like.

Law professors, like lawyers, have secretaries. Students deal with them off and on through law school, watch how their bosses treat them, how they treat their bosses, and how "a secretary" relates to "a professor" even when one does not work for the other. Students learn that it is acceptable, even if it's not always and everywhere the norm, for faculty to treat their secretaries petulantly, condescendingly, with a perfectionism that is a matter of the bosses' face rather than of the demands of the job itself, as though they were personal body servants, utterly impersonally, or as objects of sexual harassment. They learn that "a secretary" treats "a professor" with elaborate deference, as though her time and her dignity

meant nothing and his everything, even when he is not her boss. In general, they learn that humane relations in the workplace are a matter of the superior's grace rather than of human need and social justice.

These lessons are repeated in the relationships of professors and secretaries with administrators and with maintenance and support staff. Teachers convey a sense of their own superiority and practice a social segregation sufficiently extreme so that there are no occasions on which the reality of that superiority might be tested. As a group, they accept and willingly reinforce the division of labor that consigns everyone in the institution but them to boredom and stagnation. Friendly but deferential social relations reinforce everyone's sense that all's for the best, making hierarchy seem to disappear in the midst of cordiality, when in fact any serious challenge to the regime would be met with outrage and retaliation.

All of this is teaching by example. In their relations with students, and in the student culture they foster, teachers get the message across more directly and more powerfully. The teacher/student relationship is the model for relations between junior associates and senior partners and also for the relationship between lawyers and judges. The student/student relationship is the model for relations among lawyers as peers, for the age cohort within a law firm, and for the "fraternity" of the courthouse crowd.

In the classroom and out of it, students learn a particular style of deference. They learn to suffer with positive cheerfulness interruption in midsentence, mockery, ad hominem assault, inconsequent asides, questions that are so vague as to be unanswerable but can somehow be answered wrong all the same, abrupt dismissal, and stinginess of praise (even if these things are not always and everywhere the norm). They learn, if they have talent, that submission is most effective flavored with a pinch of rebellion, to bridle a little before they bend. They learn to savor crumbs, while picking from the air the indications of the master's mood that can mean the difference between a good day and misery. They learn to take it all in good sort, that his bark is worse than his bite, that there is often shyness, good intentions, some real commitment to students learning something behind the authoritarian facade. So it will be with many a robed curmudgeon in years to come.

Then there is affiliation. From among many possibilities, each student gets to choose a mentor, or several, to admire and depend on, to become sort of friends with if the mentor is a liberal, to sit at the feet of if the mentor is more "traditional." The student learns how the mentor is different from other teachers and to be supportive of those differences, as the mentor learns something of the student's particular strengths and weaknesses, both trying to prevent the inevitability of letters of recommendation from corrupting the whole experience. This can be fruitful and satisfying or degrading or both at once. So it will be a few years later with the student's "father in the law."

There is a third, more subtle, and less conscious message conveyed in student/teacher relations. Teachers are overwhelmingly white, male, and middle class, and most (by no means all) black and women law teachers give the impression of thorough assimilation to that style or of insecurity and unhappiness. Students who are women or black or working class find out something important about the professional universe from the first day of class: that it is not even nominally pluralist in cultural terms. The teacher sets the tone—a white, male, middle-class tone. Students adapt. They do so partly out of fear, partly out of hope of gain, partly out of genuine admiration for their role models. But the line between adaptation to the intellectual and skills content of legal education and adaptation to the white, male, middle-class cultural style is a fine one, easily lost sight of.

While students quickly understand that there is diversity among their fellow students and that the faculty is not really homogeneous in terms of character, background, or opinions, the classroom itself becomes more rather than less uniform as legal education progresses. You'll find Fred Astaire and Howard Cosell over and over again, but never Richard Pryor or Betty Friedan. It's not that the teacher punishes you if you use slang or wear clothes or give examples or voice opinions that identify you as different, though that might happen. You are likely to be sanctioned, mildly or severely, only if you refuse to adopt the highly cognitive, dominating mode of discourse that everyone identifies as lawyerlike. Nonetheless, the indirect pressure for conformity is intense.

