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*Personification and Conflict in the Study of
Movement Lawyering*

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Personification and Conflict in the Study of Movement Lawyering

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The challenge I'd like to grapple with in this paper is to think through the relevance and meaning of biographical narratives in preparing law students to engage with community. While the core pedagogical method of law schools is to immerse students in the factual universes of individual appellate cases, how might biographical narratives, as conveyed by historical writing and the participation of contemporary movement actors in courses and clinics, inform lawyering? My preliminary theses: (1) personification of abstract ideas makes them comprehensible and meaningful, particularly in an era in which tectonic shifts in society are dismissed as unrealistic and fanciful; and (2) understanding political conflict in other eras helps us understand the forces at work in our present period: the battle lines, the stakes, and the contingent and pliable nature of the struggles.

In this short paper, I'll first describe how I use biography in my Law and Social Movements seminar and, to a lesser extent, the Immigrant Rights Clinic and then develop further my initial theses about the uses and significance of biographical narrative in teaching about lawyering, as well as some of the constraints imposed by historical and contemporary movement sources.

I. Pedagogical Interventions

A. Historical Sources

My seminar on Law and Social Movements (LSM) has evolved to focus on how to prepare lawyers to work with social movements, which I define loosely to include formal organizations, fledgling groups of activists, and individual activists.¹ The course starts with critiques of liberal legalism and then winds its way through three weeks of Civil Rights Movement history, five weeks focused on contemporary movements, a few weeks devoted to student presentations on their areas of focus, and a final week going over the opportunities and constraints for movement lawyers present in modern legal education. I zero in on individual lawyers in the historical section. The classes are partly thematic (the “volatile alliance” of lawyers and organizers, law as repression, racial formation) and partly biographical, elevating the work of lawyers who have only recently been put back on the page because of critical scholars such as Tomiko Brown-

¹ When I think of “community,” I think of clusters of people endowed with both the internal *politics* of a group and the external aspirations (and potential mobilization) characterized as the *political*. See CHANTAL MOUFFE, *ON THE POLITICAL* (Routledge 2005). Of course, not all community formations are constitutive parts of social movements, though it seems self-evident to me that those formations engaged in projects of social change are most likely to call upon lawyers for assistance and to which lawyers are likely to gravitate.

Nagin,² Kenneth Mack,³ and Ian Haney-Lopez.⁴

Brown-Nagin has researched and situated the work of Virginia lawyer Len Holt. Holt's movement lawyering is especially important because the work offers something of a corrective to analyses of civil rights lawyering as top-down and litigation-focused offered by scholars such as Michael Klarman and Gerald Rosenberg. Holt was a creative litigator, educated at Howard under NAACP-LDF super-litigators such as Charles Hamilton Houston and Thurgood Marshall. However, for a range of reasons, Holt moved outside of the LDF orbit and adopted a more movement-centered approach to civil rights lawyering, deferring to the strategic goals of SNCC and other youth and organizer-led groups. Holt helped bring the National Lawyers' Guild into the southern civil rights movement, to some degree as a rival to the LDF for the allegiance of communities and organizations. He developed a strong working relationship with Arthur Kinoy and they both figure—as defenders of activists—in the story of the repression of civil rights activism by local governments through criminal law. Haney-Lopez raises Oscar Acosta's story to the surface in his book about the development of Chicano racial identity. Known popularly as much for his friendship with Hunter S. Thompson as for his activism, Haney-Lopez discusses how Acosta's approach to the legal defense of the East L.A. 13 and other movement actors spotlighted police and court repression and contributed to the development of a new politicized generational identity amongst Mexican-Americans in Los Angeles. Both Holt and Acosta represent styles of and approaches to lawyering that together constitute a recessive strain within American public interest law. Students currently hear very little about this kind of lawyering in law schools and they receive minimal instruction in the practice of law when supporting community organizations in struggles over legal policies and enforcement practices.

B. Contemporary Movement Sources

We discuss lawyers currently practicing in LSM, particularly in the context of the theoretical framing of the course that situates liberal legalism as pervasive and in tension with community mobilization and empowerment. In the course of our discussion of the struggle for Trans rights, we discuss the work of Dean Spade, particularly in his early years with the Sylvia Rivera Law Project in New York; on immigrant workers' rights, we talk about Julie Su's work in Los Angeles. For many years predating LSM, we have been bringing activist organizers to clinic seminars to speak with law students. It has seemed essential to both include critical thinkers from outside of the law school as partners and allies on experiential education projects, as well as to bring those collaborators to the law school to speak with students. In New York, we were lucky to have organizers such as Saru Jayaraman and Fekkak Mamdouh from ROC

² COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT (Oxford University Press 2011).

³ REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER (Harvard University Press 2012).

⁴ RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE (Belknap/Harvard University Press 2003).

New York, Ai-Jen Poo and Priscilla Gonzalez from Domestic Workers United, Bhairavi Desai from NY Taxi Workers Alliance, Nadia Marin-Molina from Workplace Project, and Subhash Kateel and Aarti Shahani from Families for Freedom come to clinic classes. In Orange County, Annie Lai and I have had Hairo Cortes from OC Immigrant Youth United, Veronica Alvarado from Warehouse Workers Resource Center, Alexis Nava Teodoro from RAIZ Deportation Defense, and Pablo Alvarado from National Day Laborer Organizing Network speak to our students. They talk about their work, their theories of social change, and how lawyers might help advance the struggles in which they are engaged.

