

CRITICAL JUSTICE

SYSTEMIC ADVOCACY IN LAW AND SOCIETY



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For Review Purposes Only

the salience of human rights in the hands of advocates representing, as an example, the undocumented Thai garment workers that Su and Yamamoto discussed in Chapter 7? Would ICMW adoption, in contrast, serve as a platform to aid the cause of such oppressed migrants? Without the ICMW, what protections and strategies exist for advocates seeking to establish rights for undocumented migrants as against government or private actors—what lessons might you derive from Ahmad’s description of torture in the rights-free zone of Guantánamo?

8.4 THREE-LAYERED GOALS MUST BE INTEGRAL TO PROJECT DESIGN

As noted above, legal needs are not randomly scattered pebbles that can be simply picked up and set aside one-by-one, but piles of stones created by the rockslide of systemic failure. Helping individuals—or groups of individuals—with problems is vitally important but must be complemented by other work that reduces the likelihood or volume of rocks set to fall next. Once the traditional idea of atomized, short-term legal need is unlearned, advocates can relearn critical notions of remedies and solutions. This relearning for systemic problem solving and hence systemic advocacy, as we emphasize here, is focused on three layered goals and the resulting collaborative activities of a systemic project.

Consequently, each of the three layers must be integral to project design. As we detail more fully in Part IV, these expanded goals are: (1) winning technical fixes to discrete social problems, (2) building organized group power for sustainable struggle, and (3) shifting consciousness and culture. These goals are designed to help advocates better account for the role of identities, groups, interests, and power in top-down systems and bottom-up struggles. In designing projects, advocates look for ways to make the three overlapping and synergistic.

The first layer goal looks much like traditional advocacy: the aim is to win ameliorative, often court-centered, legal remedies for individual clients or classes or collections of clients. The second layer—group power-building—requires systemic analysis of group domination and systemic solutions based, usually, on existing collective capacities. The third layer aims to shift cultural or mainstream understandings of “the problem” that, in turn, enable expanded solutions aiming for broader social transformations. To advance along all three layers, advocates and community groups evaluate how to combine adjudicatory strategies with democratic strategies to maximize their combined impacts in a particular context.

In this scheme, groups and advocates coordinate actions to create windows of opportunity to expand on past gains (or, when needed, defend them). This offensive-defensive work depends on the capacity or power of a

CHAPTER 10

ADVANCING AND DEFENDING THREE-LAYERED GOALS IN SYSTEMIC CONTEXTS

■ ■ ■

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- 10.1 Systemic Advocacy Centers Persistent Social Problems in Complex Contexts
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OPENING THOUGHTS

The need for change bulldozed a road down the center of my mind.

—**Maya Angelou**, *I Know Why the Caged Bird Sings* (1969)

Legal reforms can only be successful if accompanied by societal change.

—**Adrien Katherine Wing**, *Critical Race Feminism and International Human Rights*, 28 *U. Miami Inter-Am. L. Rev.* 337, 349 (1997)

Collaborative relationships among lawyers, community organizations, and clients can empower the latter to be active decision makers and community leaders.

—**Andrea C. Yang**, *Re-considering Progressive Lawyering: The Theory and a Growing Practice in Asian Immigrant Communities*, 16 *Asian Pac. Am. L.J.* 100, 107 (2010–11)

In what ways will law be predictably used to defend state and market power against the social? Are there innovative ways in which law can help buttress the power of the social to challenge organized state and market power? Are there ways in which law can further egalitarianism in the social itself?

—**Berta Hernandez-Truyol, Angela P. Harris & Francisco Valdes**, *Afterword—Beyond the First Decade: A*

Forward-Looking History of LatCrit Theory, Community and Praxis, 26 Chicano-Latino L. Rev. 237 (2006)

INTRODUCTION

Systemic dominance is daunting yet still contested. Even as identity castes were being established from above, groups and their organizers and advocates prevented the system from resting easy. At each step, they resisted, changing the course of history. They contested both foundational concepts and ground rules.

The resulting contestations and complexities are the inheritance of every advocate today. The legal industry simultaneously constrains justice into individualized, ameliorative compartments and collectivizes injustice by identity-based castes. In contrast, systemic advocacy seeks to collectivize justice, to increase bottom-up power, and to shift systems, consciousness, and culture to help bend the arc of change toward equal justice for all. Although in practice the two overlap, this chapter presents some key points that distinguish systemic advocacy from traditional practice in the industry.

We begin with the critical conception of “context” highlighting how advocates use this concept to carve out manageable entry points into larger systems and patterns of group injustice that otherwise might seem overwhelming. Context is a foundational and practical concept. For systemic advocates, context signifies the convergence of identities, groups, interests, and power in a given time and place. From a problem-solving perspective, understanding how these four elements “add up” to injustice in a given setting—micro or macro—is at the center of understanding the context. This unlearning and relearning of context repositions advocates to plan, research, and execute antisubordination projects aligned with three-layered goals.