Students, alone in their seats, feel alienated in this atmosphere, but it is unlikely that they will do anything about it in the classroom setting itself, however much they gripe about it with friends. Typically, they will find a way, in class, to respond as the teacher seems to want them to respond—to be a lot like him, as far as one could tell if one knew them only in class, even though the imitation is flawed by the need to suppress anger. And when some teacher, at least once in some class, makes a remark that seems sexist or racist, or seems unwilling to treat black or women students in quite as "challenging" a way as white students, or treats them in a more challenging way, or cuts off discussion when a woman student gets mad at a male student's joke about the tort of "offensive touching," it is unlikely that the typical student will do anything then either.

It is easy enough to see this situation of enforced cultural uniformity as oppressive but somewhat more difficult to see it as training, especially if you are aware of it and hate it. But it is training nonetheless. The students will pick up mannerisms, ways of speaking, gestures, which would be "neutral" if they were not emblematic of membership in the white, middle-class, male universe of the bar. They come to expect that as a lawyer they will live in a world in which essential parts of them are not represented, or are misrepresented, and in which things they don't like will be accepted to the point that it doesn't occur to people that they are

even controversial. And they come to expect that there is nothing they can do about it. One develops ways of coping with these expectations—turning off attention or involvement when the conversation strays in certain directions, participating actively while ignoring the offensive elements of the interchange, even reinterpreting as inoffensive things that would otherwise make one boil. These are skills that incapacitate rather than empower, skills that help the student imprison himself in practice.

Relations among students get a lot of their color from relations with the faculty. There is the sense of blood brotherhood, with or without sisters, in endless speculation about the Olympians. The speculation is colored with rage, expressed sometimes in student theatricals, or the "humor" column of the school paper. ("Put Professor *X*'s talents to the best possible use: Turn him into hamburger." Ha, ha.) There is likely to be a surface norm of noncompetitiveness and cooperation. ("Gee, I thought this would be like *The Paper Chase,* but it isn't at all.") But a basic thing to learn is the limits of that cooperativeness. Very few people can combine rivalry for grades, law review, clerkships, good summer jobs, with helping another member of their study group so effectvely that he might actually pose a danger to them. You learn camaraderie and distrust at the same time. So it will be in the law firm age cohort.

And there is more to it than that. Through the reactions of fellow students—diffuse, disembodied events that just "happen," in class or out of class—women learn how important it is not to appear to be "hysterical females," and that when your moot court partner gets a crush on you and doesn't know it and is married, there is a danger he will hate you when he discovers what he has been feeling. Lower middle-class students learn not to wear an undershirt that shows and that certain patterns and fabrics in clothes will stigmatize them no matter what their grades. Black students learn without surprise that the bar will have its own peculiar form of racism and that their very presence means affirmative action, unless it means "he would have made it even without affirmative action." They wonder about forms of bias so diabolical even they can't see them and whether legal reasoning is intrinsically white. Meanwhile, dozens of small changes through which they become more and more like other middle- or upper middle-class Americans engender rhetoric about how the black community is not divided along class lines. On one level, all of this is just high school replayed; on another, it's about how to make partner.

The final touch that completes the picture of law school as training for professional hierarchy is the placement process. As each firm puts on, with the tacit or enthusiastically overt participation of the schools, a conspicuous display of its relative status within the bar, the bar as a whole affirms and celebrates its hierarchical values and the rewards they bring. This process is most powerful for students who go through the elaborate procedures of firms in about the top half of the profession. These include,

nowadays, first-year summer jobs, dozens of interviews, fly-outs, second-year summer jobs, more interviews, and more fly-outs.

This system allows law firms to get a social sense of applicants, a sense of how they will contribute to the nonlegal image of the firm and to the internal system of deference and affiliation. It allows firms to convey to students the extraordinary opulence of the life they offer, adding the allure of free travel, expense account meals, fancy hotel suites and parties at country clubs to the simple message of big bucks in a paycheck. And it teaches students at "fancy" law schools, students who have had continuous experience of academic and careerist success, that they are not as "safe" as they thought they were.

