

For Those Considering Law School

Dean Spade, October 2010

I get several emails every week from people who are reaching out to me because they want to go to law school or are trying to figure out if they want to go to law school. Most are queer or trans activists or people who somehow want to transform the world and end various harmful and horrible dynamics impacting people and communities they are a part of or care about. I end up talking on the phone or in person to many of these people and saying a lot of the same things to them so I thought it might be useful to write them down. In general, these conversations are focused on helping them get past the national narratives we have all be fed that tell us that legal cases are successful at dismantling systems of oppression and changing people's lives. If we compare that idea to what is really happening in the world and what social movements are strategizing about, we find a more complicated relationship between law and social movements that raises questions about whether becoming a lawyer is a good way to participate in transformative change, and if so, how.

Some things to think about when considering law school:

1. **Most legal work maintains systems of maldistribution, it does not transform them.** Many people's interest in becoming lawyers is driven by the myth that changing law is the way to change lives. However, there is lots of evidence that changing laws is not as central or as important as we are made to think. In fact, in the face of large scale social movements demanding change, governments have often created laws that declare equality or neutrality in order to quell dissent and maintain the status quo to the greatest extent possible.¹ Very often, legal change that emerges in these moments heavily compromises the demands of grassroots movements in ways that end up providing symbolic victory and possibly a small amount of material change to the least vulnerable of the group who the demands were about, but leave most people the same or worse off. US law is fundamentally structured to establish and uphold settler colonialism, white supremacy, capitalism---the legal system will not undo these things. When we look at any radical movement in the US that wants to undo these things, whether its workers organizing about labor exploitation, women organizing against patriarchy, people of color organizing against white supremacy, people with disabilities organizing against ablism, people organizing against destruction of the earth, queer and trans people organizing against homophobia/transphobia, or anyone else, we can see that those movements most transformative demands were/are never met by law, and instead that law changes are usually created in ways to maximize the preservation of the status

¹ Good reading sources on this point: Angela Harris, "From Stonewall to the suburbs?: Toward a political economy of sexuality," *William and Mary Bill of Rights Journal* 14, pp. 1539–82; Anders Corr, No Trespassing: Squatting, Rent Strikes and Land Struggles Worldwide (Chapters 4, 5, 6). Angela Harris' article very helpfully breaks down how Brown vs. Board of Education, a case that inspires many students to imagine that a lawsuit can change the world, was undermined by subsequent governmental and private changes that produced suburbanization and preserved and expanded racial segregation in the US. Anders Corr looks at examples of struggles for land and housing in the US and around the world and shows how legal change is ineffective on its own, sometimes undermines resistance strategies, and can only be useful at all as a limited tactic of broad mobilizations that rely on direct action.

quo while adding a window-dressing of fairness.² Even when movements win law change that looks like it is supposed to guarantee the redistribution of some essential thing, that law is always quickly eliminated, or never enforced, or twisted through administrative or judicial interpretation to do the reverse.³ The idea that people who want to make change will make the biggest impact by becoming lawyers and bringing precedent-setting lawsuits needs to be released in the face of what movement history reveals. So, once you let go of the idea that going to law school and becoming a lawyer is the best way to make change, you can start to think about what role lawyers should or could have in social movements and evaluate whether you see yourself in those roles. In my view, transformation really happens because of mobilization of large numbers of people directly affected by harmful and violent systems. It doesn't come from the top—from elites granting change through legislation or courts. The question then becomes what role lawyers can have in that broad, participatory, mass mobilization-focused, bottom-up transformation. Some important jobs lawyers can do in such movements are:

- *Legal service provider.* Lawyers are sometimes helpful for people facing awful abusive legal systems (immigration enforcement, criminalization, welfare cuts, eviction, environmental injustice). If key services are part of a larger organizing strategy aimed at systemic transformation—meaning that they connect people to a way of joining with others struggling in similar circumstances and they are governed by people from the directly affected group—they can be an important entry-point for people into resistance struggles and an important source of support for people to help them take political leadership on matters that concern them. Unfortunately, those roles don't exist so much as lawyer jobs. Most service provider jobs where lawyers help people navigate violent legal systems (like criminal defender jobs, welfare advocacy, unemployment benefits advocacy, immigration law) are not part of broader social movements so many lawyers end up feeling like they are just cogs in the machine. Because of the way that these jobs are structured (large organizations with lots of hierarchy, narrow practice areas or funding restrictions on certain kinds of help, and gigantic caseloads), it can be hard or impossible to connect with larger social movements even if you want to. Only a tiny percent of people can even get a lawyer, and only for some of their needs, but everything is so stacked against poor people that many have claims that lawyers won't take because they can't win. Those few that get a lawyer and win something are the exception, not the rule. Many lawyers doing direct services come to feel like their work legitimizes the

² There are some good examples in the book Ideas for Action: Relevant Theory for Radical Change by Cynthia Kaufman, particularly in Chapter 3 where she talks about the National Labor Relations Act and other legislation that emerged out of worker resistance.

³ Critical Race Theorists have provided important analysis about how law reforms that emerged as responses to movements for racial justice have ended up being used to dismantle affirmative action programs and other programs aimed at racial redistribution. See, e.g., Freeman, Alan. 1996. Legitimizing Racial Discrimination Through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine. In *Critical Race Studies: The Key Writings that Formed the Movement*. Edited by Kimberle Crenshaw, Neil Gotanda, Garry Peller, and Kendall Thomas. New York: The New Press; *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S.Ct. 2738 (2007).

system, and also hate that their jobs involve enforcing the laws on their clients---telling people to take the plea bargain, or that they can't represent them in eviction defense because they don't have enough rent saved up, or that there are no avenues for them to gain immigration status. Very few of the people most impacted by poverty, racism, ableism and xenophobia get representation, and very few "win." Legal services provided in this way focus on individuals—as if people's problems with eviction, immigration, criminalization are an individual matter--and do not get to the root causes that affect whole neighborhoods, cities, racial groups, or economic classes. Unless legal services are directly connected to a strategy of mass mobilization, they mostly maintain the system and mildly legitimize it because a few people get some help surviving it. Most legal services are not currently connected to transformative change strategies, and are not going to be unless we marshal resources for way way more of that kind of work—direct community organizing, base building, mobilization. System-sustaining services are more supported than system-threatening mobilization strategies--most law students I meet have never worked with and often have never heard of mass mobilization efforts besides a few historical examples like the Civil Rights Movement. This is something to consider about becoming a lawyer—are those the skills most needed by our movements right now? We definitely do need radical people to become criminal defense attorneys and welfare lawyers and all that, but we also need to be building the skills and strategies that seek bigger change, and mostly privileged people go to law school and end up doing system-maintaining work. Unless you have a really clear idea of how you will navigate these tensions and how your work will be different, going to law school may just co-opt you into narrow reform or system-maintenance work. There are ideas out there of alternative models for doing legal support work to movements,⁴ but you should find out about them *before* you decide whether or not to go to law school and be part of building the kinds of accountable grassroots-based movements that can direct legal work in meaningful ways. Legal work is overdeveloped in the current movement context and mass mobilization strategy is underdeveloped, so think about where you can get the skills you need to do whatever you do in ways that actually generate change and make you maximally useful to the processes of transformation you believe in.

