Lawyers and Social Change

Professor Grossman

Week 1 Readings

Introductory Materials

Readings for January 14th:

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LETTER TO A LAW STUDENT INTERESTED IN SOCIAL JUSTICE

William P. Quigley[a1]

Dear Bridgette:

I am delighted to learn of your commitment to social justice law. Despite many decades practicing some form or other of social justice advocacy, I too still have much to learn. I hope some of these thoughts will help you; it helped me to write them down.

Let Me Start With a True Story. After Hurricane Katrina, hundreds of law students volunteered to work in the Gulf Coast region over the winter holidays. Dozens of students helped out with a case in the lower ninth ward challenging the City of New Orleans' unilateral demolition of hundreds of damaged homes without notice to the owner or an opportunity to be heard. Most of these homes had been literally swept off their foundations by the brutal onrush of huge walls of tons of water when the levees broke. Many homes were upside down, some were sitting in the middle of the street blocks away from where they started, and some were on top of cars or even other homes. Regular methods of property ownership checks were insufficient since the houses were often scattered far from the lots and street addresses where they originally sat. Since all of the homeowners were still displaced far outside of the city and still prohibited by martial law from living in their houses, they had no way of knowing that the authorities planned to demolish their homes before they could get back to either fix them up or even remove personal effects. In teams, students went to each house scheduled to be demolished to see if they could figure out who the owners were. Then, the teams tried to contact the displaced owners to see what they wanted us to do about the impending demolition.

At the end of a week of round-the-clock work trying to save people's homes, a group of law students met together in one room of a neighborhood homeless center to reflect on what they had experienced. Sitting on the floor, each told what they had been engaged in and what they learned. As they went around the room, a number of students started crying.

One young woman wept as she told of her feelings when she discovered a plaster Madonna in the backyard of one of the severely damaged homes - a Madonna just like the one in her mother's backyard on the West Coast. At that moment, she realized her profound connection with the family whom she had never met. This was not just a case, she realized, it was a life - a life connected to her own.

Another student told of finding a small, hand-stitched pillow amid the ruins of a family home. The pillow was stitched with the words "Blessed Are the Meek." It told a lot about the people who lived in that small home. Not the usual sentiment celebrated in law school.

The last law student to speak had just returned from working in the destroyed neighborhood. He had been picking through a home trying to find evidence that might lead to the discovery of who owned the property. He also was on the verge of tears. The experience was moving. The student felt that it was a privilege to be able to assist people in such great need. It reminded him, he paused for a second, of why he went to law school. He went to law school to help people and to do his part to change the world. "You know," he said quietly, "the first thing I lost in law school was the reason that I came. This will help me get back on track."

Social Justice Lawyering Is Counter-Cultural in Law School and in the Legal Profession

"The first thing I lost in law school was the reason that I came." What a simple and powerful indictment

of legal education and of our legal profession. It is also a caution to those of us who want to practice social justice lawyering.

Many come to law school because they want in some way to help the elderly, children, people with disabilities, undernourished people around the world, victims of genocide, or victims of racism, economic injustice, religious persecution or gender discrimination.

Unfortunately, the experience of law school and the legal profession often dilute the commitment to social justice lawyering.

The repeated emphasis in law school on the subtleties of substantive law and many layers of procedure, usually discussed in the context of examples from business and traditional litigation, can grind down the idealism with which students first arrived. In fact, research shows that two-thirds of the students who enter law school with intentions of seeking a government or public-interest job do not end up employed in that work.[1]

It pains me to say it, but justice is a counter-cultural value in our legal profession. Because of that, you cannot be afraid to be different than others in law school or the profession - for unless you are, you cannot be a social justice lawyer.

Those who practice social justice law are essentially swimming upstream while others are on their way down. Unless you are serious about your direction and the choices you make and the need for assistance, teamwork and renewal, you will likely grow tired and start floating along and end up going downstream with the rest. We all grow tired at points and lose our direction. The goal is to try to structure our lives and relationships in such a way that we can recognize when we get lost and be ready to try to reorient ourselves and start over.

There are many legal highways available to people whose goal is to make a lot of money as a lawyer - that is a very mainstream, traditional goal and many have gone before to show the way and carefully tend the roads.

For social justice lawyers, the path is more challenging. You have to leave the highway sending you on towards the traditional legal profession. You have to step away from most of the crowd and create a new path - one that will allow you to hold onto your dreams and hopes for being a lawyer of social justice.

Your path has different markers than others. The traditional law school and professional marks of success are not good indicators for social justice advocates. Certainly, you hope for yourself what you hope for others - a good family, a home, good schools, a healthy life and enough to pay off those damn loans. Those are all achievable as a social justice lawyer, but they demand that you be more creative, flexible and patient than those for whom money is the main yardstick.

Our profession certainly pays lip service to justice, and because we are lawyers this is often eloquent lip service, but that is the extent of it. At orientations, graduations, law days, swearing-in days and in some professional classes, you hear about justice being the core and foundation of this occupation. But everyone knows that justice work is not the essence of the legal profession. Our professional essence is money, and the overwhelming majority of legal work consists of facilitating the transfer of money or resources from one group to another. A shamefully large part of our profession in fact consists of the opposite of justice - actually taking from the poor and giving to the rich or justifying some injustice like torture or tobacco or mass relocation or commercial exploitation of the weak by the strong. The actual message from law school and on throughout the entire legal career is that justice work, if done at all, is done in the margins or after the real legal work is done.

But do not despair! Just because social justice lawyering is counter-cultural does not mean it is nonexistent.

Social Justice Lawyers by the Thousands

There is a rich history of social justice advocacy by lawyers whose lives rise above the limited horizons of the culture of lawyers. We can take inspiration from social justice lawyers like Mohandas Gandhi, Nelson Mandela, Shirin Ebadi, Mary Robinson, Charles Hamilton Houston, Carol Weiss King, Constance Baker Motley, Thurgood Marshall, Arthur Kinoy and Clarence Darrow.[2] Attorneys Dinoisia Diaz Garcia[3] of Honduras and Digna Ochoa[4] of Mexico were murdered because of their tireless advocacy of human rights issues. Ella Bhatt is one of the founders of an organization that supports the many women of India who are self-employed.[5] Salih Mahmoud Osman is a human rights lawyer in Sudan, a nation struggling with genocide and other human rights violations.[6] In addition to those named here, there are thousands of other lawyers working for social justice, mostly unknown to history, but many still living among us.

It is our job to learn the history of social justice lawyering. We must become familiar with these mentors of ours and understand the challenges they faced to become advocates for justice.

We must also be on the lookout for contemporary examples of social justice lawyering. There are many, and they are in every community, even though they may not be held up for professional honors like lawyers for commercial financiers or lawyers for the powerful and famous. But if you look around, you will see people doing individual justice work - the passionate advocate for victims of domestic violence, the dedicated public defender, the volunteer counsel for the victims of eviction, the legal services lawyer working with farm workers or the aging, the modestly-paid counsel to the organization trying to change the laws for a living wage, or affordable housing, or the homeless or public education reforms.[7] These and many more are in every community.

Learning About Justice

Some people come to law school not just to learn about laws that help people but also with a hope that they might learn to use new tools to transform and restructure the world and its law to make our world a more just place.