When students at Columbia or Yale paper dorm corridors with rejection letters or award prizes for the most rejection letters and for the most unpleasant single letter, they show their sense of the meaning of the ritual. There are many ways in which the boss can persuade you to brush his teeth and comb his hair. One of them is to arrange things so that almost all students get good jobs, but most students get their good job through twenty interviews yielding only two offers.

By dangling the bait, making clear the rules of the game, and then subjecting almost everyone to intense anxiety about their acceptability, firms structure entry into the profession so as to maximize acceptance of hierarchy. If you feel you've succeeded, you're forever grateful, and you have a vested interest. If you feel you've failed, you blame yourself, when you aren't busy feeling envy. When you get to be the hiring partner, you'll have a visceral understanding of what's at stake, but it will be hard even to imagine why someone might want to change it.

Insomuch as these hierarchies are generational, they are easier to take than those baldly reflective of race, sex, or class. You, too, will one day be a senior partner and, who knows, maybe even a judge; you will have mentees, and be the object of the rage and longing of those coming up behind you. Training for subservience is training for domination as well. Nothing could be more natural and, if you've served your time, more fair, than that you as a group should do as you have been done to, for better and for worse. But it doesn't have to be that way, and remember, you saw it first in law school.

I have been arguing that legal education causes legal hierarchy. Legal education supports it by analogy, provides it a general legitimating ideology by justifying the rules that underlie it, and provides it a particular ideology by mystifying legal reasoning. Legal education structures the pool of prospective lawyers so that their hierarchical organization seems inevitable and trains them in detail to look and think and act just like all the other lawyers in the system. Up to now, I have presented this causal analysis as though legal education were a machine feeding particular inputs into another machine. But machines have no consciousness of one

another; inasmuch as they are coordinated, it is by some external intelligence. Law teachers, on the other hand, have a vivid sense of what the profession looks like, and of what it expects them to do. Since actors in the two systems consciously adjust to one another, and also consciously attempt to influence one another, legal education is as much a product of legal hierarchy as a cause of it. To my mind, this means that law teachers must take personal responsibility for legal hierarchy in general, including hierarchy within legal education. If it is there, it is there because they put it there and reproduce it generation after generation, just as lawyers do.

5. *The Student Response to Hierarchy.* Students respond in different ways to their slowly emerging consciousness of the hierarchical realities of life in the law. Looking around me, I see students who enter wholeheartedly into the system—for whom the training "takes" in a quite straightforward way. Others appear, at least, to manage something more complex. They accept the system's presentation of itself as largely neutral, as apolitical, meritocratic, instrumental, a matter of craft. And they also accept the system's promise that if they do their work, "serve their time," and "put in their hours," they are free to think and do and feel anything they want in their "private lives."

This mode of response is complex because the messages, though sincerely proffered, are not truly meant. People who accept the messages at face value often seem to sense that what has actually transpired is different. And since the law is neither apolitical nor meritocratic nor instrumental nor a matter of craft (at least not exclusively these things), and since training for hierarchy cannot be a matter merely of public as opposed to private life, it is inevitable that they do in fact give and take something different than what is suggested by the overt terms of the bargain. Sometimes people enact a kind of parody: they behave in a particularly tough, cognitive, lawyer-like mode in their professional selves and construct a private self that seems on the surface deliberately to exaggerate opposing qualities of warmth, sensitivity, easygoingness, or cultural radicalism.

Sometimes one senses an opposite version: the person never fully enters into "legal reasoning," remaining always a slightly disoriented, not-quite-in-good-faith role-player in professional life and feels a parallel inability ever to fully "be" his private self. For example, they may talk "shop" and obsess about the day at work, while hating themselves for being unable to "relax" but then find that at work they are unable to make the tasks assigned them fully their own and that each new task seems at first an unpleasant threat to their fragile feelings of confidence.