- *Demystifier of legal systems.* Lawyers can also serve movements by using specialized knowledge to help demystify systems that are targeting vulnerable people but that are often intentionally opaque. Sometimes lawyers can help movement leaders strategize around who the targets of various campaigns could be or where weak points in certain legal systems are. However, this is easily overstated because people targeted by violent legal systems usually know more about how they actually work and lawyers often only how they work on paper (and sometimes mistakenly believe that to be how they actually work). Legal training can often make people less adept rather than more adept at strategizing change because we get overly bought in to how systems work. In general, law school teaches people how to stop

⁴ See, e.g. Gabriel Arkles, Pooja Gehi and Elana Redfield. The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change, 8 Seattle J. for Soc. Just. 579 (2010).

thinking outside of legal solutions to problems, which mostly means we can only think of ways to slightly tinker with harmful systems thereby strengthening, stabilizing and legitimizing them. The entire focus of legal education is about working inside the existing legal system—even the small part of legal education that is about poor people's struggles is about narrow reforms and courtroom strategies, not about supporting rent strikes or squatting or prison abolition or native land struggles—essentially, not about actually challenging the root causes of maldistribution. Law school is a powerful space of indoctrination so if you decide to go, you need to have already formed deep frameworks to resist that indoctrination through participating in and studying social movements and legal systems through perspectives of people directly impacted by systemic maldistribution and violence.

2. **Lots of legal work that needs to be done to help poor can be done without a law degree.** For those of us who want to directly help people in our communities struggling in horrible legal systems, we can do a lot of that without going to law school! Legal advocacy can be done by non-lawyers—non-lawyers can even represent people in lots of hearings related to public benefits, immigration, and other urgent issues. Some of the most radical movements in US history have provided direct help to community members in de-professionalized ways, with people learning how to get through systems or get needs met, helping other people and teaching so that lots of people can help each other instead of expertise being hoarded by a few privileged people. Getting help from someone else who is directly impacted is a powerful experience that brings people into social movements and lets them see themselves as a potential provider of such help to others in their circumstances—getting help from a privileged person with a professional degree does not do that. Lots of the work that poverty lawyers help people with is similar to what social workers do—filling out forms, making calls to get people into housing or medical programs, accompanying people to intimidating meetings, explaining systems, figuring out if the government isn't providing some help that it is supposed to provide. You can do a lot of that without going to law school, and law school classes mostly don't teach how to do that—you learn that by doing it, by finding out how those systems work where you live, by talking to people who have been doing it for a long time. If you do that work for three years you'll learn more about helping poor people with those issues than if you spent those three years in law school learning about rich people's property laws or the rules of federal courts. Because there are not enough poverty lawyers to even scratch the surface of poor people's needs, we desperately need to de-professionalize legal help and share info with people in targeted communities about what they can demand from landlords and employers and government agencies and how to be as safe as possible in the face of enormous state violence. De-professionalizing this work is also essential to breaking down the paternalistic role that service providers play in targeted communities. We also have to face that the rules mostly don't benefit targeted people and never have, and when good rules get created they are not followed or enforced, so to actually change the conditions of maldistribution we need mass mobilization and direct action to force deep transformation. Helping people get by as much as possible under awful conditions is part of that kind of transformative process, but it is not enough on its own, especially for those (like people targeted and caged by criminal and immigration systems) who are on the violent losing end of all those rules and for whom legal relief is usually not available.