We also review the three kinds of recurrent “scenarios” advocates face in any given context: whether some kernel of collective organization already exists in that context. If so, the advocacy must be geared to supporting those efforts; if not, the advocacy must initially consider whether, and how, to help originate or increase those kernels of collective consciousness and collaborative action. Contexts, as shown below, are defined both by their particularities—their unique combinations of elements—as well as by their commonalities—the patterns they form despite their unique differences. Systemic contexts thus come in infinite configurations. But practice scenarios come in three recurrent kinds: (1) those that involve only individuals and do not call for collective action; (2) those that involve collective problems with some level of already-organized group struggle for a systemic solution; and (3) those that similarly involve collective problems, but with no group consciousness or organized capacity.

As the excerpts below show, every (unique) context presents at least one of these three (recurrent) practice scenarios.

As we see in this chapter, both contexts and scenarios underscore the relevance of identities, groups, interests, and power, as well as the importance of other insights from critical and bottom-up knowledge. Advocates use a self-critical awareness of contexts *and* scenarios in making every choice or decision, including how to base themselves where they can best advance organized group struggles, emphasizing group capacities to contest systemic ground rules or foundational concepts that perpetuate injustice. This point is key: *a collective capacity to challenge or modify skewed ground rules and foundational concepts, which by design give established elites an advantage in every contest, is integral to three-layered progress.*

To highlight the importance of ground rules and foundational concepts, this chapter examines in more detail both the second layer of group power-building and the third layer of consciousness and culture-shifting—as well as the functional interrelationship between these two layers. The bottom line is that changing laws is never enough; advocates and groups *additionally* must change distributions of power to shift personal and cultural attitudes. Culture shifts start as an intragroup process—the internal work of shifting consciousness within and among members of organized client-groups engaged in both legal and extralegal action—and expand outwards to alter, over time, the social landscape.

This work, as the previous chapters illustrate, requires an expanded scope of research, analysis, and action. As a practical matter, it requires advocates to know and do more—to expand their capacity to make three-layered progress. Systemic analysis and advocacy depend on an expanded base of critical knowledges, values, skills, and attitudes (CKVSAs). This expanded toolkit combines persuasion with pressure through direct, democratic, and judicial actions. It counteracts systemic injustice in micro, everyday aspects of life as well as in macro, institutional routines. Three-layered goals can help advocates transcend partially the blindfolds, handcuffs, and hierarchies of law as an industry.

We say transcend *partially* because constant opposition and suppression, as well as cooptation, are ever-present risks. As Part III outlined, cooptation, capture, tokenism, retaliation, and other risks inure in all actions—legal and extralegal. The complexity of systems and settings provides opportunities for manipulation. Advocates cannot insulate themselves from these risks—there is no magic formula of words, actions, identities, or relationships that can preclude top-down take-overs of bottom-up insurgencies. Only constant vigilance, personal and collective, can guard against these and similar dangers. Recognizing this reality, advocates regularly practice the basic insights from the Schools and

Approaches noted in Part I: critical and self-critical analysis, coupled with principled actions, which are rooted in and accountable to the bottom. Here, we emphasize that these principled and accountable actions must be designed and carried out, in self-conscious and synergistic ways, along all three layers of systemic problem solving.

To do so, this chapter lays out some key aspects of this expanded critical toolkit, including:

- defining contexts for advocacy in terms of histories and legacies of identities, groups, interests, and power;
- focusing on the centrality of planning and advancing antistatutory advocacy in terms of the three-layered goals;
- demonstrating that second-layer group power-building includes concrete and ultimately testable indicia of the group's ability to generate desired decisions from targeted decision makers, chiefly by selecting indicia important in context based on a critical analysis of members' social conditions and organizational capacities;
- explaining that power-building processes must be designed to advance third-layer goals by engaging individuals within groups to generate a shared critical understanding of legal and cultural "blame frames" to shift consciousness among participants and, eventually, more broadly through group legal and extralegal action;
- showing, thus, that the work of group power-building and of consciousness- and culture-shifting are distinct but intertwined; and
- underscoring that the risks of top-down reactions, ranging from cooptation to retaliation are confronted through ongoing critical and self-critical work to identify and correct anything that diverts advocates and activists from challenging the premises or rules of the game that govern both adjudication and democracy, and determine their outputs.

As you read, reflect on the atomized claims, legal fictions, material incentives, and failure by design of the legal industry. Recall also dual consciousness, critical knowledge, and antistatutory values. Based on those reflections, imagine concretely how you might practice advocacy differently in specific contexts or scenarios. How would a self-critical focus on second-layer and third-layer goals affect your approach to first-layer actions that usually are ameliorative and often individualized? How could your advocacy (or project) be made more transformative by taking the missing elements—identities, groups, interests, and power—into account

in your critical *and* practical understanding of complex problems and contexts?

