

The True Left

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*You don't need a weatherman
To know which way the wind blows.*

– Bob Dylan, Subterranean Homesick Blues (1965)

My own understanding of social change and political organizing has been shaped by Duncan Kennedy's theoretical (non)-stances and his practical examples. I salute my friend, occasional mentor and true comrade on his retirement from formal teaching at Harvard Law School with this brief evocation of the “anarcho-syndicalist” dimension of his hyphenated theoretical/political orientation.¹

My starting point is the recognition of Duncan's mind-boggling success in virtually single-handedly (the “modernist” hero) building a “counter-hegemonic left” in American legal education, an unlikely place to have expected an avowedly left and arguably ultra-left (rather than liberal and reformist) resistance to emerge in the late 1970s and 1980s, especially in legal education's elite tiers, and just as the country generally seemed to turn Right.

In 1984—when Ronald Reagan was elected to his second term, critical legal studies (“CLS”) had been holding its own conferences for several years, and I was in my second year of law teaching at the University of Virginia—Duncan organized a group of “crit” law teachers to meet at the Annual Meeting of the A.A.L.S., the professional association of American law professors. Most of us had never attended the event, which seemed—to me, maybe snottily—the epitome of professional boredom. But the idea was that a group of us would gather there and collectively produce and distribute “the Lizard,” a “publication” we would present as the “daily newsletter” of the convention, laid out in the style of an underground newspaper.² It would consist of our anonymously written—but personally distributed by face-to-face leafleting—parodies, critiques, and analyses of what was going on in the very straight, repressed and bureaucratized convention, and in law schools more generally.³

The Annual Meeting was held in a big, corporate style San Francisco convention hotel (“there are phones next to the toilets!”), and consisted, as it always does, of an ensemble of panel presentations organized by the hundreds of AALS “sections” (each with its own slate of section officers elected in the “business meetings” by which the sections perpetuate themselves), the legal specialties and sub-specialties somberly considered at convention ballrooms or “salons” identically set up with raised podium, speaker tables with microphones, glasses of water and white tablecloth bunting, and hotel chairs lined up in rows. Most sessions were a third full with law professors in

¹ In *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* (“the little red book”), Duncan states his methodological orientation as “an attempt at that kind of general theory from

² See Appendix I.

³ For a much fuller description of the Lizard intervention, see generally Gary Minda, *Remembering the Eighties: The Lizard Goes to the AALS*, 75 UMKC L. REV. 1161 (2007).

business suits looking bored or defeated (even at the advertised “hot topics”), sitting still listening to other law teachers read paper after paper, a few trying to connect with professors from higher status schools, others nervous to be presenting up at the microphone table, some smug and basking in others’ jealousy over their high status positions. Between sessions, the big lobby areas filled with murmuring little clusters of largely socially awkward legal academics, some isolated at the edges, looking to see if there was anyone they knew.

It seemed to me a particularly alienated, bureaucratically constituted, and, most of all, *controlled* event. It gave me a heavy sense of fatigue and resignation—not unlike the day-to-day culture of faculties in many law schools, then and now, those solitary workers of Reason in their sterile offices off the silent corridors of featureless, modernist hallways that could easily pass as the offices of insurance adjusters.⁴

As I understood it, we hoped to punctuate the aseptic proceedings with a jolt of critical energy, a kind of surprise yippie intervention (though no one used the by-then spoiled term), a small but meaningful contestation that would mark our oppositionist movement in legal education. A blue-jean clad brigade of counter-cultural insurrectionists, we would launch a surprise intervention armed with stapled pages of the Lizard.⁵

So Duncan holed up in his hotel room with a stack of National Enquirers and other supermarket tabloids and some scissors and proceeded to snip out explosive large font headlines to cut-and-paste for our Lizard stories (“Oh My God! It’s Alive!”). He cut out a cache of graphics, including the image of a lizard to give the publication continuity (though he ended up only locating a gecko, a text contesting itself). We acted as reporters, and, for our first issue, arrived at the Annual Meeting with pre-written stories. (Given that this was the pre-digital age, they were all in different fonts, adding to the ersatz look of the Lizard). In subsequent issues—I think there were three in all—we reported on the convention’s activities. The content included an open letter reaching out to a senior legal realist colleague, an overview of theoretical debates within CLS, an “advice” column responding to a purported male law teacher seeking guidance on how to deal with his crush on a female student (a disruptive description of male desire cloaked in anonymity and doused in politically incorrect lust that received the most purported “letters to the editor”), an article responding to mainstream denunciation of crits’ lack of civility, a phenomenological depiction of faculty cocktail parties (said to constitute “cultural terrorism”), and so on. The anonymous form clearly was liberating for us—particularly after years of worrying if our writing would get us fired or not! On