3. **Law school is expensive (in most cases) and it's worth thinking about what impact the debt may have on your future.** Law school is extremely expensive and way less financial aid is available than for undergraduate education. Many people graduate with more than \$100,000 of debt. For many people, this creates a pressure to take any job when they are done—they went in with intentions to do certain kinds of social justice work but they end up either doing horrifying pro-capitalist work at a private firm or some kind of “public interest” job that they don’t like or don’t believe in. There is no point in investing three years of your life into a school experience and then having a job you hate, so before going this must be considered. Think about price when choosing a school, think about whether you are willing to give up credit privilege and default on loans. Being co-opted because of the debt is a sad and avoidable fate. It is awful to watch people graduate and rationalize taking any job they can find because the pressure of their debt and the law school culture that equalizes all career choices (becoming a prosecutor or working for ICE is considered a “public interest” or even “social justice” job in many law schools!) and supports feelings of competition and desperation. There is enormous pressure to take any job after law school—it is in the schools’ interests to have graduates employed in elite (usually conservative or mildly reformist) work, so they support a culture of scarcity, individualism, competition and fear that drives students to take jobs that make them miserable. It is no coincidence that rates of addiction are so high amongst lawyers that some states require all attorneys admitted to the bar to take a class about it.
4. **Law school is a very conservative training and rarely a critical intellectual experience.** Law school is not like undergrad. It isn’t about writing cool papers full of critical ideas. The things that interest you about law are not what the classes are about. They are about memorizing obscure rules that are likely to have nothing to do with your daily practice as a lawyer. They are somewhat about passing the bar exam, an exam that also test you on things that have very little relevance to social movement lawyering. Law school is like a language immersion program, but one in which the language you are learning is the language of rationalizing white supremacy, settler colonialism, patriarchy and capitalism. The traditional pedagogy of law school relies on humiliating students if they bring in other ways of thinking or knowing about the world, thereby whittling them down to a shadow of their former selves and reshaping them to make them think inside a very narrow box. It is true that law school sometimes makes people more concise speakers and writers, but it is certainly not the only way to do that. Usually when I share this point with folks considering law school, they nod, but they feel that they can resist this training. I urge you to take it seriously. I think that no one exits law school without having been changed and conservatized at least a bit. It took years of social movement engagement for me to shed some of the internalized dominance behaviors I gained in law school, to remember how to think about solutions that cannot be won in law, and to revive communication and relational skills that law school tramples. It is a place where white masculine cultural norms and behaviors are exacerbated. And it feels like high school—the first year is pretty much all day every day, you have a locker, white wealthy people frequently bully and tease people who bear markers of otherness. It’s not a fun place for freaks, queers, people with big hearts.
5. **If you go to law school, it’s most important to go to a school where you will have allies and support and where the learning experiences you want are actually being offered. Don’t get caught up in the quest for prestige.** After I share the above points with many people, they still go on to law school, and they

still go to the highest ranked school they get into. So, it could be that people drawn to law school are also people who value prestige, who have a hard time resisting social pressure, regardless of their self-identifications as anti-capitalists, rebels, non-conformists, or whatever. If you are someone who actually wants to see transformative change, and despite my above points you are committed to starting law school, go somewhere with a social justice mission or a specific program that you know draws MANY students to that school because they share your commitments. Lots of schools have something on their website about public interest law. That's not what I mean. I mean go to CUNY—a place that is truly committed to public interest, that has roots in transformative movements, that draws students because of its mission so your classmates will have more to teach you, and that has lively and vibrant student activism. Or go to Northeastern—where students are given the chance to work for credit more than at any other school. Or go to UCLA where the Critical Race Studies program is a rare haven for students of color and racial-justice focused students to learn from critical race scholars and deeply engage with law from a critical perspective. Or come to Seattle University and hang out with me, and help us push the school to make our social justice mission as vibrant and transformative as it can possibly be. In any case, do not fall into the trap of prestige. Some of the most elite law schools in the country don't even offer classes in Critical Race Theory or Poverty Law. Rankings are based on the wealth of the school, the amount that their students succeed on racist indicators like the LSAT, and other criteria that are irrelevant to or counter to social justice concerns. You need a school that offers as many classes as possible that are relevant to dismantling white supremacy, settler colonialism, capitalism and patriarchy. You need a school where student activists are taking the institution as their target and engaging in multi-issue activism, teaching each other along the way. You need a school that values clinical legal education and will give you lots of chances to actually do work supporting poor communities while you are in school. As someone who used to be part of hiring attorneys, I can tell you that I did not value fancy degrees, I valued people who had gotten some experience, people who had developed critical thinking about race, disability, poverty, gender and immigration, and people who had thought critically about the role of lawyers in social movements and learned how to check their privileges. Once you are at school, you need to form your own reading groups and other support spaces to learn what is not taught there, including movement history and the role of lawyers in social movements. And you must continue to engage with social movements, not in a lawyer role, throughout law school and after. This is essential to maintaining perspective on legal work, maintaining humility, and finding balance and passion.

