

Introduction: Reveling in Resistance, Imagining Reconstruction

By Lauren Coyle, Nate Ela, and Zinaida Miller

In many ways, *Unbound's* re-creation three years ago was an act of resistance: a call founded on the instinctual sense that “something is wrong” in popular discourse, relationships, society, and—most centrally for us—in the operations of law. That initial idea of pervasive wrong has been translated over the past few years into multiple moments in which our members and authors have explored in detail the egregious injustices of contemporary maldistributions of power and access to resources, whether economic, social, emotional, aesthetic or otherwise. Despite—or perhaps because of—*Unbound's* own success, we have come to grapple with the myriad issues surrounding and informing the concept and practice of **resistance**, which this year became the theme of our first symposium, “Resistance and the Law: Radicalism, Extremism, Legitimacy, Cooptation.” Curious how others’ views might inform our own thoughts concerning how one could or should resist certain pathological patterns in law, legal thought, and legal academia, and how legal scholars and practitioners may define the very forces we resist, we invited participants to explore in broad terms the idea of resistance within, without, and against the law. As we stated in our prospectus:

Whether through intellectual projects or through direct action, resistance to global and local distributions of economic and political power is constant. Those who engage primarily through theory may critique the practice of others, finding that practitioners often fail to understand the ways in which even “doing good” might contribute to harm in the greater scheme; those who find resistance in their “legal” practice or their “illegal” actions may find the notion of theory as resistance to be not only foolish but even corrosive to “real” action. Such binaries are, of course, inaccurate and reductionist; yet they relate to the myriad disagreements over how to constitute resistance and how to enact it.

We welcome a wide range of thinking and expression—from reflections on spontaneous personal acts of resistance in a kitchen or a classroom to analyses of decades-long organization at the national and international level; from rants about strains of legal theory to protest songs. We encourage speakers to reflect critically on specific instances of resistance to inequalities that have resulted from law and/or legal theory—whether the speaker took the position of a member of the resistance, an onlooker, or a reactionary. We hope participants will offer their commentary on diverse modes and sites of struggle as well as their views on law’s potential as ally or oppressor.

The symposium and the collective process of shaping it offered us an opportunity to engage critically with one of the fundamental pillars of *Unbound's* ethos—the shared sense that we are, in fact, resisting something. But resisting what? In our early conversations, we realized that despite our collective impression that we were resisting together in a common space through a particular project, it could be exceedingly difficult to define our targets of resistance, either individually or collectively, that at

times we desired to resist without knowing the object, that we often differed in our answers to the questions of what it is that we resist or desire to resist. And even in those fleeting moments when we approached some consensus regarding the object(s) of our collective resistance, we would soon find ourselves diverging anew, now on the planes of *how* and *why* we should resist.

Among our questions: when we disaffiliate, which affiliations do we renounce? When we balk, at what? What *is* it that so thrills and horrifies, enraptures and enrages, seduces and repulses us to the point at which we “act” (or at least feel compelled to act)? What does it even mean to “act,” and why do we tend to select some forms of action over others? Is thinking—or, engaging in theoretical and conceptual projects—a form of “acting”? In privileging certain ways of seeing and doing over others, what role do we imagine for “the law”? We have come to discern legal dimensions virtually everywhere, but how does this framing undergird, mimic, obscure, or lay bare whatever we’re hoping to address in the first place? Not surprisingly, our editors never reached an accord on these matters. Instead, we threw a symposium to see what might shake out.

* * *

Not every article in this issue springs directly from the symposium, but in a continuing effort to open up the definition and discussion of “resistance” we offer the proposition that each work in its own way embodies a certain form of resistance. **Lucie White** and **Julieta Lemaitre** offer versions of their symposium talks from the panel “Activism Within and Without the Law.” White, through a series of illustrative anecdotes, implicates her own “activist” work and offers the possibility of rupturing any complacency in human rights or poverty lawyering through a methodology of “heartfelt listening.” Her method questions both our interventions and our subjects, our claims to assist and our inability to do so, our “cerebral” styles of analysis and our “empathetic” formulations of listening.