10.1 SYSTEMIC ADVOCACY CENTERS PERSISTENT SOCIAL PROBLEMS IN COMPLEX CONTEXTS

“Context” is a point of focus and venue of work that advocates use to research and design principled, accountable, and effective projects. Specifically, we turn to contexts in systemic terms—that is, systemic contexts. To start, consider a quandary of advocates seeking to ensure that all women have equal justice in relation to decisions about reproduction:

In early 2009, Nadya Suleman, now known as the “octo-mom,” caught international attention for giving birth to live octuplets. Public sentiment quickly turned from awe to scorn when the media disclosed that Suleman had used assisted reproductive technology to become pregnant while unemployed and receiving public assistance. This national media spectacle once again stirred up hostility toward poor women—leading many to call for increased regulation of women’s reproductive choices. Several state legislatures have considered legislation to prevent women from accessing fertility treatments if their age, health or financial circumstances are deemed “unsuitable.”

At the heart of the octo-mom debate lies a question . . . of public resources—recognizing that a legal right to reproductive services, without support, leaves many women without meaningful choice.¹

To answer this question, many advocates and activists began to focus on “reproductive justice,” developed through critical reflection by and with poor women of color and defined as “the complete physical, mental, spiritual, political, social, and economic well-being of women and girls, based on the full achievement and protection of women’s human rights.”² Reproductive justice generates changes in approach:

Reproductive justice is rooted in a rich history of organizing among women of color within movements for social justice and women’s health. Additionally, reproductive justice is about shifting resources—in addition to extending rights—to those who

¹ Sarah London, *Reproductive Justice: Developing a Lawyering Model*, 13 *Berkeley J. Afr.-Am. L. & Pol’y* 71, 71 (2011).

² Loretta Ross, SisterSong Women of Color Reproductive Health Collective, *What is Reproductive Justice*, in *Berkeley Law Reproductive Justice Briefing Book: A Primer on Reproductive Justice and Social Change*, www.law.berkeley.edu/php-programs/courses/fileDL.php?fID=4051 (attributing the definition to the Asian Communities for Reproductive Organization).

lack the information and means to achieve self-determination in reproduction. Reproductive justice activists recognize that “reproductive choice” does not occur in a vacuum, but in the context of all other facets of a woman’s life, including barriers that stem from poverty, racism, immigration status, sexual orientation and disability. To achieve reproductive justice, according to movement leaders, oppressed communities must build power through organizing, education and political mobilization.

One mainstream national reproductive rights organization, Law Students for Reproductive Justice (LSRJ), has wholeheartedly adopted the reproductive justice framework, but has encountered difficulty in defining its role. . . . [At a student gathering,] Aimee Thorne-Thomsen from Expanding the Movement for Empowerment and Reproductive Justice (EMERJ) provided chapter leaders with an overview of the reproductive justice framework. . . . As a participant in this gathering, I felt energized by this new direction, so I asked a question: “What should law students do?” The speaker paused, shook her head, and quietly responded: “Well . . . I don’t know. You will have to figure it out.”³

Understanding context as a complex intersection of forces is a starting point for figuring “it” out. The context for systemic advocacy defines how a social problem affects specific people in specific, material ways, in a specific place and time, and as a result of specific histories. Context defines where these identities, histories, structures, and laws intersect. Below, legal scholar John Calmore provides a description of inner city communities as a systemic context—“the intersection of race, space, and poverty.” Understanding contexts critically brings into focus “the structured aspect of poverty” and other *systemic* conditions.

Calmore emphasizes a form of collaborative professionalism rooted explicitly in antisubordination values. This twin focus on context and antisubordination challenges dominant notions of advocacy, in which problems are handled in atomistic, decontextualized, and largely ahistorical ways. Against this backdrop, systemic advocacy aims to make change along all three layers to counter the embedded persistence of social problems in complex contexts, which as Calmore emphasizes below, must be understood critically as shifting confluences of intersectional identities, groups, interests, and power. Defining a systemic context—and a contextual advocacy project—in these ways allows advocates to delineate a manageable starting point for action while recognizing the inevitability of complexity. Thinking and doing contextually helps advocates to support

³ London, *Reproductive Justice*, at 72–73.

organizing groups as repeat players—contesting ground rules and making measurable progress against injustice—in specific locales.

**A CALL TO CONTEXT: THE PROFESSIONAL CHALLENGES OF
CAUSE LAWYERING AT THE INTERSECTION OF RACE,
SPACE, AND POVERTY**

John O. Calmore
67 *Fordham L. Rev.* 1927 (1999)

Introduction

Traditional legal analysis and advocacy are too often plagued by the tendency to extrapolate issues from their history and the broader social and normative contexts that bear so heavily on them. Seldom will a client’s legal problem be just a legal problem. By issuing a call to context, I am directing attention to the inner-city poor’s lived experiences, including the interconnection of legal and non-legal issues they confront, the web of experiences within which they live[,] . . . “their anchor in context.” This suggests that we cannot view their issues or the features of context as fixed and unchanging. Instead, we must view them as historically evolving, relational, changing in meaning . . . “to be interpreted in terms of time and place.”