There is far too little about justice in law school curriculum or in the legal profession. You will have to learn most of this on your own.

One good working definition of "social justice" is the commitment to act with and on behalf of those who are suffering because of social neglect, social decisions or social structures and institutions.[8]

Working and thinking about how to transform and restructure the world to make it more just is a lifelong pursuit.

Social justice is best described by a passage from a speech Dr. Martin Luther King, Jr. gave on April 4, 1967:

> I am convinced that if we are to get on the right side of the world revolution, we as a nation must undergo a radical revolution of values. We must rapidly begin the shift from a "thing-oriented" society to a "person-oriented" society. When machines and computers, profit motives and property rights are considered more important than people, the giant triplets of racism, materialism, and militarism are incapable of being conquered. A true revolution of values will soon cause us to question the fairness and justice of many of our past and present policies.[9]

Be Willing to Be Uncomfortable

One night, I listened to a group of college students describe how they had spent their break living with poor families in rural Nicaragua. Each student lived with a different family, miles apart from each other, in homes that had no electricity or running water. They ate, slept and worked with their family for a week. I knew these were mostly middle-class, suburban students, so I asked them how they were able to make the transition from their homes in the United States to a week with their host families. One student said, "First, you have to be willing to be uncomfortable."

I think this is the first step of any real educational or transformative experience - a willingness to go beyond your comfort zone and to risk being uncomfortable.

The revolutionary social justice called for by Dr. King is not for the faint of heart - it calls on the courage of your convictions. It takes guts.

Questioning the fairness and justice of our laws and policies is uncomfortable for most because it makes other people uncomfortable.

Many people are perfectly satisfied with the way things are right now. For them, our nation is the best of all possible nations, and our laws are the best of all possible laws, and therefore, it is not right to challenge those in authority. For them, to question the best of all possible nations and its laws is uncalled for, unpatriotic and even un-American. These same criticisms were leveled at Dr. King and continue to be leveled at every other person who openly questions the fairness and justice of current laws and policies.

So, if you are interested in pursuing a life of social justice, be prepared to be uncomfortable - be prepared to press beyond your comfort zone, be prepared to be misunderstood and criticized. It may seem more comfortable to engage in social diversions than to try to make the world a better place for those who are suffering. But if you are willing to be uncomfortable and you invest some of your time and creativity in work to change the world, you will find it extremely rewarding.

Never Confuse Law and Justice

We must never confuse law and justice. What is legal is often not just. And what is just is often not at all legal.

Consider what was perfectly legal 100 years ago: children as young as six were employed in dangerous industries. Bosses could pay workers whatever they wanted. If injured on the job - no compensation, you went home and need not return when you recovered. Women and African Americans could not vote. Any business could discriminate against anyone else on the basis of gender, race, age, disability or any other reason. Industrialists grew rich by using police and private mercenaries to break up unions, beat and kill strikers and evict families from their homes.

One hundred years ago, lawyers and judges and legislators worked in a very professional manner enforcing laws that we know now were terribly unjust.

What is the difference between 100 years ago and now? History has not yet judged clearly which laws are terribly unjust.

Social justice calls you to keep your eyes and your heart wide open in order to look at the difference between law and justice. For example, look at the unjust distribution of economic wealth and social and political power. It is mostly legally supported, but is actually the most unjust, gross inequality in our country and in our world. You must examine the root causes and look at the legal system that is propping

up these injustices.

Critique the Law

Critique of current law is an essential step in advancing justice. Do not be afraid to seriously criticize an unjust or inadequate set of laws or institutions. People will defend them saying they are much better than before, or they are better than those in other places. Perhaps they will make some other justification. No doubt many of our laws today and many of our institutions represent an advance over what was in place in the past; however, that does not mean that all of our laws and institutions are better than what preceded them, nor does it mean that the justice critique should stop.

Critique alone, however, is insufficient for social justice advocates. While you are engaged in critique, you should also search for new, energizing visions of how the law should and might move forward.

You have some special talents in critiquing the difference between law and justice because of your legal training.

All laws are made by those with power. There are not many renters or low-wage workers in Congress or sitting on the bench. The powerless, by definition, are not involved in the lobbying, drafting, deliberating and compromising that are essential parts of all legislation. Our laws, by and large, are what those with power think should apply to those without power. As a student of law, you have been taught how to analyze issues and how to research.

Social justice insists that you first examine these laws and their impacts not only from the perspective of their legislative histories, but also from the perspective of the elderly, the working poor, the child with a learning disability and the single mom raising kids, who are often the targets of these laws.

So how do you learn what the elderly, the working poor or the single moms think about these laws? It is not in the statute, nor the legislative history, nor the appellate decision. That is exactly the point. If you are interested in real social justice, you must seek out the voices of the people whose voices are not heard in the halls of Congress or in the marbled courtrooms.

Keep your focus on who is suffering and ask why. Listen to the voices of the people rarely heard, and you will understand exactly where injustice flourishes.

Second, look for the collateral beneficiaries. Qui bono? Who benefits from each law, and what are their interests? Why do you think that the minimum wage stays stagnant for long periods of time while expenditures on medical assistance soar year after year?

This inquiry is particularly important since the poor and powerless - by definition - rarely have any say in the laws that apply to them.

“Follow the money,” they say in police work. That is also good advice in examining legislation. Do not miss the big picture. You probably have a hunch that the rich own the world. Do you know the details of how much they actually own? You are a student of the law, you have learned the tools of investigation - you use these tools to find out. Then ask yourself: if the rich own so much, why are the laws assisting poor, elderly and disabled people, at home and abroad, structured in the way they are?

Third, carefully examine the real history of these laws.[10] Push yourself to learn how these laws came into being. Learning this history will help you understand how change comes about. Social security, for example, is now a huge statutory entitlement program that is subject to a lot of current debate and proposals for reform. But for dozens of decades after this country was founded, there was no national

social security at all for older people who could not work. As you look into how social security came into being, who fought for it, how people fought to create it and the number of years it took to pass the law, you will discover some of the stepping stones for change.

As part of your quest to learn the history of law and justice, learn about the heroic personalities involved in the social changes that prompted the changes in legislation. Biographies of people who struggled for social change are often excellent sources of inspiration.

Once you learn about the sheroes and heroes, push beyond these personalities and learn about the social movements that really pushed for revolutionary change. There is a strong tendency for outsiders to anoint one or more people as THE leaders or mothers or fathers of every social justice struggle. Unfortunately, that suggests that social change occurs only when these one-in-a-million leaders happen to be in the right place at the right time. That is false history. For example, as great as Dr. Martin Luther King, Jr. was, he was not the civil rights movement - he was a part of a very widespread and diverse and often competitive and conflicting set of local, regional, national and even international groups and organizations of people pushing for civil rights.[11]

So, look for real histories about the social movements behind social change and legislation. See how they came about. You will again discover some of the methods used to bring about revolutionary social justice.

Fourth, look at the unstated implications of race, class and gender in each piece of the law. Also look carefully at the way laws interconnect into structures that limit particular groups of people. Race, gender and economic justice issues are present in every single piece of social legislation. They are usually not stated, but they are there. You must discover them and analyze them in order to be a part of the movements to challenge them.

The critique of law is actually a process of re-education - challenging unstated assumptions about law. This is also a lifelong process. I have been doing this work for more than 30 years and I still regularly make mistakes based on ignorance and lack of understanding. We all have much to learn. Real education is tough work, but it is also quite rewarding.