For progressive and left students, there is another possibility, which might be called the deunciatory mode. One can take law-school work seriously as time serving and do it coldly in that spirit, hate one's fellow students for their surrenders, and focus one's hopes on "not being a

lawyer" or on a fantasy of a leftist legal job on graduation. This response is hard from the very beginning, since rejection of what teachers and the student culture communicate about what the first-year curriculum means and how to enter into learning it leaves the student adrift as to how to go about becoming minimally competent. He has to develop a theory on his own of what is valid skills training and what merely indoctrination, and his ambivalent desire to be successful in spite of all is likely to sabotage his independence. As graduation approaches, it becomes clearer that there are precious few unambiguously virtuous law jobs even to apply for, and the student's situation begins to look more like everyone else's, though perhaps more extreme. Most (by no means all) students who begin with denunciation end by settling for some version of the bargain of public against private life.

I am more confident about the patterns that I have just described than about the attitudes toward hierarchy that go along with them. My own position in the system of class, sex, and race (as an upper middle-class, white male) and my rank in the professional hierarchy (as a Harvard professor) give me an interest in the perception that hierarchy is both omnipresent and enormously important, even while I am busy condemning it. And there is a problem of imagination that goes beyond that of interest. It is hard for me to know whether I even understand the attitudes toward hierarchy of women and blacks, for example, or of children of working-class parents, or of solo practitioners eking out a living from residential real-estate closings. Members of those groups sometimes suggest that the particularity of their experience of oppression cannot be grasped by outsiders but sometimes that the failure to grasp it is personal rather than inevitable. It sometimes seems to me that all people have at least analogous experiences of the oppressive reality of hierarchy, even those who seem most favored by the system—that the collar feels the same when you get to the end of the rope, whether the rope is ten feet long or fifty. On the other hand, it seems clear that hierarchy creates distances that are never bridged.

It is not uncommon for a person to answer a description of the hierarchy of law firms with a flat denial that the bar is really ranked. Lawyers of lower middle-class background tend to have far more direct political power in the state governments than "elite" lawyers, even under Republican administrations. Furthermore, every lawyer knows of instances of real friendship, seemingly outside and beyond the distinctions that are supposed to be so important, and can cite examples of lower middle-class lawyers in upper middle-class law firms, and vice versa. There are many lawyers who seem to defy hierarchical classification and law firms and law schools that do likewise, so that one can argue that the hierarchy claim that everyone and everything is ranked breaks down the minute you try to give concrete examples. I have been told often enough that I may be right

about the pervasiveness of ranking but that the speaker has never noticed it himself, treats all lawyers in the same way, regardless of their class or professional standing, and has never, except in an occasional very bizarre case, found lawyers violating the egalitarian norm.

When the person making these claims is a rich corporate lawyer who was my prep-school classmate, I tend to interpret them as a willful denial of the way he is treated and treats others. When the person speaking is someone I perceive as less favored by the system (say, a woman of lower middle-class origin who went to Brooklyn Law School and now works for a small struggling downtown law firm), it is harder to know how to react. Maybe I'm just wrong about what it's like out there. Maybe my preoccupation with the horrors of hierarchy is just a way to wring the last ironic drop of pleasure from my own hierarchical superiority. But I don't interpret it that way. The denial of hierarchy is false consciousness. The problem is not whether hierarchy is there, but how to understand it, and what its implications are for political action.

II. A Strategy for Legal Education

The strategy I am advocating is that of building a left bourgeois intelligentsia that might one day join together with a mass movement for the radical transformation of American society. The great movements of liberation in the history of the West (and also of the third world) have always had in their service cadres of class turncoats from the intelligentsia, who provided them everything from a few ideas, to some knowledge of tactical use, to leadership itself. Without such a cadre of bourgeois intellectuals, it is unlikely that a mass movement could ever be permanently successful in the United States, where ideology is a particularly important instrument of domination and a majority of the population identifies itself as middle class.