In considering why we describe law as a “profession,” many focus on the practice of law as a “public calling.” From this perspective, perhaps, the most profound issue in providing effective legal services to the poor is whether legal advocacy on their behalf can maintain a positive, operational connection between rights and justice. With or without lawyers, for the inner-city poor, justice is hard to find. In the quest for justice, representing the poor has generally attracted “cause lawyers.” Broadly speaking, cause lawyering encompasses various law-related activities, from rights assertion to legal counseling, that relies on law-related means to achieve social justice for individuals and subordinated or disadvantaged groups. Whether representing individuals or groups, cause-oriented poverty lawyers often adopt an orientation of antistatutory advocacy. This requires legal advocates, especially attorneys, to cross traditional boundaries where “the practice of law primarily consists of the hermeneutic reproduction of that which already exists.” This lawyering, moreover, must confront the difficulties and contradictions that are part of working for social change within and outside of the legal system’s conventional framework.

. . . In this line of work, we must appreciate that poverty has multiple dimensions. In terms of time, there is persistent poverty; in terms of space, there is neighborhood poverty; and in terms of behavior, there is underclass poverty. Sometimes, these dimensions coalesce and those in poverty experience both stigmatizing and oppressive constraints. This predicament

is worsened by societal imposition of negative racial characteristics as an overlay. In other words, poverty and space become racialized to the detriment of these poor. This marks the intersection of race, space, and poverty.

. . . The intersection of race, space, and poverty necessarily directs our attention to the significance of the neighborhood aspects of poverty and its concentration effects. . . . [Intersection] connotes a dynamic process that extends beyond identity formation. More than that, intersectionality additionally constitutes context: framing the interconnection of issues and the web of experiences that live at and within the intersection of race, space, and poverty. In some instances, the intersection is the primary defining feature of context.

Within this intersection, or context, I focus on high-poverty neighborhoods—that is, those with poverty rates of at least forty percent. I also focus on people who experience the effects of concentrated poverty. Concentrated poverty sharpens our focus in considering the constraints and social isolation that these poor people face. . . .

Almost beyond the purview of legal advocates and policy makers, the existence of neighborhood poverty has grown dramatically since the 1970s. . . .

“One common impression of poor neighborhoods is correct: they are predominantly inhabited by members of minority groups.” . . . In 1990, while one in seven blacks—fourteen percent—lived in ghettos or high-poverty neighborhoods, only one percent of all (non-Hispanic) whites lived in neighborhood poverty. Among Latinos, nineteen percent of Puerto Ricans, nine percent of Mexicans, and three percent of Cubans lived in barrios or high-poverty neighborhoods.

. . . In what follows, I examine the nature of cause lawyering as it may be practiced specifically on behalf of the inner-city poor—clients who are, synergistically and simultaneously, racially and economically subordinated within the spatially constrained and the opportunity-denying circumstances of ghetto and barrio life. In light of these features, I argue that effective representation must collaborate with these clients not only to represent them, but also to represent their place and communities as well. . . .

The Challenges and Opportunities of Cause Lawyering

This part introduces the concept of “cause lawyering,” comparing it to [traditional] lawyering and explaining how it can benefit inner-city client communities. It examines the meaning of cause lawyering, with its associated attributes and threats to the legal profession. This part then addresses the forces that drive and direct cause lawyering in various contexts.

The Concept of Cause Lawyering in Context

... Cause lawyering presents a profound professional threat to the dominant bar and its forms of legal practice:

[Cause lawyers] threaten the profession by destabilizing the dominant understanding of lawyering as properly wedded to moral neutrality and technical competence. . . . Cause lawyering exposes the fact that [law] is contingent and constructed and, in so doing, raises the political question of whose interests the dominant understanding serves. The result is a threat to ongoing professional projects and the political immunity of the legal profession and the legal process.

... This lawyering is not motivated by a desire to defend and protect rights in the abstract. Instead, rights are means to political ends. Far from asserting rights, the false legitimization function of the law is constantly challenged. This is important, because “[t]he law is a major vehicle for the maintenance of existing social and power relations by the consent or acquiescence of the lower and middle classes.” As a consequence, left-activists tend to push their professional role and their organizations into areas that are politically and professionally risky, confrontational, and controversial.

... [However, standing alone,] a genuine, good-faith commitment to antisubordination work does not necessarily insulate one. . . . [T]he [conventional] mode of lawyering is cultivated under the pressing circumstances of practice. Those circumstances include the social and cultural distance between lawyers and clients, the occasional but significant mutual distrust and disrespect between lawyers and clients, the overwhelming crush of client demand, the burn-out of practice, the differing, sometimes contradictory worldviews of lawyers and clients, and lawyers’ self-righteous arrogance. Moreover, its cultivation takes place regardless of whether the practice emphasizes individual client cases, group or institutional impact cases, or mobilization advocacy. It takes place whether the lawyer is non-white or white, male or female, gay or straight, or a stranger to the community or a former resident who has now moved on.