⁴ I am describing how it appeared to me from the outside! It could have been meaningful to others, and I don’t mean to disparage the yearning for connection that might enliven everything for those experiencing these places from the inside

⁵ I am generalizing the scene. Some crits wore sport jackets, which registered in the suit and tie setting as a dissent from an academic, humanities location against the professionalism trade culture of lawyers, the intellectuals versus the trade school crowd. Peter Gabel, tall and visibly countercultural with long hair and hippiesh worn blue denim clothing, the President of New College of Law—a working class law school—would be the look most attendees would likely associate with the Lizard.

the back cover, a mess of graphics surrounded block quotes from left “canonical” texts—Marx, Foucault, Sartre, and other fancy Euro-stuff.

After Duncan laid out each issue, usually late at night, we would head to the 24-hour copy place to print it up. The next day, we distributed it around the elevators, at the front doors of the hotel, and in the common areas around the bars and restaurants, instigating face-to-face contact with the conference attendees—among them our own colleagues.

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Now, what to make of the Lizard intervention? A handful of “crit” law professors leafleting other law professors with a mock conference newsletter in a high-end convention hotel in San Francisco was not exactly meeting late monopoly capitalism head-on, one could say (and undoubtedly some did).

In my view, the Lizard project at the 1984 AALS Annual Meeting was a small but meaningful political intervention, a lot of fun mixed with anxiety and tension, and, the reason I’m evoking it here, a powerful exemplar of Duncan’s anarcho-syndicalist politics more generally. As things turned out, it was an early piece of the broader resistance that cls, and then the “crit networks,” lodged in American law schools.

A vivid thing that the Lizard helped accomplish in the physical space of the convention—and at that historic time in legal education—was to challenge the assumed distinction between the “professional” or “academic” (and therefore apolitical) and the “political” or “cultural.” The very act of leafleting symbolically suggested (in 1984, if not now) the politics of the late 1960s and early 1970s mass anti-war and civil rights mobilizations. Leafleting was implicitly confrontational. But the Lizard wasn’t about the war or racism or sexism or the environment or farm workers, the customary subjects of 1970s activism; it was about legal education itself, and the leafleting was taking place inside a pseudo-scholarly professional event, not on the streets or in front of grocery stores. It was a particularly effective way to communicate that our profession—legal education and scholarship—was a site for political agitation. , a radical idea inside that fancy hotel, when American legal thought was still largely dominated by the depoliticized craft projects of 1950s “legal process school” proceduralism (“A Court must give reasons for its decision...blah blah blah”).

The National Enquirer headlines also embodied our fancy epistemological deconstruction of rationality in a pithy visual artifact—the very treatment of “legal thought” according to the bombastic tabloid headlines reflected our idea that the ideological modes of legal and academic consciousness and the culture of alienated self-seriousness within which it was performed and reproduced were connected...and each—the ideology as well as the rationalistic culture—played a role in the constitution and reproduction of the status quo of law, legal education, and power in society more generally.

What’s more, the Lizard constituted its participants as an oppositionist group in that newly politicized environment, and in that transformed moment, fused in small part by the experience itself. Creating the Lizard together required building a collective will and then trust in that collectivity. Not to exaggerate our first world concerns, but the

whole thing risked appearing silly and juvenile to our colleagues, those with whom we worked day-to-day, and some who would vote on our jobs. Even more sober crits had qualms (see the disclaimer below), and on top of all that, each of us must have worried whether our own contributions, anonymous to outsiders but known to each other, were up to the project or whether our words would be embarrassingly off. We were potentially exposing ourselves to ridicule or to dismissive judgments. We had to trust each other that we all could together—and for the most part on the spot—pull off this “publication” that would embody “our” challenge to the dominant culture of legal education. We needed to create a tone and presence serious enough not to be dismissed as mere “acting out,” but one that still manifested our critical and cultural take on things; a shared political projection whose meaning and value, and its timeliness, was confirmed to each of us by being recognized by each other, in a moment of “inter-subjective zap.”