Critique the Myths About Lawyers and Social Justice

There is a lawyer-led law school and legal profession myth that suggests social justice law and the lawyers practicing it are at the cutting edge of social change. I think history demonstrates it is actually most often the opposite - developments in law follow social change rather than lead to it.

Lawyers who invest time and their creativity to help bring about advances in justice will tell you that it is the most satisfying and the most fulfilling work of their legal careers. But they will also tell you that social justice lawyers never work alone - they are always part of a team that includes mostly non-lawyers.

Take civil rights for example. There is no bigger legal, social justice myth than the idea that lawyers, judges and legislators were the engines that transformed our society and undid the wrongs of segregation. Civil rights lawyers and legislators were certainly a very important part of the struggle for civil rights, but they were a small part of a much bigger struggle. Suggesting that lawyers led and shaped the civil rights movement is not accurate history. This in no way diminishes the heroic and critical role that lawyers played and continue to play in civil rights advances, but it does no one a service to misinterpret what is involved in the process of working for social justice.

Law school education, by its reliance on appellate decisions and legislative histories of statutes, understandably overemphasizes the role of the law and lawyers in all legal developments. But you who are interested in participating in the transformation of the world cannot rely on a simplistic overemphasis

of the role of the law and lawyers. You must learn the truth.

In fact, the law was then and often is now actually used against those who seek social change. There were far more lawyers, judges and legislators soberly and profitably working to uphold the injustices of segregation than ever challenged it. The same is true of slavery, child labor, union-busting, abuse of the environment, violations of human rights and other injustices.

The courts and the legislatures are but a few of the tools used in the struggle for social justice. Organizing people to advocate for themselves is critically important, as is public outreach, public action and public education. Social justice lawyers need not do these actions directly, but the lawyer must be part of a team of people that are engaged in action and advocacy.

Build Relationships with People and Organizations Challenging Injustice: Solidarity and Community

"If you have come to help me, you are wasting your time. But if you have come because your liberation is bound up with mine, then let us struggle together."[12]

Social justice advocacy is a team sport. No one does social justice alone. There is nothing more exciting than being a part of a group that is trying to make the world a better place. You realize that participating in the quest for justice and working to change the world is actually what the legal profession should be about. And you realize that in helping change the world, you change yourself.

Solidarity recognizes that this life of advocacy is one of relationships. Not attorney-client relationships, but balanced personal relationships built on mutual respect, mutual support and mutual exchange. Relationships based on solidarity are not ones where one side has the questions and the other the answers. Solidarity means together we search for a more just world, and together we work for a more just world.

Part of solidarity is recognizing the various privileges we bring with us. Malik Rahim, founder of the Common Ground Collective[13] in New Orleans, speaks about privilege often with the thousands of volunteers who come to help out with the grassroots repair of our community. In a recent interview with Amy Goodman, Rahim said:

> First, you have to understand the unearned privilege you have in this country just by being born in your race or gender or economic situation. You have to learn how you got it. You have to learn how to challenge the systems that maintain that privilege. But while you are with us, we want to train you to use your privilege to help our community.[14]

This is the best summary of the challenge of privilege and solidarity in social justice advocacy I have heard recently. This is a lifelong process for all of us. None of us have arrived. We all have much to learn, and we have to make this a part of our ongoing re-education.

So, how do social justice advocates build relationships of solidarity with people and organizations struggling for justice? These relationships are built the old-fashioned way, one person at a time, one organization at a time, with humility.

Humility is critically important in social justice advocacy. By humility, I mean the recognition that I need others in order to live a full life, and I cannot live the life I want to live by myself. By humility, I mean the understanding that even though I have had a lot of formal education, I have an awful lot to learn. By humility, I mean the understanding that every person in this world has inherent human dignity and incredible life experiences that can help me learn much more about the world and myself.

There is a wise saying, "What you see depends on where you stand." Latin American liberation theologians insist that a preferential option for the poor must be one of the principles involved in the transformation of the world.[15]

Our choices in relationships build our community. If we want to be real social justice advocates, we must invest ourselves and develop relationships in the communities in which we want to learn and work. That sounds simple, but it is not. As law students and lawyers, we are continually pulled into professional and social communities of people whose goals are often based on material prosperity, comfort and insulation from the concerns of working and poor people. If we want to be true social justice advocates, we must swim against that stream and develop relationships with other people and groups.

For example, helping preserve public housing may seem controversial or even idiotic to most of the people at a law school function or the bar convention, yet totally understandable at a small church gathering where most people of the congregation are renters.

Seek out people and organizations trying to stand up for justice. Build relationships with them. Work with them. Eat with them. Recreate with them. Walk with them. Learn from them. If you are humble and patient, over time people will embrace you, and you will embrace them, and together you will be on the road to solidarity and community.

Regularly Reflect

In order to do social justice for life, it is important to engage in regular reflection. For physical and mental health, regular reflection on your life and the quest for justice is absolutely necessary. For some people, this is prayer. For others, it is meditation. For still others, it is yoga or some other method of centering reflection and regeneration.

Most of the people I know who have remained engaged in social justice advocacy over the years have been people who regularly make time to reflect on what they are doing, how they are doing it and what they should be doing differently. Reflection allows the body and mind and spirit to reintegrate. Often, it is in the quiet of reflection that insights have the chance to emerge.

I am convinced that ten hours of work is considerably less effective than nine and a half hours of work and 30 minutes of reflection.

In an active social justice life, there is the tendency to be very active because the cause is so overwhelming. Advocates who do not create time for regular reflection can easily become angry and overwhelmed and bitter at the injustices around and ultimately at anyone who does not share their particular view about the best way to respond. They consider themselves activists, but they may be described as hyper-activists. They have often lost their effectiveness and the respect of others, which just makes them even more angry and more accusatory of everyone who disagrees with them. We all sometimes end up like that. When we do, we need to step back, reflect, recharge and reorder our actions.

Practice, Patience and Flexibility in Order to Prepare for Chaos, Criticism and Failure

One veteran social justice advocate told me once, "If you cannot handle chaos, criticism and failure, you are in the wrong business." The path to justice goes over, around and through chaos, criticism and failure. Only by experiencing and overcoming these obstacles can you realistically be described as a social justice advocate.

We must be patient and flexible in order to do this work over the long run. There are no perfect people. There are no perfect organizations. Most grassroots social justice advocacy is carried out by volunteers -

people who have jobs and families and responsibilities that compete with their social justice work for time and energy. There is usually not any money for the work. Often the people on the other side, who are upholding the injustices you are fighting against, are well-paid for their work and have staff and support to help them preserve the unjust status quo. This translates into challenging work. Patience with our friends, patience with ourselves and patience with the shortcomings of our organizations are essential. That is not to suggest that we must tolerate abusive or dysfunctional practices, but while we work to overcome those, we must be patient and flexible.

If you challenge the status quo, you better expect criticism from the people and organizations that are benefiting from the injustices you are seeking to reverse. Though it is tough to really listen to criticism, our critics often do have some truth in their observations about us or our issues. Sometimes criticism can be an opportunity to learn how to better communicate our advocacy or to think about changes we had not fully considered. Other criticism just hurts your backside, and you just have to learn how to tolerate it and move on.

