SENSIBILITIES FOR SOCIAL JUSTICE LAWYERS

Ascanio Piomelli

piomelli@uchastings.edu

Sensibilities for Social Justice Lawyers

ASCANIO PIOMELLI*

More than forty years ago, in Rules for Radicals, Saul Alinsky prescribed a path to redirect the energies and approaches of the young social justice activists and would-be revolutionaries of the 1960s and 1970s. Recently, I was asked to reflect on the practices and training of the social justice lawyers of the 21st Century. Rather than pronouncing rules for the next generation of lawyers to follow, I will suggest six mindsets or sensibilities that I consider crucial for 21st Century social justice lawyers of all ages. As I will briefly sketch, I believe social justice lawyers are most effective when we appreciate—and live out—six simple truths:

(1) We are not starting from scratch; we are building on the ideas and efforts of our predecessors and contemporaries.
(2) It helps to be clear about our fundamental aims: what we mean by and count as social justice and social change.
(3) We are at our best when we connect our efforts with others.
(4) It is vital to cultivate our ability to see from multiple perspectives.
(5) We are wise to pay close attention to class, race, and gender and to consciously combat all aspects of our cultural encapsulation.
(6) Fostering social change is hard, fulfilling work.

* Professor of Law, University of California, Hastings College of the Law. J.D., Stanford Law School; A.B., Stanford University.

1. See SAUL D. ALINSKY, RULES FOR RADICALS: A PRAGMATIC PRIMER FOR REALISTIC RADICALS (1971). As his subtitle conveys, Alinsky urged greater attention to pragmatism and realism.

1. We are not starting from scratch; we are building on the ideas and efforts of our predecessors and contemporaries.

To understand where we stand, how we got here, the roads others have walked, and the paths we might pursue, it behooves us to be intimately familiar with the extensive literature of the past thirty years about lawyering and social change. We should know well the work of Arthur Kinoy and Gary Bellow, of Jerry López, Lucie White, Luke Cole, and Jennifer Gordon of Shauna

3. Arthur Kinoy was one of the preeminent social justice lawyers in the U.S. in the second half of the 20th Century. He worked with militant unions and radical activists to resist Cold War repression in the 1940s and 1950s, with the Black freedom movement in the 1950s and 1960s, and defended social activists in the 1960s. He co-founded the Center for Constitutional Rights, was a leading advocate before the U.S. Supreme Court, and was a law professor at Rutgers University. See Arthur Kinoy, Rights On Trial: Odyssey of a People’s Lawyer (1983) (describing vision of “people’s lawyer” who focuses on using legal skills to enhance morale and ability of activists to push for social change).


6. Louis A. Horvitz Professor of Law, Harvard Law School. See Lucie E. White, Collaborative Lawyering in the Field? On Mapping Paths from Rhetoric to Practice, 1 Clinical L. Rev. 157 (1994); Lucie White, “Democracy” in Development Practice: Essays on a Fugitive Theme, 64 Tenn. L. Rev. 1073 (1997); Lucie E. White, Facing South: Lawyering for Poor
Marshall,9 Bill Hing,10 Sameer Ashar,11 Bill Quigley,12 and a host of others.13 We also need to be well read in the literature about


10. Professor, University of San Francisco School of Law, and founder of the Immigrant Legal Resource Center. See Bill Ong Hing, Coolies, James Yen, and Rebellious Advocacy, 14 ASIAN AM. J. 1 (2007).


16. Myles Horton was one of the founders of the Highlander Folk School, which provided leadership training to many of the key participants in the union organizing movement in the 1930s and 1940s and the Black freedom movement in the 1950s and 1960s. See FRANK ADAMS & MYLES HORTON, UNEARTHING SEEDS OF FIRE: THE IDEA OF HIGHLANDER (1975); JOHN M. GLEN, HIGHLANDER: NO ORDINARY SCHOOL 1932–1962 (1988); MYLES HORTON & PAULO FREIRE, WE MAKE THE ROAD BY WALKING: CONVERSATIONS ON EDUCATION AND SOCIAL CHANGE (1990); MYLES HORTON, JUDITH KOHL & HERBERT KOHL, THE LONG HAUL: AN AUTOBIOGRAPHY (1997).
Wade Rathke,19 and Gary Delgado,20 of Cesar Chavez21 and Dolores Huerta,22 of Mahatma Gandhi23 and Martin Luther King.24 And,

17. Paulo Freire, a Brazilian educator, was perhaps the world’s leading theorist and proponent of popular adult education. See PAULO FREIRE, PEDAGOGY OF THE OPPRESSED (1970); PAULO FREIRE, THE POLITICS OF EDUCATION: CULTURE, POWER & LIBERATION (1985); HORTON & FREIRE, supra note 16.


given their success, we are wise to also study the tactical and strategic brilliance of the Powell Memorandum\textsuperscript{25} and the Christian Right.\textsuperscript{26} As my students often complain, we have a lot of reading and reflecting to do, if we are serious about devoting our lives to the struggle for social change.