In the absence of a mass movement of the left, the way to organize a left intelligentsia is around ideas, and around the concrete issues that arise within the bourgeois corporate institutions where the potential members of such an intelligentsia live their lives. By organization around ideas, I don't mean the propagation of an ideology in the mode of Marxism in Western Europe, or, say, fundamentalist Christianity in the United States. Organizing around ideas means developing a practice of left study, left literature, and left debate about philosophy, social theory, and public policy that would give left intellectuals the sense of pacticipating in a community. Periodicals perform this function in a desultory and, these days, demoralized way. What is needed is the social organization of study and debate at the "local" level.

Along with organization around ideas at the local level there goes organization around the specific issues of hierarchy that are important in the experience of people in these institutions. These have in the main to do

with the authoritarian character of day-to-day work organization, and particularly with the use of supervisory power. Selection, promotion, and pay policies, along with a whole universe of smaller interventions, many of which are merely "social," maintain class/sex/race stratification within the organization, while at the same time disciplining everyone to participate willingly in the complex of hierarchical attitudes and behaviors.

This point of view is not at all revolutionary: it has nothing to do with preparations for a violent mass uprising or a coup d'etat, and it is certainly not based on a theory that capitalism is doomed by its own internal contradictions to succumb to the rising proletariat. On the other hand, what I am proposing doesn't fit the usual mold of reformism either. First, it involves risk taking, insubordination, defiance—in a word, rebellion. It is intensely difficult for a member of the American middle-class meritocratic elite to behave in ways that presuppose and affirm the invalidity of the existing structure of hierarchy. Because hierarchy is bred so deep into our bones, there is something shocking, almost parricidal, in the moment when you actually do something that clearly opposes it.

Second, the premise of this strategy is that we would go as far as possible toward the total dismantling of the existing system. The idea is that our society is rotten through and through, so that no adjustment of the rules of the game to make them fairer, or to make hierarchy more socially rational, would be enough. The demand is for a new society. Third, this strategy is based on the idea that reformism is in fact a hopeless endeavor. Once one accepts this idea, there is no reason at all to sacrifice the long-term goal of building a movement for radical transformation to short-term gains. It is important always to take short-term gains when they are offered, but the only reasons to take them are that it's nice to win something occasionally and that through the coalitions that achieve them one gets access to people who may be converted to more radical commitments.

The core of a law-school organizing strategy should be the left study group. It is not that hard to set one up. The teacher-organizer makes an announcement in class of an initial meeting or distributes a flyer. Not many people will show up, probably, but some will. What they'll have in common, more likely than not, is a sense of outrage at the authoritarian style of at least one first-year teacher, and a vague uneasiness that somehow the first-year curriculum is heavily ideological even though no one can say exactly how it is biased. Then there is the sense that law school means selling out, and that one has to find somehow an extracurricular activity that will keep one in touch with one's ideals.

A group of people loosely united by sentiments like these develops into an organization by talking about their law-school experiences, reading texts together, and trying to relate the texts to their institutional situation. The authoritarian character of the first-year classroom, even when it's not

run by a mythic tyrant like Kingsfield, is a good starting point. There is now a fairly substantial literature about legal education that looks at this phenomenon critically, and that may be the place to begin reading together. There is also a growing body of work about the subject matter of the first-year curriculum. Reading texts of this kind gives the group a direct relevance to day-to-day life as a law student. But it makes sense to read general left social theory texts as well, whether it be Marx on the Jewish Question, or maybe Genovese's discussion of the law of slavery, or E.P. Thompson's on legality in eighteenth-century England.