Successes do occur, and we are all pretty good at handling success. However, failure is also an inevitable part of social justice advocacy. Failure itself cannot derail advocacy, it is the response to failure that is the challenge. Short-term social justice advocates feel the sting of failure and are depressed and hurt that good did not triumph. They become disillusioned and lose faith in the ability of people and organizations to create justice. People doing social justice for life are also hurt and depressed by failure. They spend some time tending to their wounds. But then they get back up, and patiently start again, trying to figure out how to begin again in a more effective manner.

26 Joy, Hope, Inspiration and Love

In order to live a life of social justice advocacy, it is important to have your eyes and heart wide open to the injustices of the world. But it is equally important that your eyes and heart be wide open to and seek out and absorb the joy, hope, inspiration and love you will discover in those who resist injustice.

It may seem paradoxical, but it is absolutely true that in the exact same places where injustices are found, joy, hope, inspiration and love are found. This has proven true again and again in my experiences with people and communities in the United States, in Haiti, in Iraq and in India. In fact, many agree with my observation that the struggling poor are much more generous and have more joy in their lives than other people living with much more material comfort.

Since Katrina devastated the Gulf Coast, I have been inspired again and again by the resiliency and determination of people who suffered tremendous loss.

Recently, I attended an evening meeting of public housing residents held in the bottom room of a small, newly-repaired church. I was pretty tired and feeling pretty overwhelmed. It was a small group. There were a dozen plus residents and a couple of children there. All had been locked out of their apartments for more than 20 months. One was in a wheelchair. Another was in her cafeteria-worker smock. One was the exclusive caregiver for a paralyzed child. Most had no car, yet they got a ride to a meeting to try to come up with another plan to save their apartment complex. Many of their neighbors were still displaced. Others who were back in the metro area were overwhelmed and had given up. We held hands, closed eyes and started with a prayer. Then we dreamed together of ideas about how to turn their unjust displacement around. Some of our dreams were impractical, others unrealistic, a few held out possibility. All at once, I realized almost everyone there was a grandmother. They had already raised their kids, and many were now helping raise their kids' kids. Most were on disability or social security. They had a fraction of the resources that I had, and they had been subjected to injustices unfathomable in my world; yet they were still determined and fighting to find a way to reclaim affordable housing for themselves and their families and their neighbors. When we finished, we said another prayer, set the date for another meeting, hugged

and laughed, and people piled into a van and drove away.

These grandmothers inspire me and keep me going. If they can keep struggling for justice despite the odds they face, I will stand by their side.

Hope is also crucial to this work. Those who want to continue the unjust status quo spend lots of time trying to convince the rest of us that change is impossible. Challenging injustice is hopeless they say. Because the merchants of the status quo are constantly selling us hopelessness and diversions, we must actively seek out hope. When we find the hope, we must drink deeply of its energy and stay connected to that source. When hope is alive, change is possible.

A friend, who has been in and out prison for protesting against the School of the Americas at Fort Benning, Georgia,[16] once told me that there are only three ways to respond to evil and injustice. I listened to her carefully because when she is not in jail for protesting, she is a counselor for incest survivors, so she knows about evil. She told me that there are only three ways to respond to evil and injustice. The first is to respond in kind, perhaps to respond even more forcefully. The second response is to go into denial, to ignore the situation. Most of our international, national, communal and individual responses to injustice and evil go back and forth between the first and second variety. We strike back, or we look away. We forcefully swat down evil, or we try to ignore it. But there is a third way to respond. That is to respond to evil and injustice with love. Though a response of love is the most difficult, it is truly the only way that injustice and evil can be transformed.

Love ends up at the center of social justice advocacy. Love in action; not the love of dreamy-eyed, soft-music television commercials, but the love of a mother for her less able child, the love of a sister who will donate her kidney to save her brother, the love of people who will band together to try to make a better world for their families. These are examples of real love. This is the love that will overcome evil and put justice in its place.

Conclusion

Every good law or case you study was once a dream. Every good law or case you study was dismissed as impossible or impractical for decades before it was enacted. Give your creative thoughts free reign, for it is only in the hearts and dreams of people seeking a better world that true social justice has a chance.

Finally, remember that we cannot give what we do not have. If we do not love ourselves, we will be hard pressed to love others. If we are not just with ourselves, we will find it very difficult to look for justice with others. In order to become and remain a social justice advocate, you must live a healthy life. Take care of yourself as well as others. Invest in yourself as well as in others. No one can build a house of justice on a foundation of injustice. Love yourself and be just to yourself and do the same with others. As you become a social justice advocate, you will experience joy, inspiration and love in abundant measure. I look forward to standing by your side at some point.
Peace,

Bill Quigley, Janet Mary Riley Professor of Law and Director of the Law Clinic and the Gillis Long Poverty Law center at Loyola University New Orleans College of Law

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LAW AND SOCIAL CHANGE

Martha Minow[a1]

I cannot help but note that today is tax day, and as many of us scramble to finish our taxes, I am reminded of the saying, "there are two kinds of people in the world: those who finish what they start, and so forth." Actually, what I really believe is, "there are two kinds of people in the world: the kind who think there are two kinds of people and the kind who don't."

I also think there tend to be two kinds of people when it comes to the topic of "law and social change"--those who believe that law is an important instrument of social change and those who think not. Carolyn Heilburn once commented: "Thinking about profound social change, conservatives always expect disaster, while revolutionaries confidently anticipate utopia. Both are wrong."[1]

When it comes to the relations between law and social change I am not ready to announce who is wrong. There we find variations on the two basic positions. Some people think the law basically lags behind changes in society and gradually catches up. An example would be the change from divorce laws requiring demonstrations that one spouse was to blame for the break-up of the marriage to what is commonly called "no-fault divorce," available if either party just wants out. Given how many thousands of people manufactured evidence under the blame system, the adoption of no-fault divorce could be viewed basically as an acknowledgment of actual practice.[2]

Some believe in contrast that law can occasionally prompt changes in society but only occasionally, and often unintentionally. For people with this view, *Brown v. Board of Education*[3] stands as a remarkable and unusual moment of judicial leadership in advance of public opinions and practice.[4] Others emphasize the unintended consequences of law reform efforts. For them, no-fault divorce is a striking example of a reform that unintentionally eliminated protection for women and has become associated with dramatic drops in economic well-being for women and children following divorce.[5] Another example is *Roe v. Wade*,[6] a success for the pro-choice movement which inspired and mobilized the counter pro-life movement.

Some people believe that law's biggest impact on society comes in the form of symbols that affect consciousness, human hopes and perhaps ultimately, conduct.[7] From this vantage point, the adoption of no-fault divorce is most important for its gradual effect on the meaning of marriage; more people may enter marriages believing they will be temporary, and American culture more generally replaces moral language with images of inevitability to describe the demise of marriages, be these their own or those of others. The legal language of "irretrievable breakdown," used in some no-fault divorce statutes, seems to treat the broken marriage like a lemon of an automobile; gone is the language of personal failure or responsibility for the end of the relationship.[8] The role of law, for some, is most significantly a cultural medium that influences people's modes of expression and everyday hopes and fears.