Lemaitre, in discussing the legal fetishism of human rights and its agents, dissects the pleasure that many of them (and many of us) derive from law itself, the ways in which liberal law “makes law an object of desire.” Resisting at times both the pleasure she elucidates and the pain of its rejection, Lemaitre challenges rights activists and critics alike to understand the convergences of pleasure and pain. White and Lemaitre’s tales of personal work serve as resistance: by challenging their own work, they suggest promising means of self-critique, deftly interweaving what might appear to be binary fields by examining how and when practice and theory diverge and elide, coexist and conflict, cooperate and contradict.

These lessons are particularly valuable for those of us at *Unbound* who attempt to negotiate the apparent gap or tension between legal theory and legal practice. For, despite our most valiant attempts at avoiding binarized worldviews, our legal lives often appear quite divided. For example, many of us engage in various types of human rights activism, even as we have learned how to internalize and reproduce deep critiques of rights discourses. We self-consciously engage as “part of the problem”

while reading about the problem itself.¹ To understand the strange alternating presences of rights and critique of rights, of progressive projects and radical thought, of radical action and liberal thought, requires a long set of steps, moves, inquiry, and exploration. White and Lemaitre suggest ways to walk and even dance along this potentially maddening path.

In “Drown the World: Imperfect Necessity and Total Cultural Revolution,” **James Oleson**, chief counsel to the criminal law policy staff of the Administrative Office of U.S. Courts, proposes a provocative tweak to the doctrine of necessity, which could have profound results for cases involving violent political resistance. Investigating examples from real life and fiction, Oleson traces how acts of resistance *outside* the law might be justified by resistance *through* the law, a necessity defense pushed to its limits. He disrupts common notions about law in the (dis)service of resistance by offering, for example, the hypothetical case of an individual who would go to extreme lengths to slow climate change. Oleson leaves us not with a picture of utopian plans or perfect criminal defenses but with unsettling and intriguing ideas about how a traditional legal doctrine could prove an unlikely facilitator for intellectual and activist resistance.

Samuel Sommers opens his article, “On Race, Judgment, and Ideology,” by interrogating *Unbound’s* solicitation of his work. After reflecting on the politics of his own research (or ostensible lack thereof), Sommers explores the ways in which “race colors judgment” by examining its continuing influence on the psychology of the U.S. jury system. Beyond this primary topic, Sommers addresses a question relevant to anyone teaching in the U.S. today: how should a professor’s politics be brought into the classroom, if at all? And indeed, is it possible to teach in a wholly scientific, apolitical manner? By asserting that he “strives for...objectivity in [his] teaching,” Sommers in some sense rejects the very spirit that animates our self-consciously leftist journal, where many of us feel that the political is crucial, and inescapable in any case. Rather than politely declining our invitation, Sommers perhaps became our first author to resist *Unbound* itself—a spirit that we appreciate.

Saskia Sassen’s article, “The Limits of Power and the Complexity of Powerlessness: The Case of Immigration,” defies the commonplace dichotomy of “outside/inside” that riddles discussions of immigration and immigrants’ rights. Building on her own impressive body of work about territoriality and “the nation,” Sassen’s analysis of immigration policy problematizes the notion of powerful nation-states and powerless immigrant populations. As she states at the outset, her “concern here is exploring the limits of power and the complexities of powerlessness—the direct or mediated resistances that the powerless can deploy knowingly or not.” Using immigration as a case study, she delves into the perplexing character of the global system, complete with its received residents—nationalism, transnationalism, and post-nationalism—and witnessing the emergence of a new “multi-bit reality,” in which, for example, certain rights no longer track national citizenship.

¹ David Kennedy, *The International Human Rights Movement: Part of the Problem?* 15 HARV. HUM. RIGHTS J. 101 (2002).

Finally, **Immanuel Wallerstein's** talk—provided here in video format—represents a recent moment in a long career devoted to resisting the hegemony of Western imperialist powers in the global theater. As the influential founder of “world-system analysis,” Wallerstein continues to inspire counter-hegemonic thought and action across the globe, by taking to task the domineering socioeconomic powers of the “core” through his work within and beyond the academy. We were honored to have Wallerstein join us at Harvard and can provide no better introduction to his talk than to recommend a (re)reading of his work.