The first step for most of us in becoming effective advocates, then, is to break away from the [dominant] idea of lawyering. . . .

Lawyers must know how to work with the client community, not just on its behalf. There must be collaboration with professional and lay allies, including a willingness to be educated by them. . . . They must continually assess probable interaction between both legal and non-legal approaches to problems. They must adopt a problem-solving orientation. . . . Finally, this orientation toward advocacy must nurture the appropriate

sensibilities and skills that are “compatible with a collective fight for social change.”

The Direction of Cause Lawyering in Context

. . . The community-based notion of cause lawyering not only allows us to situate our clients as a social group, but also compels us to confront their problems as public issues that reflect systemic “contradictions” or “antagonisms” rather than as “personal troubles.” This in turn directs us to adopt a mission of social justice that redresses oppression. Thus, social justice furthers liberation and entails establishing freedom from the features of oppression. These features . . . are exploitation, marginalization, powerlessness, cultural imperialism, and violence. . . . Significantly, within the context of inner-city poverty, these multiple forms of oppression often coalesce in synergistically interlocking ways. They constitute the packaged opportunity-denying circumstances that must be redressed. . . .

. . . [A] ubiquitous feature of oppression is “the double bind—situations in which options are reduced to a very few and all of them expose one to penalty.” Over the years of practicing poverty law from Roxbury to Watts, I was continually struck by the apparently optionless world that most of my clients inhabited. I never associated it with oppression, but rather I saw it as a lack of social and monetary capital. I continued to believe in the myth of Horatio Alger [that an individual’s hard work would supply upward mobility]. I simply failed to see the predicament of my clients as oppression—as something that was group-based, structured, and systemic. The life of the oppressed “is confined and shaped by forces and barriers which are not accidental or occasional and hence avoidable, but are systematically related to each other in such a way as to catch one between and among them and restrict or penalize motion in any direction.” The constraint is analogous to that of living within a cage where . . . “all avenues, in every direction, are blocked or booby trapped.” Thus, many of the problems my clients brought to me were recurring: another eviction, another welfare cut, another police beating, another inability to pay bills, an endless and miscellaneous list of booby traps. I did not see that they were linked problems that represented a cage-like structure.

When I represented white working-class clients in Hayward, California in the mid-1970s, I did not really appreciate the race-based exacerbation of poverty that distinguished them from my black and Latino clients. At that time, I was not sharp enough to see the intersection between race and class that I came to see much later in the 1980s. I saw my minority clients as being in a similar boat as the white poor. I knew that Appalachian poverty was different from Harlem poverty, but it was still primarily a class experience that was being played out in different locations. It is the feature of racialized poverty, however, that calls

attention to group specificity and the fact that oppression is primarily a function of social group association. The compounded oppression of race-class is the qualitative difference between black-brown poverty and white poverty. My white clients certainly experienced the hardships of poverty. But they generally did not experience these hardships as a social group that was oppressed at the intersection of race and poverty. Almost never did they experience them at the tripartite intersection of race, space, and poverty. When we look at oppression, we must look at the specific social group experience and respond accordingly.

We must also pay attention to the structured aspect of poverty. Clearly poor people must take responsibility for their lives and battle the forces that might compel them to engage in dysfunctional behavior. But this responsibility is not enough. . . .

The inner-city poor are oppressed by “the normal ongoing processes of everyday life.” When we speak of empowerment and transformation, we should be referring not only to disrupting stark hierarchy and power imbalances, but also to changing the processes of everyday life as lived by those within the client community.

Finally, cause lawyering must develop a critical vocabulary to present race and racism as part of the poverty story. Here, critical race theory can be useful to the practice. It informs us that race and racism are always concepts in formation. Our notion of race and our experience with racism do not represent fixed, static phenomena. Racism is more than the intentional behavior of the occasional bad actor. Racism mutates and multiplies, creating a range of racisms. We must be able to bring up issues of race and racism without the terms always leading to fear, alienation, and off-point debate. There is no such thing as colorblind poverty. We must appreciate that because the inner-city poor are approximately seventy-five percent black and brown, inner-city poverty itself is “raced.” One simply cannot seek economic justice and equal treatment for the poor by separating the quest from considerations of the raced aspects of context, history, social organization, institutional arrangements, and culture. . . .

Representing Clients in Poverty And Place

A key aspect of cause lawyering is understanding that individual clients cannot be treated as separate from their racial, geographical, and class identities. Rather, as this part demonstrates, race, class, and “place” often converge to inform both individual client identity and societal perceptions of certain groups.

The Significance of Intersectional Analysis

. . . The issues confronting the inner-city poor point to a series of problems that we can trace to the inter-connected dynamics of racialized poverty,

residential segregation, and the long history of racism. . . . [W]e must have a comprehensive view of the conditions to be redressed. . . .