Quite in contrast are those who argue that law does not or should not produce social change. Some raise empirical doubts. For example, some researchers have challenged the claim that *Brown v. Board of Education* produced significant legal or political gains in civil rights or school reform.[9] Many of these critiques come from people aligned with political conservatism. But not all of the critics fit that description.[10] For example, my former colleague, Derrick Bell, who worked for the NAACP on school desegregation, has more recently written searing books and articles maintaining that law reform for racial justice has failed. He argues that racism and black poverty persist, and that civil rights professionals are too invested in their strategies to admit they have failed.[11] Bell further compares civil rights reform efforts to Prohibition, the turn-of-the century effort to ban liquor sales, and concludes that both failed because too many people in both instances wanted to evade the law. Others raise a different kind of doubt about the

relationship between law and social change; they especially question the legitimacy of judicial action to produce changes in society.[12]

I do not plan to adjudicate among these or other competing conceptions of law and social change. Instead, I would like to urge attention to the key terms underlying these conceptions. Although it may seem an academic enterprise, looking at words can influence social change. Author Carmen Martinez Ten said recently that "[l]anguage is neither innocent nor neutral. Linguistic habits condition our view of the world and hinder social change."[13] Meaningful evaluation of law and social change requires careful understandings of the possible range of meanings for "law," "social" and "change."

Let me explain each of these points.

I. MEANINGS OF "LAW"

Many studies of law and social change treat the courts, and especially the United States Supreme Court, as the only legal game in town. One recent book, for example, dubs faith in law to achieve social change "The Hollow Hope" and proceeds to focus exclusively on the United States Supreme Court in the areas of racial justice and women's rights.[14] This approach is short-sighted and erroneous. The Supreme Court, however illustrious and powerful it may seem, is simply one of many legal institutions in this country. It considers fewer than 200 cases a year, recently fewer than 120, and most of these concern technical legal matters with little broad social significance.[15] The occasional case before the Court that involves social issues of general interest may be as much a catalyst for legislative debate or state response as it is for direct social consequences.

Even famous cases like *Brown v. Board of Education* and *Roe v. Wade* only partially reflect on the Supreme Court's capacity to influence social change for they both grew out of mass movements with legislative, regulatory and protest dimensions. Many contemporary reformers file test case lawsuits with the goal of gaining a place on the evening news and influencing legislative agendas, regardless of whether or not they prevail in court.[16] Evaluating such efforts, thus, requires a considerably broader view of law than a narrow focus on Supreme Court results or even the relation between judicial action and real people's conduct.

So a focus on all federal courts, state courts and both federal and state legislation, would better frame evaluations of social change efforts. Derrick Bell's criticisms of civil rights initiatives to some extent admit this broader definition of "law." He includes federal civil rights statutes in his critique, and cites as evidence the continuing presence of racism and the enduring patterns of poverty among so many African-Americans. In essence, he treats the "law" that matters as the informal social and economic practices of whites and dominant institutions such as corporations and universities. I think there is an important point here; the law on the books ultimately takes its meaning from the law in practice. In this view, customs and other day-to-day practices that continue to exclude or degrade non-whites fairly belong in an assessment of social change sought by law reform.

Nonetheless, I think that Bell underestimates the effects of law reform to date. Relevant here, I submit, is the degree of consciousness of their rights manifested by African-Americans--as well as the degree of successful legal claims. Consider the results of a recent survey of employment discrimination cases reported by the federal courts in 1987.[17] The survey found that seventy-seven cases dealt exclusively with racial discrimination, and sixty-five of those cases were filed by African-American plaintiffs; five cases were filed by members of other minorities and seven by whites.[18] This pattern does suggest wider perceptions of discrimination against African-Americans than any other groups--but it also suggests a sense that the legal system is a meaningful way to challenge that discrimination.

After judicial consideration, African-American plaintiffs won fourteen of the cases they brought; white

plaintiffs won none of their cases.[19] This second finding could support competing conclusions. Perhaps it suggests that the judiciary is inhospitable to African-Americans, since the selection of reported cases are presumably non-frivolous ones. Perhaps the finding indicates that actual employment discrimination remains largely a burden for African-Americans. Yet neither interpretation alters the evidence that at least those plaintiffs believed that they had legal rights that had been violated and that they had an entitlement to plead their cases in court. Moreover, employers and their lawyers around the country all read both filed and decided cases closely and monitor employer conduct accordingly.

"Law" should be read to include each of these elements: the norms about which individuals come to have consciousness, whether that consciousness derives from judicial decisions, statutes or more general sources of rights to object to mistreatment.[20] "Law" should also include actual use of the courts in this vein, whether or not the result favors the complainant and prospective changes in conduct by employers who watch the pattern of filed and litigated cases.

We should also understand one further possible dimension of "law." That is the concerted voluntary efforts by and on behalf of disenfranchised people to create services and programs denied to them by the formal legal system. I am thinking particularly of the social services for children, widows and other dependents sponsored by women's organizations during the 19th and early 20th centuries, before women obtained the right to vote. Even during the period that law assigned to husbands control over married women's property, women's private volunteer organizations pragmatically appointed single women to positions of secretary and treasurer.[21] Through those organizations, women devised schools, libraries and orphanages.[22] The Woman's Parliament, convened in 1869 by a New York women's club, debated the development of a parallel government to implement women's concerns for good schools, clean government and public virtue.[23]

Women's organizations also advocated the adoption of new legislation including child labor laws, creation of juvenile courts, sanitation regulations and women's suffrage.[24] Having an effective network to disseminate and advocate ideas for new forms of governance, women's voluntary organizations not only produced specific law reforms but also altered the norms and practices of the official government.[25] In a recent book examining social support policies in the United States, Theda Skocpol demonstrates that women's organizations produced maternalist welfare policies to assist American mothers and children where the official governmental channels proved otherwise resistant to the social legislative ideas adopted in Europe during the same period.[26] The women in these organizations in essence produced an alternative legal regime. This alternative regime, as well as the specific reforms it pushed through, changed society and also altered the status of the women who participated.

Could analogous activities alter or expand the meaning of law today? A contemporary example might be privately financed shelters for battered women, created by formerly battered women, supporting law reforms to deter and control domestic violence. Several observers have recently warned against public funding of shelters which can co-opt the movement and undermine the social change needed to stop the violence itself.[27] Nonetheless, public funding of shelters marks a level of political success, turning a private initiative into one bucked by the state. Another contemporary example is private, volunteer community policing efforts. Consider ostensibly private volunteer efforts such as the Guardian Angels who in some New York City blocks are more present and effective than police officers. I would be interested to hear of other candidates for this expanded notion of law.

Law in this sense is not merely the formal official rules adopted by legislatures, courts and executives nor solely the procedures of those institutions. Law is also the practices of governance and resistance people develop behind and beyond the public institutions. Those practices may alter formal, public law; they also alter the meaning and shape of law and provide a potentially rich context for social change.

I am reminded here of Gloria Steinem's comment, "If the shoe doesn't fit, must we change the foot?"[28] It is an illuminating comment about social practices and public institutions, and a good reminder that disempowered people may march with their feet and remake the legal and political order that way.