Or the whole thing might be something we would later regret. We weren’t sure.

I remember finding this dimension of things a little scary and also exciting. And I sensed in everyone else the same anxiety, mixed with a collective sense of doing something positive and important. There in Duncan’s room as the first issue came together, then later, more starkly, under the fluorescent lights at the 24-hour copy place, we were coming together in a slightly giddy mix of intellectual, cultural, and emotional recognition, fun and excitement, followed by apprehension before the first morning of leafleting, and finally rewarded with the anonymous author’s and oppositionist’s thrill of minor success. Many of the attendees refused to take a copy; some even sneered. But we could see others reading it while they were killing time or having their coffee. A few were smirking, but several readers seemed interested and amused, and, by the second day, people seemed friendly about it: a lot of people were asking for it before it was even offered, especially some of the younger teachers and the clinicians. All in all it seemed to be positive—for many attendees, it was something to talk about during the convention, and, we imagined, an opening up, in a small way, of the possibility of treating law schools as political places, where questions of power—race, sex, and class, yes, but, when locally understood, a myriad of other vectors on which power is exercised in law schools, including the ideology of the rule of law, the neutrality of individualism, the claims of the academic and the professional to their own ideals of neutrality, and the invisible social and cultural injunctions of enlightened academic culture—all of it might be contestable together.

By the third day, attendees no longer stiffened as they tried to figure out what to do when offered a Lizard: there we were, crits at the AALS, manifesting a political and cultural opposition, and we imagined injecting a modest wrinkle in the facade of reason as more mainstream attendees adjusted to us being at the elevators and restaurant entrances.

I suppose that anyone who has done organizing, particularly workplace organizing where you are stepping out of your usual role in view of co-workers, can recognize this sense of unnerving, but necessary, self-exposure.

The Lizard contained the following editorial disclaimer that sought playfully to claim a higher ground for the fun we had:

“Lizard is an emanation of a small faction within the critical legal studies movement, sometimes referred to as the True Left.”⁶

There have been frequent accusations over the years, usually lodged from the “left,” that those, like Duncan, who approach things with a post-modern critical sensibility, lack a *theory* with which to understand and engage in sustained social change.⁷ In the early days of CLS, Duncan and other “irrationalists” who occupied what Duncan termed the “southern” positions within CLS⁸ were criticized by “northern” crits for lacking a structural account of how power was exercised in capitalist society. This sort of basic dispute involved several, inter-connected debates: Whether legal doctrine had a systematic “tilt” toward the capitalist ruling class or was too “indeterminate” to ground such claims; whether there was an overarching way to understand how power worked in a capitalist society or whether the idea of a “capitalist” society was itself an ideological construct; and whether CLS needed to offer a reconstructive program or whether “trashing” was itself politically meaningful.⁹ In terms of actual political organizing, the same ideas emerged as a critique of the meaningfulness of organizing law teachers and students rather than the working class or another disempowered group (upon whom a revolutionary potential was implicitly assigned). Given the spread of the post-modern influence in American academia generally, I assume that this structure of debate is familiar to readers who have spent time there.¹⁰

⁶ Apparently in response to concerns about the possible effects of the Lizard on untenured crit law teachers, or maybe the reputation of the “organization” generally, the disclaimer “responsibly” went on:

Lizard does not in any way, official or unofficial, represent the views of the Conference on Critical Legal Studies. The contents of Lizard have not been discussed within CCLS, and it does not conform to the general attitude of the membership, which is far more responsible and boring than anything we would be interested in printing. Since most CLS people would dislike this paper were they to become familiar with it, it would be gross guilt by association to treat them as co-conspirators.

⁷ According to the traditional materialist Marxists, it is the flaw of “voluntarism,” over-estimating the ability to change historically structured production practices with subjective, even if collective, acts of will; according to the contemporary European version, it is the flaw of “eclecticism.” The po-mo rejection of an ultimate ground for distinguishing knowledge and truth from opinion and ideology has also been termed nihilistic, leaving its articulators without a way to decide anything.

⁸ See Appendix II for Duncan’s north/south outline of the location of left position, distributed at a 1988 CLS summer camp.

⁹ This way of posing the issues has largely been eclipsed in left academia generally by the victory and possible hegemony of the southern position, largely associated with the influence of Foucault and other post-structuralist analyses of power.