At the same time, it is important to link up with other people concerned about the issue of hierarchy in your institution and the surrounding community. There will almost certainly be at least one fellow teacher who is at least vaguely sympathetic, and it is crucial to link up with that person and act jointly. Student allies are not enough. You need a political soulmate with whom you can grow as a left activist over a long period of time. But you have to create such a relationship. It won't just happen. If there is no school chapter of the National Lawyers Guild, it makes sense to think about starting one and using that activity as a way to get in touch with left members of the local bar. Another possibility is a speakers program, through which you bring to the school local or more distant left practitioners, left law professors or nonlegal left academics and organizers. Events of this kind are likely to draw new members, as well as being intellectually stimulating. The Conference on Critical Legal Studies organizes annual meetings aimed at Marxist and non-Marxist law teachers trying to radicalize their work lives. Also, it's quite easy, from a technical and financial point of view, to start an insurgent underground newspaper, raising your issues in a polemical way directed both at students and at possibly sympathetic teachers, staff, and local lawyers. This might seem impossibly ambitious at first, but it is surprising how little work is involved and how much fun it can be for those with that kind of bent.

None of these activities can be expected to convert a large segment of the institution to resistance to hierarchy, but once they get started they are likely to build slowly and to affect school politics. What one does with this possibility of influence depends on circumstances—the contingent ebb and flow of school issues. It also depends on even more fundamental issues, like, Do you have tenure? I'm suggesting activism, not self-immolation. But there are three kinds of projects that are likely to be useful at some point: helping students organize an act of resistance of some kind against the authoritarian classroom; curriculum change to reduce its political bias to the right and its incapacitation for alternative forms of practice; and the establishment of a politically sensitive legal services clinic for poor people operated by the school.

These three intitatives—an action against the authoritarian classroom, a proposal about the curriculum and the placement process, and a legal services clinic—touch directly on law school and life as a lawyer. Only the

third has an equally direct relation to the politics of the society at large. Study groups should at least make an effort to find local labor-union insurgents, radical feminist networks and activist groups in the black community. Law students may have something to offer them in the form of legal work, and they have a lot to gain from contact with them. The group shouldn't see itself as existing for their sake, but it shouldn't let itself be isolated either. The slogan of resistance anywhere, any time, on any issue, doesn't imply that one should resist all alone, and it may be the case that there are specific actions in the "real world" through which law teachers and students can do more for the cause of the left than they can do by concentrating on their own issues. There is no way to know about this *a priori.*

A final aspect of study group practice is utopian thinking. By this I mean, not the attempt to discover an ideal form of social arrangement which would put an end to historical struggle and uncertainty, but a practice of formulating demands so as to reveal the hidden ideological presuppositions of institutional life. An effective utopian proposal honors all the "practical" constraints that center liberal administrators appeal to when asked to explain the way their institutions work, so that it can't be dismissed as flatly impossible or beyond the capacities of those who would have to carry it out. On the other hand, an effective utopian proposal has no chance at all of being adopted (at least in the near future) because it violates the unspoken conservative norms that guide administration in fact, if not in name. It should represent small scale and middle term, rather than "final" programmatic thinking, based on a rough assumption that the world outside the institution in question remains unchanged, and subject to revision in every detail as the process of left study and action clarifies our thinking about how we might actually change things if we had some measure of power.

This kind of work has value in the rhetorical battle against those who alternately portray the left as hopelessly visionary and as practically unoriginal. But its deeper importance is as an aspect of the life of the group. People ought to quarrel and then try tentatively for closure about what to do, about whether a given proposal would make things better or make them even worse. It helps in figuring out what's really wrong with the way things are, even if there is little chance of carrying out any radical change in the short run. It is crucial to form coalitions based on a relatively vague consensus that things should be different, and it is a mistake to carry programmatic thinking to the point of hardness where it excludes potential allies. But it is never too early to start building a much sharper consensus about what we would do if we could.

What follows is an example of this kind of thinking: a summary of a proposal to the Harvard curriculum committee written last year. It is addressed to an elite private law school, and doesn't address the overall organization of legal education. (For example, it doesn't take up the idea

of random assignment of teachers and equalization of financial resources as a way to abolish the hierarchy of schools.) But even with these allowances, it already seems to me dated and inadequate, mainly because it doesn't pay enough explicit attention to the modeling of hierarchy through teacher-student and student-student relationships. I offer it not as a blueprint, but as a contribution to a dialog that is already under way, and that will gain depth and sharpness with the growth of our power.