II. MEANINGS OF "SOCIAL"

Let's turn to the meanings of "social" when we talk about law and social change. Typically, the term is unexamined. For example, in a book subtitled *The Limits of Litigation in Social Change*, Aryeh Neier never defines the term "social" but instead proceeds to consider lawsuits in ten areas: racial equality; voting rights; sexual equality; abortion; poverty; foreign policy; national security; institutions such as prisons, mental hospitals, and schools for persons with mental retardation; capital punishment; and environmental protection.[29] These topics mirror the agendas of such cause-oriented groups as the American Civil Liberties Union, the Center for Constitutional Rights, the Mental Health Law Project and the Southern Poverty Law Center.

The topics also satisfy the broad dictionary definition that identifies social as "of or relating to human society."[30] That definition would seem to apply to any human experience. Yet my suspicion is that the "social" part of "law and social change" usually is conceived too narrowly. For example, conceptions of the "social" may treat morality as a given,[31] when instead the "social" could be the realm for debates over what counts as moral.

Compare the more narrow view that undergirds Neier's own analysis. He draws a distinction between morality and policy. This distinction looms large in Neier's own evaluation of where law reform efforts have succeeded and where they have failed. For example, he concludes that litigation worked to win specific advances for recipients of public welfare benefits, such as the elimination of residence requirements and the establishment of more fair procedures for terminating benefits.[32] Yet Neier pegs the political backlash to the moment when law reformers asserted that welfare is a right, not merely a gift or privilege.[33] At that moment, he argues, the reformers hit the point at which most Americans do not find morality in the cause. This contrasts, in Neier's view, with the racial justice crusade, which did concern morality.[34]

Perhaps his description correctly tracks past experiences. But treating the distinction between morality and policy as fixed and given makes the term "social" when used in the phrase, "law and social change," seem never to engage the personal and political contexts in which people debate morality.[35]

I suggest instead that "social" includes attitudes held by private individuals. For example, crucial to the feminist movement is the notion that "the personal is political." Closely related are the methods of consciousness raising and personal transformation. These ideas are seldom discussed in conjunction with law and social change. And yet debates over reproductive freedom, sexual harassment, the right to die and interracial adoption crucially involve renovations in personal attitudes and intimate behavior.

The same can be said about recycling and environmental consciousness. The changes behind environmental reforms, and the changes produced by environmental reforms, importantly involve how people view such matters as paper napkins.[36] The executive director of the Sierra Club, for example, reported that the organization, committed to environmental quality and natural beauty, found a whole new orientation when people attending one meeting said, "Oh, we're not using paper napkins anymore" because of "the new ecology movement."[37]

Indeed, many thinkers planning the future of the environmental movement focus on changes in individual consciousness as the crucial goal precisely because the government will never have sufficient power to protect the environment. Ralph Nader, for example, has argued that the government's regulatory apparatus has the authority to halt pollution and environmental degradation, but not the power to do so.

Real power would require store-front environmental groups located in every community. In Nader's words, "[T]hat would be a shift of power, focusing the concerns of people into cutting-edge advocacy--political, economic, legal--all kinds of advocacy, which can then trigger authority into doing its job."[38]

This bold vision echoes populist democratic visions that inspire many divergent political movements. But it also acknowledges as significant the shift in attitudes held by ordinary people.

What engages people, together and alone, what really alters emotions and attitudes--*this* should be part of what we mean by the "social." Nadine Gordimer, the South African novelist, offered this powerful insight:

> It is not the conscious changes made in their lives by men and women--a new job, a new town, a divorce--which really shape them, like the chapter headings in a biography, but a long, slow mutation of emotion, hidden, all-penetrative; something by which they may be so taken up that the practical outward changes of their lives in the world, noted with surprise, scandal or envy by others, pass almost unnoticed by themselves.[39]

I think that Gordimer would agree that political change is intertwined with personal change. Many others, however, still neglect their connection. A useful meaning of the "social" could refer to the context for bridging these two realms. Addressing the settings where private attitudes are forged and reinforced becomes critical in this understanding of the social realm.

The notion of the "social" has been too limited in another way. It has tended to exclude the economy. Studies show that African-Americans and whites who have the same years of schooling still do not earn the same when employed; findings range from a wage gap of ten to thirty percent for comparably educated people across the two races.[40] To many, the central issue in racial disparity is access to resources, and this remains untouched by existing civil rights law reforms.[41] Useful here, I think, is Roy Brooks' distinction between racism--a belief that race is the primary determinant of human capacities in fixed racial patterns of superiority and inferiority--*and race discrimination*-- treating members of different races differently, regardless of whether racism is the antecedent.[42] Efforts to use law to change society's treatment of race seems to have focused more on racism than on the economic opportunities foreshortened or foreclosed for members of racial minorities. This may reflect resistance by judges or politicians to the larger vision of some law reformers or it may reflect the law's own tendency to distinguish corrective and distributive justice.[43] For example, many northern school desegregation efforts halted when they challenged class divisions affecting residential patterns and boundaries between cities and suburbs. Until economic opportunity is located squarely within the realm of the social, legal efforts to produce change in the status of race will not make much difference.

III. MEANING OF "CHANGE"

The meaning of "change" may seem obvious. The goal is to alter, revise, renovate, substitute, move. And yet simply shifting from one static position to another, whether the topic is race relations, treatment of persons with disabilities or domestic violence, neglects a deeper notion of change. It is the difference in aiming for results and aiming for a continuing process of change.

This contrast explains why some people oppose reliance on government funds in running shelters for battered women. The danger is that strings attached to government funds will professionalize and bureaucratize the shelters, depriving them of their usefulness in promoting political critique and consciousness shifts in and beyond the shelters.[44] Yet a similar contrast between result-orientation and process-orientation could influence a choice between types of governmental support. For example, in contrast to the usual federal agency approach to environmental protection enforcement, the 1986 amendments to the federal Superfund toxic waste cleanup statute require businesses that make or use

toxic substances to inform local communities about their activities.[45] The statute also makes federal money available to help community-based organizations acquire scientific and technical assistance needed to participate in a local process for managing health and safety risks.[46]

Attention to the ongoing process of change would point toward initiatives that have the capacity to elicit constituencies that can support them in the future. On this basis, Theda Skocpol has advocated social welfare programs that are universal rather than targeted to the most needy.[47] Similarly, Susan Sturm has argued for judicial reform of prisons that does not merely set standards for decent conditions but instead sets in motion processes for more profound organizational and group change, altering the relationships between inmates and administrators.[48]

I would like to explore legal initiatives on behalf of people with mental disabilities in this light. In barely twenty years, mental health law reforms have criticized and exposed failures in public institutions and commitment practices, called for better procedures and expanded participation by patients, and profoundly challenged the status quo. The accomplishments in a short time have been enormous. One measure of this is the recent indication that the upcoming reforms in national health care will include serious commitment to finance mental health services. Other measures include statutory successes, notably the adoption of the Americans with Disabilities Act[49] and the Fair Housing Amendments Act.[50] Still others are the casting of a person with Down's Syndrome in a leading role on a major network television show, and the legal protection against health care discrimination for persons with mental disabilities.