2. It helps to be clear about our fundamental aims: what we mean by and count as social justice and social change.

Our understanding of what we seek to achieve is the touchstone by which we assess and continually re-shape our tactics, strategies, and approaches. For the past forty years, the predominant view among public interest lawyers has been that our objective is to achieve particular policy outcomes or shifts in legal doctrine or statutory or regulatory interpretation that further the interests of our clients. In a phrase, the aim has been law reform. The primary problem to remedy, in this view, is the legal and political system’s failure to adopt policies favorable to low-income and other marginalized groups and to formally recognize their legal claims. The lawyer’s purpose is to obtain favorable legal and policy outcomes on behalf of her clients.

In the past two decades, a growing chorus of social justice lawyers and lawyering theorists has urged that our ultimate goal

\begin{itemize}
\item \textit{Canaan’s Edge: America in the King Years, 1965–68} (2006); \textit{Taylor Branch, Parting the Waters: America in the King Years, 1954–63} (1988); \textit{Taylor Branch, Pillar of Fire: America in the King Years, 1963–65} (1998); \textit{David J. Garrow, Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference} (1986).

\item \textsuperscript{25} Memorandum from Lewis F. Powell Jr. to Eugene B. Sydnor Jr., Chairman of Education Committee, U.S. Chamber of Commerce, (Aug. 23, 1971), \textit{available at} http://research.greenpeaceusa.org/?a=download&d=5971 (last visited Feb. 17, 2013). A few months before President Richard Nixon appointed him to the U.S. Supreme Court in 1971, Lewis Powell, wrote this confidential memo to the U.S. Chamber of Commerce urging major corporations and their supporters to launch a full-scale, multidimensional effort to invest in new institutions dedicated to shifting public discourse, attitudes, and beliefs to reverse what he labeled the “attack on the free enterprise system.” \textit{Id.} at 1.

\end{itemize}
ought instead to be building the power of our clients and their communities to directly shape their own lives and world. 27 Advocates of this approach—variously called “rebellious lawyering,” “community lawyering,” or, the term that I prefer, “democratic lawyering” 28—view the ultimate condition we seek to reverse as political, economic, and social subordination. Subordination manifests and perpetuates itself through practices that presume that some people matter and some don’t, that some people merit consulting and some don’t, that some people should shape the contours and rules of our society and some need not. Subordination fuels and freezes material and spiritual deprivation. These social justice lawyers consequently focus on fostering clients’ and communities’ ability to act collectively with others in coordinated public efforts across legal, political, social, economic, and cultural spheres.

The goal is to build the power of “ordinary”—non-affluent, non-expert, non-privileged—people and communities to shape their circumstances and living conditions. The aim is not only to win particular rights or policy outcomes, but to pursue and win them in ways that enhance clients’ and communities’ power to win future struggles and to preserve those victories. Building power is the ultimate goal, particularly the power to act in concert with others. Knowing this discourse and deciding for ourselves what we are striving to achieve helps guide us in moments of uncertainty and enables us to reshape our practices to better fit our aspirations.

3. **We are at our best when we connect our efforts with others.**

It may sometimes be defensible for social justice lawyers to operate largely on our own (or only with fellow lawyers), but it is almost always dangerous. As social justice lawyers, it helps to remember that we are not the only potential agents of social change. We are at our best when we learn from and connect our efforts with mobilized groups of clients and constituents, with organizers and political activists, with public officials, researchers and philanthropists, with educators, journalists, and artists. For when we connect ourselves and our clients with others, we multiply the

27. See authors cited, supra notes 5–13.
28. See Piomelli, Challenge, supra note 13, at 1386.
domains in which we can act, the tactics and strategies we can deploy, and our odds of ultimate, lasting success in changing our society and our culture. It is therefore vital for social justice lawyers to understand coalitions—which Bernice Johnson Reagon has taught us are vital, but dangerous settings—and to know how to operate effectively in them.

In the monograph that inspired the conference for which I initially sketched this list of sensibilities, my colleague, Professor Mark Aaronson, reflects upon Ralph Abascal’s lawyering in the struggle to resist Governor Reagan’s welfare reform initiatives of the early 1970s. Interpreting Ralph’s work as waged largely independently from client groups, Mark uses the case study to explore what it means to represent a geographically dispersed constituency. But from what I know of Ralph Abascal’s work, he did not always work “gyroscopically,” to use Mark’s term. As a pioneer in the environmental justice movement and a partner of the disability rights movement, Ralph also knew well how to work with, rather than simply on behalf of clients and communities. I do not deny that there are moments of crisis or opportunity where it is not possible to collaborate closely with clients and constituencies, but we are on firmer ground when those moments are few and far between. Without individual or institutional partners to whom we must directly account—or, at the very least, with whom to consult and strategize—we deprive our efforts of vital insights and we risk descending into paternalism or expending resources to pursue issues or remedies that our clients and constituents don’t prioritize.

31. Professor Aaronson borrows the concept of “gyroscopic” representation from political theorist Jane Mansbridge to signify representatives who “act like gyroscopes, rotating on their own axes, maintaining a certain direction, pursuing certain built-in aims” and whose “accountability is only to their own beliefs and principles.” Id. (quoting Jane Mansbridge, Rethinking Representation, 97 AMER. POLI. SCI. REV. 515, 520 (2003)).
4. It is vital to cultivate our ability to see and understand from multiple perspectives.