¹⁰ The most recent issue of *Unbound* suggests that this thematic continues. See Tor Krever, *A Journal of the Legal Left?*, 9 *Unbound* 1 (2015) (criticizing *Unbound* project for failure to incorporate more class-based, materialist, Marxist perspectives); see also Samantha Godwin, *Social Construction of False Necessities and the Material Basis of Socio-Legal Power: A Reply to Irrationalism in Critical Legal Studies Critiques Identifying Latent Social Violence as a*

As I understand Duncan's¹¹ position, with which I concur, there is no single thread that ties together the various ways that social power is exercised, that makes them each manifestations of the same, universal, dynamic or set of dynamics. Everything cannot be understood in terms of "capitalism," a term which itself depends on legal categories, or in terms of the blockage of the universal desire for mutual recognition, as Peter Gabel sees it, or as attempts to mediate the "fundamental contradiction," as Duncan's early, existential formulations had it, or this or that vector of race or sex or class power. Instead, the idea is that power operates according to multiple vectors in various situations and locations, all potentially different depending on the history and geography of a specific social field, that is, depending on the particularities of time and space. There is no objective way, separate from and outside of being situated within that history, authoritatively to describe and account for these myriad manifestations of social power—it's all "political" in that deep epistemological and interpretative sense that the very ways that we describe what is going on around us are themselves subject to political contestation. The target of this "True Left" critical energy, then, is in part the false authority of the claim of theorists to have transcended politics itself, whether contained in the apologetic legitimating discourses of the rule of law or in the claims to the correct epistemological or interpretative grounding in left "theory" itself.

By denying the possibility of an objective, apolitical, grounding "truth," or a way to distinguish narrative from reason, this "True Left" epistemological position, "intellectual anarchism," maybe, is connected to "syndicalist" commitments, because it renders the academic *workplace* as a meaningful site for politics: if the universities are not distinguishing universal truth from the partialities of perspective, that is, fulfilling their purported Enlightenment role, then they too could be seen as a part of, rather than independent from, the production of social power, as workplaces with particular roles to play in the production and reproduction of society. Accordingly, "True Left" intellectuals do not share a common project with their liberal colleagues to protect the purity of the academic mission against the influx of crude market or political forces; on these questions, they understand the liberals to be deploying a falsely de-politicized Reason and helping to reproduce its problematic discursive authority.¹² (Not that we are

Potential New Material Foundation for Systematic Socio- Legal Theory, 32 Pace L. Rev. __ (2012).

¹¹ Since his renunciation of the "fundamental contradiction" between self and other as the unifying animating thread for understanding legal thought. See Peter Gabel & Duncan Kennedy, *Roll over Beethoven*, 36 STAN. L. REV. 1 (1984).

¹² In my own understanding, this negative part of the "True Left" position—denying the possibility of unified or authoritative accounts of how power is constituted, reproduced and exercised—is partly a reaction to the objectivist, structural claims of conventional Marxist social and historical theory (in addition to the claims of Enlightenment thought to distinguish truth from fiction).

The Marxist philosophy of history placed the proletariat as the "universal" agent of fundamental historical change in capitalist societies. The "dialectical materialist" accounts asserted that the contradictions of capitalism would become manifest in the objective, material situation of the proletariat, on whom the engine of capitalism depended but who are particularly exploited by their place in the system. Later, less materialist Euro-Marxist and proto-New Left

against short-term, expedient alliances.) Seeing social power at stake across the existential space, the “True Left” seeks to politicize rather than mediate, to heighten the contradictions and hopefully make the kettle boil, by revealing the contingent social construction of the way things “are,” all with no master blueprint that can tell you in advance which sector to attack or what the necessary result of any intervention will be.

Duncan’s little red book is, to me, a compelling example of the anarcho-syndicalist viewpoint I am describing. His critical depiction of law schools does not reduce the experience of collective power, community and constraint to the needs of capitalist law firm structure, or patriarchal styles of authority, or to white domination of the learned professions in America, and so on—although each is woven into a thicker, more particular and ultimately truer account, one that still resonates with law students because it captures the particular and local feeling of it all: the hard/easy case distinction constituting the classroom together analytically, framed with a white, male and class privileged tone, all hanging together under Duncan’s purposely vague idea of the “reproduction of hierarchy.” Duncan’s description of how a professor’s tone with a student might echo his tone with his administrative assistant, in an economy of power and hierarchy, implicitly refutes essentialist and objectivist approaches—he’s clearly right, and what he is describing cannot be reduced to the needs of late monopoly capitalism, or the need to legitimate market individualism, or even to sex and race, without missing key ways that power is constructed and circulated in law schools. Yet, in contrast to the criticism of the po-mo position—that it leaves the practitioner with nothing to say—the little red book suggests the opposite: there is so much to say about how power is circulating, but no definitive way to pin it down to just this or that “essential.”