In looking at the racial and ethnic data regarding neighborhood poverty, I am struck by two things. First, it is really not a significant problem for whites, as only one percent of all non-Hispanic whites live in poor neighborhoods. Second, for this reason, racism may continue to cultivate broad societal neglect and block efforts at grand-scale redress. . . .

. . . White support for racial justice remained strong as long as moral issues were salient in the civil rights movement—issues associated with addressing such matters as state-sanctioned segregation, political disenfranchisement, and antiblack violence, largely in the South. Support waned, however, when the movement's attention was redirected to the economic aspects of racial inequality. . . . “As the civil rights movement moved north after 1964 and pressed demands for open housing, busing, and affirmative action, the northern white civil rights constituency began melting away and undermining the political foundations of antipoverty policy.” . . .

The Anchor of Context: Racialized Class-Space

The racialized inner-city poor, particularly African Americans and [Latinx people], experience concentrated poverty in their neighborhoods that is compounded by a spatial and geographic marginalization that deepens their intersectional racist and economic subordination. Within this context of ghetto and barrio poverty, geographic racism operates in a way that manifests . . . “the new poverty.” In the context of past poverty, the poor suffered from deprivation, constrained opportunity, and exploitation. These marked their economic inequality. A significant segment of today's poor, in contrast, are superfluous not only to the economy, but also to the nation's societal organization. . . .

Traditional ghettos were sites of opportunity through exploitation. The residents were confined by dominant interests not only to facilitate a strong measure of social control but also to channel ghetto activities in a way to further dominant economic interests. The new ghetto of the excluded is very different. . . . Society is less inclined to use these residents, even under circumstances of exploitation, because “of fear that their activities, not controlled, may endanger the dominant social peace.”

This ghetto, moreover, is conceptually different from an enclave. An enclave is also a spatially concentrated area, but one within which “members of a particular population group, self-defined by ethnicity or religion or otherwise, congregate as a means of enhancing their economic, social, political, and/or cultural development.” Transcending class, many African-American, Latino, and Asian communities are spatially organized as cultural and/or immigrant enclaves. Many suburbs are also enclaves, but they are racially or economically exclusionary . . . [:]

The exclusionary enclave, although not new, plays a new role today, both quantitatively and qualitatively. It differs from other forms of enclaves (although there are shared characteristics) in that its residents, intermediate and insecure in their economic, political, and social relationships to the outside community, wish to “protect” themselves from a perceived danger from below.

... [This] description is particularly helpful in distinguishing the black ghetto today from the ethnic or cultural enclaves of white immigrants. . . . Hence, understanding why blacks and Latinos have come to occupy their place in society and how they can move on, will call for group-specific, different analyses. . . .

... This reality renders quite problematic remedies that are predicated on the civil rights tenets of colorblindness, individual equality of opportunity, and integration through assimilation. . . .

... [I]t is not enough to direct intervention efforts at what occurs within poor communities. Rather, we must affect inter-spatial relationships. . . . Through the process of racialization [geographic separation] transforms many urban problems, particularly those associated with living in the city, into black and Latino problems. Indeed, the array of problems associated with city life get reduced to the black and brown poor, so that they become the problem. . . .

This subordinating spatial organization is illustrated in suburban formation, urban renewal and displacement, exclusionary zoning, gentrification, public housing site selection, and environmental inequities. It is illustrated in the spatial hierarchy [of today], consisting of the ghetto of the excluded, the totalizing suburb [of the mainstream], and the luxury citadel [of the rich].

Thus, we must join inner-city client communities in our shared recognition that “all spatialities are political because they are the (covert) medium and (disguised) expression of asymmetrical relations of power.” This means that legal advocacy of impact must join in the client community’s challenges to that hegemony which is expressed in terms of place, politics, and identity. Failure here is to retreat from the necessary cutting edge of cause lawyering.

... Here, too, we can better appreciate why we cannot come into the picture with canned claims and prayers for relief. We must be open to being used by the client community in ways that they deem appropriate. We can provide technical assistance and advocacy perspective; we can enhance their stories; and we can help them to leverage their positions. We cannot eliminate poverty; we cannot really move very many out of poverty. But we can join the political project by occupying the real-and-imagined worlds on the margin and helping the community to reclaim these spaces as places of radical openness and possibility.

Fighting the “Underclass” Label and Developing Social Capital

A good deal of debate about policy responses to the ghetto poor, barrio poor, and neighborhood poverty itself is distorted because these poor and their poverty are over-inclusively associated with the image of the undeserving poor. These people are deemed to make up the so-called underclass groups—the inner city, the persistently impoverished, the jobless, the uneducated, the criminal, the violent, and welfare underclasses. The designation of underclass is more than a reference to poverty. It incorporates a societal judgment that these poor violate mainstream rules or norms of behavior. These poor are seen as living in a self-perpetuating culture of poverty that causes them to be so alienated and damaged that even if there were improvements in their economic condition and increased access to a viable opportunity structure, they would be unable to take advantage of these changes. The remedial focus is on changing their behavior and values rather than changing their structured inequality. . . .