II. Teaching from Biography

A. Personification

The lawyers in the recessive strain of public interest practice that we discuss are models and exemplars, particularly when the dominant strains of mainstream practice on behalf of both public interest causes and private actors are made to appear monolithic and one-dimensional in many first-year contexts. The biographical narratives enable us to spotlight lawyers who have *subverted practice norms* and deployed legalist tactics against systems of power and methods of distribution that would otherwise be reinforced by law and legal practice. The stories convey both *substantive theories of justice and processual theories of social change*. The idea that “another world is possible” is essential in an educational context in which law students may feel trapped by a tradition of precedent and focus on individualized struggle. Organizers often speak about their bad experiences with lawyers (trapped by their learned assumptions of precedent and individualized struggle), not in the gratuitous way that we see occur in popular culture, but with a degree of love and need. Organizers entrust workers or immigrants with whom they are working to lawyers, who then may abuse that trust by remaining unaccountable. Organizers ask law students and law clinics to be accountable, to mindfully refrain from undermining mobilization, to be more *ethical and professional* in our interactions with clients. My clinic partner Annie Lai often talks about working with organizers as introducing *interdisciplinary professional practice* to our students. It breaks some of the self-enforced isolation of law schools and presents a model that competes with the standard versions of interdisciplinary collaboration that we recognize in academia—privileging scholars from other fields and fealty to quantitative empirical methods—and in poverty law, most often in the provision of services to individuals with social workers and medical workers. Finally, bringing outsiders in gives *comfort and context* to students who feel alienated in law schools because of their life experience and/or political ideas. The emphasis in admissions on entering indicators privileges students with particular academic and social backgrounds. Even at the most progressive law schools, the curriculum can be overwhelmingly dense and isolating. It is essential that we open up our classrooms to students who feel marginal on the grounds of identity and ideology. Organizers and unconventional lawyers who made it into practice against the odds can be lifelines through law school for some of our students.

B. Conflict

It is common to say that we live in an ahistorical or anti-historical age and culture, particularly in the United States. We avoid the past because we want to ignore what we may find. We are not willing to confront our sins of *plunder and genocide* or to seek redemption for those sins. It seems essential to bring history, particularly the struggles of marginalized peoples in American history, into our classrooms. It is difficult to understand Black Lives Matter without some understanding of the history of race and policing, particularly the state repression of activist uprisings by African Americans across time from fugitive slave patrols to COINTELPRO. Our knowledge of this history is fragmentary; bringing these topics into the classroom invites all students to share what they know from their prior schooling and from their families and communities. We also pick up recurrent themes and identify *continuities and discontinuities* over time. The past is not as neat and linear as we may think and the present is not as scrambled as it may seem. Intra-movement conflicts are particularly recurrent, as we see generational splits in various contexts over time. We see the strengths and weaknesses of movement activity initiated and sustained by singular charismatic leaders. We begin to think about movement activity more dynamically, seeing the civil rights movement not just as the March on Washington, but as also the initial failed attempts to desegregate buses in Montgomery and the bottom-up, youth-led lunch counter sit-in's across the south. This is a particularly important insight for students to have as they become frustrated working with disorganized and divided movement formations in various current contexts. Finally, organizers, especially, bring critical understanding and intuitions about *social context*, problem definition and remedies that are essential to convey to students.⁵ They force us out of the box of adversarial legalism, help us redefine winning and losing, and remind us of how the legal case fits into the larger campaigns and causes that they are advancing. This skill—to learn about the larger context in which we deploy legal tools—is essential in many practice areas. In large firm practice, lawyers are expected to think strategically as they advise corporate clients on both litigation and transactional projects. In poverty law practice, this approach is called “holistic” lawyering, in which lawyers are taught to think about an individual or family’s problems outside of the individual case on which they are working. The historical sources teach us about social context vertically over time and the current movement actors teach about our current social context horizontally. Both perspectives are essential in any teaching about lawyering and legalism, more generally.

C. Constraints

⁵ Eve Smith-Darian makes a broader, insightful case for the use of ethnography in legal education to teach students about social context in a transnational and pluralist legal order. *The Crisis in Legal Education: Embracing Ethnographic Approaches to Law*, TLI Think! Paper 02/2015 (November 25, 2015), available at <http://ssrn.com/abstract=2696806>. Contra the characterization in the paper, clinical practice has the potential to offer ethnographic insight that moves students well beyond what Smith-Darian calls “vocational skills.”

It remains unclear to me whether the biographical materials accomplishes everything I'd like it to accomplish, in terms of encouraging and nurturing critical spirit in the law school classroom. I question whether *reverence and distance* from the exemplar lawyers might silence critiques of their practice and make them seem out of reach. The changed economic context of legal practice over time may again distance our students from historical figures (though Kenneth Mack's work on African American lawyers in the post-Depression era offers powerful lessons about adaptation in varied practice settings). The second reservation I convey to students is about *reification and exclusion* of sources. Why do I choose these particular historical and current movement sources? How does my affirmative agenda cause me to spotlight some lawyers and neglect others? How do we account for the iterative and somewhat unpredictable revisions of historical insight when examining legal practice and social context? Who remains off the page? Personification may make the abstract ideas that constitute radical politics—the politics of social change and progress—more concrete and discernible to law students. It may help them think about legal tactics that may be deployed to support strategies of social change. But it also may be *reductive*, favoring coherent narratives over complexity and more fragmentary accounts of movement and struggle. At the least, we must remain vigilant of these and other dangers as we might experiment with lawyering instruction through biographical narrative.

Conclusion

I have written this paper to think more critically about approaches to which I have gravitated in both seminar and clinical teaching. I hope that this brief documentation of the aspiration and the method might advance the larger conversation about why and how law schools might engage with communities.