But some of the reforms themselves have produced considerable controversy. I know that it is easier to be a critic than a reformer. I once saw a cartoon that showed a balloon filled with hot air, tied to a sandbag--and in the cartoon, the liberals were the hot air and the conservatives were the sandbag.[51] Whether liberal or conservative, critics can blow hot air and sandbag change. But deinstitutionalization of persons with mental illness or mental retardation is a reform by one generation that could well be the scandal of the next.[52] My former boss, Judge David Bazelon, was a long-time advocate for the rights of persons with mental disabilities. But he warned that deinstitutionalization in many states simply moved people "from the 'back wards' to the 'back alleys' [and the] 'promise of freedom' has often proved to be as chimerical as the 'promise of treatment.'"[53]

The conditions of so many state mental institutions and schools for persons with mental retardation have been nothing short of abominable. Reformers have developed legal arguments that people have a right to treatment in the least restrictive possible environment, and that living in the community is itself a right and a therapeutic or habilitative practice. These arguments coincided with public budget crises and the result has been a massive movement of people from institutions. Where have they landed? The link between homelessness and deinstitutionalization has been exaggerated in the press and in public imaginations, but studies do indicate that some thirty to forty percent of homeless people have some kind of mental illness.[54] It is difficult in this light to challenge the widespread public perception that reformers have granted people with mental disabilities a right to live on the sidewalk.[55]

More troubling still is that many of the ostensibly deinstitutionalized people have become reinstitutionalized. Some move to nursing homes, some to private clinics, many into the criminal justice system. Some may be threatened with return to the now vacant large-scale mental institutions. For those who are "in the community," at best they face fractionalized care, or often, no treatment at all.[56]

Is deinstitutionalization, then, a failure? If so, the failure reflects more on the larger society than on the reformers. Stigma and disrespect for people who seem different predate deinstitutionalization, and unsurprisingly persist.[57] It reminds me of the old joke: How many psychiatrists does it take to change a light-bulb? There are two punch-lines possible. One is, "What makes you ask this question?" The other is,

"Just one, but the light bulb has to really want to change." By analogy, (if one can analogize to a punch line), how much can deinstitutionalization change society? Answer, it can, if society really wants to change.

Aye, there's the rub. Society hasn't really wanted to change much. Reformers, I submit, have to take this basic fact into account in devising reforms. If the goal was to open opportunities for decent lives for people with disabilities, it is far from achieved.[58] If the means chosen emphasized visibility, on the assumption that the community would respond to the actual sight of people in need, the astonishing capacity for human callousness needs to be acknowledged.

Some observers suggest, though, that the very disgust and controversy over deinstitutionalization sets in motion a process of continuing change. Commenting on deinstitutionalization efforts in Italy, Professor Ota de Leonardis writes that some problems don't fit the pattern of problem and solution.[59] She further claims that challenges to institutions also challenge the picture of a problem met by a solution. She concedes that deinstitutionalization creates ongoing problems, even crises. But she argues that this is a good result. It mobilizes many people, including patients, to act. It prompts experiments, complete with trial and error, and stimulates a continuing process of reform and reaction. From this vantage point, the failure in result is itself a success in the process of ongoing change.

If the effort is to catalyze larger social responses to people who seem different, however, I think we can do better than the pattern of homelessness, criminalization and reinstitutionalization we now see in most places. The hope is to set in motion a process of societal engagement with people who seem different and engaging the task of remaking society so that the costs of difference do not fall on the most vulnerable people.

For many reformers in this area, the commitment to ongoing change itself poses a dilemma. Will the advocates challenge the very notion of difference, but then lose the foothold for justifying special services and protection for people with mental disabilities? Or will the advocates emphasize difference, and then risk retrenchment, reinstitutionalization and rigidifying negative attitudes and stigma?

As a middle child, I have always hated either/ors. I think both/and is much more likable and much more likely. Stanley Cohen has commented that the difference claim could be used to justify services, not just social stigma.[60] Classifying people may have drawbacks, but it may also help mobilize resources.[61] Moreover, he claims, the weakest, least powerful members of society may be better served by having professionals and advocates attached to them by a labeling process than by dispersing them into the general sea of human misery. Those professionals and advocates, in turn, can keep the process of change ongoing.

A similar idea would acknowledge that the conception of people with disabilities as "different" is dominant and therefore a fruitful handle for changing society.[62] This idea must, I believe, be held in tension with Audre Lorde's powerful insight, "the master's tools will never dismantle the master's house."[63] Similarly, the notion of change should combine Adrienne Rich's image: "not as a leap/but a succession of brief, amazing movements/each one making possible the next,"[64] with the Hasidic saying, "You cannot leap a chasm in two leaps." And one more thought with a twist: "When you are out on a limb, you've got the world below your feet." The "change" in law and social change needs these kinds of paradoxes, tensions and twists; it needs to connect the past with an unfolding future, results with process, and ends with means.

IV. ENDS

Speaking of ends, it's time for one. I admit I have not answered many of the questions that may have led you to attend this talk. I have proposed conceptions of "law," "social" and "change" that may seem

surprising or unfamiliar. “Law,” I suggest, includes judicial, legislative and regulatory action, but also their inaction, and the contrasting activities of private groups and individuals who pursue law enforcement or otherwise seek to alter the way the society is governed. “Social” should be read to include the contexts of politics and culture in which people forge consciousness of their society and their aspirations for it; “social” also includes the arenas for debates over what morality and economic justice should entail. “Change” includes not only specific, discrete alterations, but also processes of renovation and continuing challenge of the status quo.

You may not agree with these definitions. If I spark a debate over them, I will be delighted, for my most fundamental concern is the way the terms of “law,” “social” and “change” have largely remained unexamined in debates over law and social change. And now I’ll offer one more way to identify two kinds of people: those who leave without saying good-bye and those who say good-bye without leaving. I’m in the second group, so farewell, but I’ll stick around now in hopes of further conversation.

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TEN QUESTIONS FOR SOCIAL CHANGE LAWYERS

William Quigley

Social change lawyering starts with the idea that history shows us that systemic social change comes not from courts or heroic lawyers or law reform or impact litigation, but from social movements. Social change lawyers work with, assist and are in constant relationship with social movements working to bring about social change.

Social change lawyering is a process, not an achievement. It is a path we walk with others to confront the root causes of injustice. What lies ahead is not known. There is no map. Our directions are set by constantly checking a compass that points toward justice. There are obstacles that force us to change directions and ways of going forward.

What follows are 10 thoughts on social change lawyering. They are questions and criteria we can use to define and evaluate social change lawyering and to help us make sure we are following that path toward justice.

1. Where does the direction for the lawyering come from?

Commercial lawyers are very clear about this--whoever pays the bills directs the work. For social change lawyers the direction of the legal work comes from the social movement that is working to bring about institutional or systemic or radical change. This work may include advice, defense, discussion, protection, advocacy or litigation.

The point is not what the work is, but why this work is chosen and who participates in making those choices. For social change lawyers, the movement makes these decisions in consultation and in ongoing relationship with the lawyer. This is unlike other types of public interest lawyering or law reform or impact litigation where the goal is often set by the lawyers themselves or the institution where they work.

2. Where does the power go?

Is the purpose of your legal work to redistribute unjust power relationships and diminish the power of the unjustly powerful and transfer that power to the unjustly disempowered? Is the legal work going to empower organizations of people on the margins working for change? Or is this about the lawyer and choices about what is important made by the lawyer?

There is nothing at all wrong with public interest lawyers achieving personal satisfaction in their work. But that is not the primary goal of social change lawyering. The primary goal of social change lawyering is to challenge the injustices identified by social movements working to dismantle unjust structures and to shift power to the people of the movement so they can bring about change.