* * *

In the end, the symposium, and the year itself, did not yield a one-size-fits-all definition of resistance or even consensus on its appropriate targets. But they did generate an intriguing variety of interventions on diverse topics, sounding in multiple theoretical registers. From the symposium's first panel to its last, we were constantly and collectively nagged by the basic question of whether, without a definition for the frame of resistance, an agreed notion of what is being resisted, it is possible to think concretely about the concept or practice of resistance. We were also faced with questions of power and silence: how may resistance be both an inevitable response to power and an independent, creative source of power? How might such a double vision alter the manners and methods, objects and subjects of resistance? And how would our practices change if we were to take account of, and responsibility for, the silences that plague our words, our actions, our symposia, our intellectual and political communities?

Thus, some participants expressed a certain sense of relief that so many people would gather—in a visible expression of power—for a symposium about resistance, a concept that nevertheless might strike some (both within and without our ranks) as dated, or potentially frustrating when divorced from a mutually agreed-upon object of resistance. This articulation of relief was not, we should note, a call of solidarity, exactly—the creative disagreements and differences that our discussions illuminated would betray the notion of even definitional consensus. Yet such a lack of consensus, or even out-and-out dissensus, seems itself sometimes a good thing, lest we grow complacent in holding our discussions of resistance in Harvard Law School's wood-paneled rooms, among familiar company, in the vernacular of our particular subculture's intellectual references. To complicate and better understand our comfort in creative collectivity, we might consider who was *not* at the symposium, and not just due to the nor'easter that happened to sweep through on that weekend. Who was excluded or uninterested, who or what was missing from the panels, what went unsaid? These absences problematize and alter the ways in which we interact in this space, the ways in which we create, understand and even revel in our own senses of resistance.

By calling people together under a banner so broad, to discuss a subject so diffuse, we created a forum that could have produced cacophonous incoherence or false universalisms. Yet even as some projects and presentations ran past and through one another, even as we noted the silences apparent in the schedule of panels and panel-

ists, we also experienced something greater, taking away a fuller sense of the ruptures, congruencies, and contingencies that combine to compel and beset resistance.

And so the symposium and the past year as a whole were for us—and we hope their products provide for you, dear reader—a space in which to interrogate and attempt to re-imagine contemporary legal discourses and practices, to rehearse strategies for performing creative acts of resistance within them—or, for that matter, without/outside of them. These discourses and practices, while not wholly politically or ethically bankrupt, while potentially avenues for certain limited inroads into various injustices, tend to undergird systemic distributional maladies, to obscure and stifle truly transformative imaginaries. By refining our practices of disaggregation, deconstruction, combination and recombination—by heightening our facility with the toolkit of critique—we strive to detect and unravel the defects of our present and to imagine multiple, complex, sometimes non-utopian futures in which resources might be distributed in more equitable ways. Holding a symposium and publishing some articles might advance this project of critique and imagination, as could drawing inspiration from a wholly separate space, such as the synesthetic acrobatics of Louis-Claude de Saint-Martin, the so-called “philosophe inconnu”:

It is not at all as it is in the shadowy room of our home when sounds can be compared only to sounds; colors only to colors; and a substance only with its analogous substance. There everything was of one kind.

Light gave sounds, melody gave birth to light, colors had motion because colors were vivid. Objects, too, were capable of sound, diaphanous and mobile enough to intermingle and cross all of space like a shot.²

We hope that those who engage with *Unbound*, whether as members, authors, or readers, will continue to hone such creative and committed exercises, to defy the logic of disimpassioned and cabined discourses, to resist not just what is outside but also what is within, to seek out the hottest intellectual and political technologies for mapping, unearthing, critiquing, and destroying the patterns of maldistribution cloaked by so many of the “neutral” rules and policy prescriptions that swirl around us. Resistance requires many modes of thought and action, construction and reconstruction, brave challenges to complacency and hopeful discourses of renewal. We are excited to have captured what we found to be some delicious examples of this approach in print and on video, and to present them in this latest creation of *Unbound*—in the spirit of finding strength in these seeds of resistance.

² Louis-Claude de Saint-Martin, *Man of Desire*, quoted in GASTON BACHELARD, *AIR AND DREAMS: AN ESSAY ON THE IMAGINATION OF MOVEMENT* 52 (Edith R. Farrell and C. Frederick Farrell, trans., 1943; 1988 ed.).