The project of the Lizard, and more generally Duncan’s work toward the politicization of legal education and scholarly thought, is in some ways traditionally “leftist,” in that it focuses on the *workplace* as a significant site for political agitation. However, while traditionally in left thought the “workers” in material capitalist production occupy a qualitatively different position than intellectual workers, the “True Left” position starts from the workplaces where we find ourselves. Legal education—academic institutions generally—are places of production—largely producing ideologies,

variants would add consciousness to the analysis, and, in what I found to be a particularly gripping account, the capitalist system of production would be overthrown when the proletariat became the “subject-object” of history, objectively and structurally situated at the critical power point of capitalist production, able subjectively to comprehend its material situation and move beyond it as a self-conscious collectivity, taking history into its revolutionary hands.

Restating the traditional Marxist position decades later makes it sound more cartoony and simplistic than it was, but my basic point is that Duncan’s anarcho-syndicalist theoretical position has been under attack for decades for his refusal to sign on to various structural accounts purporting to tie together strands of social power into an authoritative, right, account of what is “really” going on in our social relations.

discourses, modes of consciousness, that play roles in the constitution and reproduction of various forms of social power. Whatever might be said about other “academic” fields, the “knowledge” that law school produces is not a neutral commodity. The problem of power—whether racial, sexual, or class-based—does not consist in the exclusion of this or that subordinated group from obtaining their fair share of this neutral thing, “legal knowledge,” but is infused in the very ways that legal discourses are constructed and maintained, the “product” of law schools.

This syndicalist, “True Left,” position is also responsive to what might be seen as “nationalistic” concerns. My own misgivings about whether elite law schools were sufficiently “revolutionary” sites were consistent with my sense of class alienation within them. On the other hand, I wanted to *flee* the working class—that was my existential and material reality. And I also took personally the institutional claims to Reason—my take was that this elite world was telling me to ignore my grandmother’s *schtetl* wisdom, that her knowledge was inferior to the so-called “good sense” of academic thought. And, as a white radical coming out of the South in the mid-1970s, I took seriously (then) Stokely Carmichael’s suggestion that whites should stop showing up in black neighborhoods to help organize black people for civil rights—they should go organize their own neighborhoods, because that’s where the problem of racism was rooted. Duncan was doing just that—organizing to transform his own elite “neighborhood” in the American legal intelligentsia; that’s where the problem of false consciousness preventing revolt, or at least cementing the sense of normalcy of everyday social life, might be rooted, rather than in the analysis of what other groups should do to free themselves from oppression “out there.”¹³

In contrast to the image some critics project of the po-mo orientation—of aimless activists lacking a governing theory and thus unable to focus political energy in a particular, useful, direction—Duncan has embodied the project with steely discipline and determination over decades. He has recruited hundreds of law teachers to subversive events of one kind or another. He built a cadre of oppositionists in legal education almost one-by-one, by personal contact, by telephone, and often for hours, with new, left-leaning law teachers, reading our work, bolstering our confidence—as he did throughout the Lizard intervention, and helping us see ourselves as political actors who may have meaningful projects. He has, in whatever context he has found himself, helped to make the kettle boil.

Our existential situation is that we find ourselves working in law. Given how power is constituted and maintained, there is no necessary connection between our resistance and other political sites; it’s not as if the worldwide proletariat will simultaneously rise up with us, having become the subject-object of history, a class on whom material structures of production depended, but one also with the consciousness to be able to comprehend its own role and its contingency, and thus produce revolutionary change. But it is also true that meaningful resistance is possible. It just has to be understood more locally, in this or that place and time, shorn of the false universals of rationalistic

¹³ See Duncan Kennedy, *First Year Law Teaching as Political Action*, 1 *Law & Social Problems* 47 (1980).

interpretation, and of the will to colonize the future with authoritative “theories” about it all.