This framework is generic—it does not address specific conditions that you may be facing or specific movements you may be a part of, but I hope it provides a moment of pause in the assumption that law school is a wise choice for activists who want to transform the world.

Response to this Essay from Another Professor Prefers to Remain Anonymous

Hi, Dean,

Thanks for sharing your comments to activists who are thinking about law school. I

agree with all of your points. A few thoughts:

1. One point you might add to your observations about legal services: When legal services attorneys successfully brought class action suits to broaden the impact of their cases, Congress responded by placing restrictions on the use of LSC money to conduct class actions -- thus reinforcing the focus on individuals.

2. Another, more controversial point about law school's conservative training: law school can transform activists into missionaries. In other words, as we discussed, law school (and not just law teaching) indoctrinates students into the habits, dress, demeanor, and patterns of thinking of the dominant class. To the extent that students practice "public interest law," they may actually dis-empower social movements and socially subordinated groups and individuals by adopting the mantle of the great (white) savior of the ignorant masses who "know better" than subordinated groups about their own subordination. This is a harsh way of expressing a phenomenon that may be more subtle. Do you represent the interests of the clients? Or do you represent your own view of your preferred solution to someone else's problem? For example, Derrick Bell writes about this in his controversial article *Serving Two Masters*. Did his clients really benefit from litigation strategies that sought to promote integration? Law school can give people a false sense of superiority and a patronizing attitude toward others -- particularly at the more elite institutions. This makes it much more difficult to conduct the constant examination and deconstruction of privilege that is central to any anti-subordination practice. Those who are convinced that they have "transcended" the limitations of their culture can wind up reinforcing patterns of domination far more effectively than those who openly express traditional hierarchical views -- and who can be challenged directly. I think these ideas are already embedded in what you've written, but you may want to make them more explicit. For example, you talk about breaking down the paternalistic role that service providers play in targeted communities. Those problematic attitudes are often acquired in law school.

3. You might want to expand on the ways that law school indoctrinates students since this is obvious to those of us who have gone through the experience but is not at all obvious to those who have not. I think this is an important point because most law schools (except Chicago, George Mason, Pepperdine, and a few others) purport to be bastions of "liberalism" and students may be misled. The faculty express mildly left of center political views. The education students received is justified as "professional training" -- as if it were technical and neutral when in fact it is not. This type of education ultimately promotes a certain acceptance of the status quo and, at best, tinkering on the margins. But students have no idea what this entails until they are actually in the middle of it. It might be useful to describe it just a bit more -- to make sure prospective students understand what they're getting themselves into.

I like the analogy that you make to high school. The lockers. You might mention the enormous classrooms that make any meaningful, critical dialogue very challenging.

The assigned seats. The standardized curriculum and lack of meaningful choice. The humiliation -- which you already mention. Law school separates people from their activist communities in body as well as spirit since the first year involves a standard menu of courses. It infantilizes first year students by treating them as if they know nothing, and must start their learning from scratch. It destroys solidarity among students by breeding competition for "scarce" resources (grades, jobs). It creates hierarchies based on grades, law review, and other competitions. It rewards students who can best emulate white, male, heterosexual, middle and upper class speech patterns and patterns of analysis and ostracizes "others." It does this, in part, by the very criteria used to select students -- so that "outsiders" are kept to a bare minimum and must struggle in a sea of homogeneity and privilege. Law schools are ranked based on these criteria. Law school professors are also expected to conform to these white, male, heterosexual, middle and upper class norms. Those who do not are often "disciplined" by students in the form of poor evaluations and are ultimately marginalized or dismissed from law school teaching. Law schools, in the end, are designed to breed conformity rather than critical thinking.

Take care,

Prof. _____