The underclass label is problematic in various ways. Labels are not mere words. They carry judgmental and normative connotations that can influence societal institutions and individuals to punish those who are stigmatically labeled. . . . [B]ecause “underclass” is a code word that implies that undeserving people are not or should not be in society, those who accept the term in this way justify excluding the poor from the rest of society without expressly admitting it. Moreover, because the term underclass is racialized, it is a convenient way for masking antiblack or anti-Latino sentiments. As a racial code word, it “accommodates contemporary taboos against overt prejudice. . . . Such taboos sometimes paper over—and even repress—racial antagonisms that people do not want to express openly.”

. . . [Thus,] “the key conclusion from a public policy perspective is that programs created to alleviate poverty, joblessness, and related forms of social dislocation should place primary focus on changing the social and economic situations, not the cultural traits, of the ghetto underclass.” I do not mean to suggest that there is no problematic behavior or dysfunctional values operating within the dynamics of ghetto or barrio life. . . . [But] many manifestations of inner city social dislocations should be analyzed as symptoms of racial-class inequality, not as cultural aberrations, and, therefore, “changes in the economic and social situations of the ghetto underclass will lead to changes in cultural norms and behavior patterns.”

. . .

Conclusion

. . . Advocacy on behalf of [impoverished, subordinated] people and their places must be activist, bold, innovative, and radically progressive. It must also be site-specific and targeted in responding to the needs and aspirations of the inner-city poor as a distinct social group. In this response, it must

proceed in, literally, an organic manner. It must transgress boundaries, including those that mark the professional role, socialization, and responsibility of attorneys. In representing inner-city poor people, universalistic perspectives and orientations are likely to be ineffective. In many cases, neither poor people nor their troubles can be viewed as fungible. In responding to, and working with, our client communities, we must identify which particular poor people and which particular contexts are the subjects, before we can map advocacy strategies.

When race and space are synergistically involved with poverty, race-neutral or color-blind poverty practice is naively wrong-headed. It reflects an approach that is both ahistorical and de-contextual. It badly underestimates the interlocking elements of oppression. In terms of redress sought, it stops us too far short. . . .

To all advocates, I wonder whether we can really “do good” without respecting the client community’s voice, vision, and humanity. . . . In responding to the actual conditions of the racialized, inner-city poor, we must direct our quest for the cause of social justice with respectful regard and comprehensive understanding of a world that is foreign to us, even as we practice within it. Practicing law in the community is not a tourist adventure and, therefore, we must eschew the routine of the autonomous, interloping advocate who dreams up cases in the home office and then tests them on the community. That is, we must search for invitation, opportunity, and connection that legitimate our very presence and committed practice. An open mind and a correct sensibility may be more important than the command of technical craft, because often we must learn as we go. We must approach that learning in non-linear, non-laboratory ways. Learning within our client communities will likely respond to these places as “eco-system[s] of knowledge” where learning is “multi-dimensional, often messy and confusing.” Only through this approach will advocates effectively become incorporated within the client community.

. . . At the same time, we must recognize that empowerment must extend beyond support . . . and enable the clients to position themselves to reach out and to assume a greater entry into a more just and open society where opportunity can be leveraged in new and different ways.

. . . From within the space of marginality we can come to know a situatedness that is, in part, self-chosen rather than oppressively imposed by external structures. This marginalization does not write off people, but provides a vantage point from which to see and act differently. From that vantage point, one knows different things and one knows in different ways. This perspective and knowledge can propel resistance and construct radical senses of openness and possibility. As bell hooks implores us: “Enter that space. Let us meet there.”

Drawing from experience with “cause lawyering” Calmore illustrates how every “context” is more than just a time and place. Rather, in systemic terms, every context is a volatile convergence of identities, groups, interests, and power in a given time and place and in light of relevant histories and legacies. These convergences create needs—not just for amelioration, but also for transformation. Consequently, every systemic context is thick with complexity.

Understanding a systemic context and its complexities from the bottom up provides critical knowledge to develop strategies and plans for three-layered goals. Contexts provide practical and manageable points of entry for systemic advocacy tailored to advancing and defending three-layered progress. This kind of three-layered progress, as we emphasize in this chapter, recognizes that rights—civil rights and human rights—are important for group struggles but not enough for social transformation.