3. Who gets the glory?

If the legal work or the publicity or the fundraising is about the lawyers or their legal organization, then it is not likely empowering social justice movements. If the lawyer is the media face of the work rather than the clients and the movement, then it is not too likely really in service of the movements--unless that is what the movement decides is right for the occasion.

4. Is there an ongoing commitment to work with groups of the most impoverished and the most marginalized people?

The focus of the work must remain on these groups and their efforts to overturn the root causes of the unjust status quo.

5. Is human rights advocacy an essential part of the work?

Human rights advocacy, though still in its infancy compared to constitutional and civil rights work, offers tremendous upside for social justice. It is people-based, offers a radical critique to most current law, and illustrates the gap between law and justice.

6. Is the legal work just one part of the overall social change movement?

Is the lawyer part of a team in the movement working in partnership with other strategies for social change? An organizer friend of mine likes to talk about the legal component of social change as one finger on the hand--or 20 percent of the effort. Other fingers can include education, outreach, communications, and continual organizing to build the group and to expand the number of people involved.

If the legal work is the primary part of the campaign, it is unlikely that the legal component is in relationship with a real social change movement. The civil rights era provides cautionary examples here with examples of many different types of lawyering, from the lawyer-led litigation method of the NAACP Legal Defense and Educational Fund to the grassroots lawyers who specifically rejected lawyers as leaders of the movement.

7. What work is the lawyer actually doing?

Social change movements depend on face to face and group meetings and outreach and planning and evaluating actions. Is the lawyer spending time on the ground, going out, meeting with movement partners, participating in group meetings and actions? Or is the lawyer an office advocate whose primary relationship is with the computer and law?

This is a tough challenge. Litigation, once started, tends to create its own internal life, a very demanding life of memos and briefs and legal conferences and research and writing and emails that can quickly take over. All that is important, and it is important to do it well. However, the lawyer and the social change organization she is in relationship with need to work together to maintain that relationship.

All relationships demand time. An honest examination of how the lawyer spends her time will indicate whether the lawyer is working with and for a social movement or is some other type of lawyer. No matter how demanding litigation is, social change lawyers have to create room to work and be in relationship with the people and the movement that they are taking direction from.

8. Is the lawyer willing to be uncomfortable on some sort of regular basis?

Legal education does not train anyone to be a social change lawyer--quite the opposite. Social change lawyering forces us to confront our training and our privilege and the patterns of work that sometimes constitute our definition of self. Law school culture encourages people to think of themselves not just as educated and trained but as culturally and politically and economically different from, even superior to, most other people. In order to be a social justice lawyer, people have to consciously set aside the social privilege of being a well-educated professional and rediscover their own shared humanity with the people

whom our legal education would have us call clients.

This does not mean people have to stop being lawyers; it simply means to stop acting like socially privileged, specially powered individuals. Lawyers must learn that while they certainly have much to teach and to give, they also have much to learn and to receive in true social justice-based relationships. If lawyers are going to be in solidarity and service to social change movements, this is challenging but essential.

Working with groups of people involved in social change movements is often messy and chaotic compared to litigation. There is no book of rules or library of precedents about how this is done, and no judge to make people behave or move on. Social change lawyers need to have good analytical tools but also need to have big hearts and understanding and patience and a willingness to participate in experiences where it is not clear that participation will necessarily translate into traditional legal work.

Consider, for example, the instructions from the Lawyers Constitutional Defense Committee to incoming volunteer grassroots social justice lawyers who were arriving to help out in the civil rights struggle in the South:

> The volunteer civil rights lawyer is not a leader of the civil rights movement. We are there to help the movement with legal counsel and representation, not to tell the movement what it should do. You may, if asked, suggest what the legal consequences of a course of action might be, but you may not tell them whether or not they should embark on it. They have more experiences than you in civil rights work in the South, and they are responsible for the action programs. Even if they make mistakes, they are theirs to make; your task is to defend their every constitutional and legal right as resourcefully and as committedly as you can, even if they have made a mistake. Until the time comes when they ask us to lead the movement, do not be misled by any advantage of education, worldly experience, legal knowledge, or even common sense, into thinking that your function is to tell them what they should do. The one thing that the Negro leadership in the South is rightly disinclined to accept is white people telling them any further what to do and what not to do, even well-meaning and committed white, liberal Northerners.[10]

9. Is the work on the margins?

If someone else is already doing the work, social change lawyers are probably needed elsewhere. Social change lawyering is a bit like leaving the main camp and going out to scout and claim some unchartered or contested territory. Working out there is social change work. If enough others come out to join in the work, it is probably time to leave that area and move to another contested area where social change organizations need a partner.

For example, the National Guestworker Alliance worked with foreign student guestworkers to organize a challenge to the State Department's J-1 cultural visa program. The program, which turned a cultural exchange opportunity into the nation's largest temporary worker program, was overturned when State banned a leading sponsor company from bringing any more foreign students to the United Statesfor summer jobs. Students, with help from the National Guestworker Alliance and its legal team, protested working conditions at a plant in Pennsylvania that packed Hershey's chocolates, and they ultimately forced significant changes in the program.

10. Is it work with people?

Work on "issues" alone is not social change lawyering and, for most people, is not sustainable. You have to be in relationships with the people you are working with and for. You have to give but also realize you have to take--you teach but you also learn. Only people offer opportunities for excitement and joy and hope and love.

Real social change work will partner us with people who live on the edge. Life at that edge seems precarious and insecure from the perspective of the traditional legal profession. But working with people at the edge is amazing because where the world sees poverty, oppression, and want--at that same place you will find people and organizations demonstrating generosity, beauty, courage, community, and solidarity in inspiring acts that will radically transform your life.

This will give you the energy to keep challenging the status quo in your work and in your personal life. This is the essence of social change lawyering-- addressing the root causes of injustice by putting your legal skills at the service of social justice movements and the people in them.

A Final Word

These are just some preliminary thoughts of one person. They surely leave out many ideas and probably misstate some others. You must figure out your own way of being a social justice lawyer--but you have to do it as part of a team. There are no solo social justice actors; everyone is on a team.

Being on a team is critical because social change lawyers are swimming upstream against the current of our profession and usually the law itself. Law, as an institution and as a profession, is primarily about commerce and either maintaining the status quo or altering the current order slightly to accommodate modest change. It is uninterested in, if not hostile to, systemic social change. Any type of justice-based lawyering is therefore only a tiny bit of the profession and is actually--despite high-minded pledges to do justice and the like--profoundly countercultural to the law and legal profession.

Further, we lawyers are not educated at all about social justice change or social justice movements unless we do it outside of legal education. Lawyers, like everyone else, take pride and satisfaction in their skills and the development of their abilities. Because of our training, our profession, and our models of lawyering, social change lawyering seems to challenge the idea of being a good lawyer because it seems to take skills and ideas and work outside of our skill set.

There is a good reason why we want to continue to do what we have been doing-- we are comfortable and confident in those skills and in who we are. That is fine. That might even be some beneficial type of lawyering, but it is not social change lawyering.

All of us need to work continuously to re-center ourselves to become social change lawyers. We will fail many times, and we will make lots of mistakes. But when we fall, if we are willing to get back up and keep trying along with the rest of the team, we will be on the path to social change lawyering.