III. A Utopian Proposal

A. The New Model Curriculum

A required program to be taken in a prescribed sequence over two years and one summer, covering all basic doctrinal areas and skills, clinical experience, and interdisciplinary study, followed by a diversified third year.

1. *The Doctrine Course:* An aggregate of three semesters of programmed instruction in doctrine, including learning rule systems and learning the skills of case manipulation, rule manipulation and pro/con policy argument, conveyed through "cases and materials," computer learning-machine exercises, facilitation classes run by faculty members, videotaped lecture series, and tutorial.

2. *The Clinical Program:* A required sequence of clinical experiences, spaced over the two years, and aggregating one semester and one two-month summer stint, covering most practical and ethical aspects of law practice, using simulations, extensive legal writing, small scale experience in hearing-type settings, and two months in the school's large legal clinic modeled after a university teaching hospital.

3. *The Interdisciplinary Course:* A required course running parallel to the doctrine course, meeting three or four hours a week, covering materials in history, jurisprudence, economics, sociology of law and the legal profession, social psychology, social theory, and political philosophy, closely integrated with both doctrinal and clinical study, and taught so that each student is exposed to two formally distinguished "streams," one representing the left and the other the right political tendencies in approaching the materials.

4. *The Third Year:* A third year resembling what we have now, with no formal requirements and great faculty flexibility in deciding what to teach, but with the addition of three options, each of which could take up some or all of a student's time: a Research Institute, advanced clinical work in the Clinic, and concentration in one or more practice specialites or conceptually defined fields of study.

B. The Law School as a Counterhegemonic Enclave

This is a set of proposals designed to reduce illegitimate hierarchy and alienation within the school, and to reduce or reverse the School's role in

promoting illegitimate hierarchy and alienation in the Bar and the country at large.

1. *Admissions:* There should be a test designed to establish minimal skills for legal practice and then a lottery for admission to the school; there should be quotas within the lottery for women, minorites, and working-class students. There should be a national publicity campaign about our goal of modifying the social composition of the Bar.

2. *Hierarchy among Students:* A program designed to reduce disparities in educational attainment of students while at law school, through a combination of redesign of the curriculum (see the new model curriculum above) and investment of large sums of money and resources in students at the bottom of the academic hierarchy. Abolition of the current law-review selection system; modification of the grading system to eliminate perverse incentives; new forms of feedback at all levels.

3. *Channeling of Students:* A program to give students accurate information about hierarchical and moral realities of different kinds of practice, combined with training designed to give them technical, social, and psychological resources necessary for real freedom of choice between large law firms and other kinds of work. Overhaul of the placement system to equalize the chances of competitors of large firms, even at the price of making our graduates less attractive to the large firms. Studies aimed to discover possiblities for viable publicly oriented and small-scale practice, including development of proposals for curricular or statutory reform where necessary.

4. *Faculty Hierarchy:* Hire most qualified women, minority, and working-class candidates until those groups occupy a reasonable number of faculty positions. Abolish the distinction between tenured and untenured faculty—all tenured or none tenured. Democratize hiring through an elected appointments committee with representation of all groups in the school. Develop a program to reduce existing disparities in teaching and scholarly capacity of different faculty members, analogous to the attack on disparities among students.

5. *General School Hierarchy:* Equalize all salaries in the school (including secretaries and janitors), regardless of educational qualifications, "difficulty" of job, or "social contribution." Encourage (without violating the applicable labor law) the formation of unions of employees at all hierarchical levels. Faculty should push for: (a) everyone should have some version of the faculty's unscheduled work experience, or the faculty should have less of that experience; (b) the division of labor should be reduced by adding functions within existing job classifications and reducing the total number of kinds of jobs; (c) every person should spend one month per year performing a job in a different part of the hierarchy from his normal job, and over a period of years everyone should be trained to do some jobs at each hierarchical level.