NOTES AND QUESTIONS

1. *Working Within Contexts.* Can you tentatively itemize the factors or circumstances that Calmore says converge to create the intersectional context in which he worked? Review your list carefully to ensure you have accounted for, but not limited yourself to, the four key elements of systemic advocacy we have emphasized: identities, groups, interests, and power. Now, using your own advocacy project or an issue area in which you are interested, compose a description of its context in light of the factors discussed above. Can you also compare this context from another jurisdiction (local, state, national, or international) facing the same social problem with a seemingly similar social and legal system? Consider critically both similarities and differences that surface through comparison. What lessons or insights can you draw to inform advocacy in the two contexts? How might strategies be the same or different across these two contexts?
2. *Understanding Context to Enhance Advocacy Contributions.* Calmore points out several specific contributions that advocates can make to client-groups in struggles for justice: “We can provide technical assistance and advocacy perspective; we can enhance their stories; and we can help them to leverage their positions.” Below is an excerpt from a report describing the widespread occurrence of gender-based violence and harassment (GBVH) in the supply chains of multinational garment producers. The report was released in the lead up to tripartite negotiations among representatives of workers, corporations, and governments at the International Labor Organization (ILO) to craft a new convention aimed at preventing GBVH. As you read, identify aspects of the problem in this context—the particular space and place and time of GBVH in global garment production networks in relation to this specific constellation of identities, groups, interests, and power, as well as laws:

[This report] aims to situate new empirical findings on gender based violence in Walmart factories in Bangladesh, Cambodia, and Indonesia within the broader context of global production networks in general and the garment global production network in particular. . . . Brands like Walmart, headquartered in high income countries, outsource production to supplier firms in developing countries. . . .

. . . While brands and retailers do not carry out production, they drive sourcing and production patterns overseas. . . .

Women workers employment in garment supply chains are overwhelmingly employed in nonstandard and precarious forms of employment, typified by informal, low-paid and poorly protected work. . . . In varied, locally specific ways, international capital relies upon gendered ideologies and social relations to recruit and discipline workers, producing segmented labour forces within and between countries. . . .

Women workers reported being targets of explicitly gendered violence, including verbal abuse linked to gender and sexuality, sexual harassment, and threats of retaliation for refusing sexual advances. . . .

Women are disproportionately impacted by patterns of violence with the garment supply chain because they make up the vast majority of garment workers. In Bangladesh, Cambodia, and Indonesia, women workers represent between 80 and 95% of the garment workforce. . . .

Despite their numerical majority within the garment sector, women workers remain within low skill level employment and rarely reach leadership positions in their factories and unions. . . .

Forms of sexual harassment documented in this study include sexual comments and advances, inappropriate touching, pinching and bodily contact initiated by both managers and male co-workers. . . .

Workers reported ongoing verbal abuse and frequent threats and physical violence. . . .

. . . [L]ack of access to adequate reproductive and maternal health services [also] is a significant issue. As early as 2012, workers organizations in Cambodia began reporting that pregnant women were regularly threatened with dismissal from garment manufacturing jobs.⁴

⁴ Global Gender Based Violence in the Walmart Garment Supply Chain, Workers Voices from the Global Supply Chain: A Report to the ILO 2018, Asia Floor Wage Alliance, CENTRAL Cambodia, & Global Labor Justice (May 2018), www.globallaborjustice.org/wp-content/uploads/2018/05/GBV-Walmart-25-May-2018.pdf.

Why, in this context, do you think the report was released publicly prior to negotiations for the GBVH convention? Did the understanding of context enable advocates to better provide effective technical assistance or advocacy perspective, enhance worker stories, or help workers leverage their positions?

10.2 THREE-LAYERED GOALS ARE GEARED TO THREE RECURRENT ADVOCACY SCENARIOS

Mapping the context for cause lawyering in the late 20th century United States, Calmore writes as one of many practitioners and scholars who helped to formulate Approaches to systemic advocacy. Systemic injustice and struggles against it, however, know no borders. We thus turn to another example, by legal scholar Lucie White, drawn from advocacy in a “different” systemic context: South Africa late in the 20th century. Note that in this context, even formal equality does not exist; but antisubordination values do. And notice again the centrality of identities, groups, interests, and power to struggle with and through law toward justice.

White deconstructs three advocacy scenarios to outline the relationship among contexts, advocacy, and goals. Employing terms like “dimensions” or “images” and “visions,” White’s three practice scenarios correspond roughly to the three layers of systemic advocacy goals. These three likely kinds of scenarios are: (1) an individual (or series of individuals) seeking amelioration, (2) an already-organized group that needs support in responding to collective problems, and (3) group or community members who need help to form or strengthen their collective consciousness and strategic understandings of social problems and solutions. The core question that remains constant across scenarios or dimensions is *how best to advance the three layers of goals that add up to social transformation?*

In the first of White’s dimensions, the image or vision of lawyering is focused on the pursuit of ameliorative legal assistance for individual clients. These may be individual court-centered remedies or transactional solutions, like assisting with individual entity formation documents or contracts. In this first dimension, lawyers usually are not engaging more broadly the systemic social ills of caste; this reflects both the constraints of traditional legal education and the response-focused priorities of most sites of practice. In this first recurrent scenario—perhaps the most common—lawyering provides essential immediate services to vulnerable populations; systemic advocacy does not reject but rather aims to reinforce and expand the gains of this work.

In the second dimension of advocacy, the image or vision of lawyering expands to include systemic analysis of group domination and *systemic* solutions based on existing and potential collective capacities. Advocacy