Law school prides itself on teaching precisely the skill of viewing a situation from different perspectives. What I mean, however, is more than the ability to deploy and critique arguments from multiple sides or the ability to consider the precedential impact of deciding a particular case. Three other types of multiple-perspective-taking are vital to our success as social justice lawyers.

We need to know how to look and think top-down, to take a birds-eye view of systems and how they function and might be changed, as well as how they will likely respond to our change efforts. But simultaneously we must also look, think, and engage bottom-up, to understand how systems and practices look and feel from the perspective of those enmeshed in them and to elicit the ideas of ground-level participants both about what to address and how.

In a temporal sense, it is vital to look not only at the current dimensions of an issue or situation, but also to look backward to understand its historical roots and forward to anticipate the future trajectory of potential approaches.

And finally, we must cultivate our ability to recognize strengths as well as weaknesses. In law school, we are tenaciously taught (explicitly and implicitly) to hone in on weaknesses in arguments, in others, and in ourselves. But if we are to grow as lawyers and humans, we can’t only identify failings or deficits to improve, we must also recognize, replicate, and build upon what we do well. Similarly, as social justice lawyers, it opens a world of possibilities when we see not only our clients’ vulnerabilities and deficits (and provide our legal services to compensate for them), but when we recognize as well their strengths, insights, and assets (and build upon and connect them).

5. We are wise to pay close attention to class, race, and gender and to consciously combat all aspects of our cultural encapsulation.

“Cultural encapsulation” means the unconscious ways that our race, gender, and initial class background, as well as our
professional socialization and status in the professional middle class, all shape our thought and action.\textsuperscript{32} For this journal and its readership, I will not rehearse all the reasons and ways that race, class, and gender matter—in the lives of our clients, the attitudes of decision-makers, the composition of the social justice lawyering bar, the interactions between social justice lawyers and our clients and communities. As a large literature has explored, it is crucial for lawyers to recognize the cultural proclivities and the ensuing opportunities and constraints that stem from the key markers of our identity and to know how to work across dimensions of difference.\textsuperscript{33}

In addition to paying attention to the impact of our race, class, and gender on our interpretation of the world and our interactions with others, it is vital that we focus too on our enculturation as lawyers and expert professionals. We are more likely to stay on track and meet our aspirations if we consciously explore whether the ways we are trained or conditioned to think and act—the assumptions that go without saying, that strike us as just the way things are—are consistent with the change we strive to create and the means we deem best calculated to bring it about.

For those of us moved by the democratic vision of lawyering, there are central elements of our cultural conditioning as lawyers from which we must deliberately break free. We regularly reject, for example, the idea that lawyers not only think differently, but that we think more clearly and effectively than other people. We also resist the assumption that law and lawyering are too complex and overwhelming for non-lawyers (especially those without formal education) to understand or participate in effectively—the


expectation that our clients are uniformly too overwhelmed or too vulnerable to move effectively against their own subordination. And we challenge the conviction that expertise is properly measured by formal education and credentials (rather than lived experience) and that credentialed experts should be the primary sources of information and only indispensable participants in sound decision-making.

6. Fostering social change is hard, fulfilling work.

In the seminar that my colleague, Shauna Marshall, and I teach each year to second-year law students concentrating their studies in social justice lawyering, we are often taken aback—originally in surprise, now simply in dismay—when a substantial portion of our students share that their attraction to social justice lawyering stems in part from a sense that social justice lawyers “don’t have to work long hours”¹³⁴ and are thus better able to achieve work-life balance.

While we strongly support the importance of personal self-care and family responsibility, we try, with incomplete success, to encourage this portion of our students to reconsider both the expectation and aspiration to work forty-hour weeks, along with the tacit assumptions underlying them. We seek to encourage these budding social justice lawyers to expect to work hard (including nights and weekends when necessary). But instead of dreading that prospect, we urge them to cherish and seize the opportunities that social justice lawyering provides for us to integrate and join, rather than segregate and balance, our work and our personal lives.

To be sure, a significant number of our students do not share the expectation or aspiration to limit their work to a nine-to-five schedule. They and we point out that social justice lawyers, especially early in their careers, have much still to learn about law and lawyering and many relationships they must invest the time to develop with communities and allies. They and we note that social justice lawyers typically face adversaries with far greater resources and judges and policymakers who are often predisposed against our clients, so we need to work hard to make headway in the currents

¹³⁴ The context of these comments makes clear this is not simply a comparison to the hours worked by attorneys in large private firms, but instead to a hope to work something close to a standard U.S. workweek of forty hours.
we swim against. Together, we suggest that the stakes are high enough, the consequences of defeat or success significant enough, and the number of available social justice lawyering positions limited enough, that clients, communities, and social justice organizations are entitled to expect social justice lawyers to work as long as it takes to vigorously advocate with and for their clients and constituencies.

We emphasize the relative privilege of social justice lawyers. We point out that social justice lawyers are among the few in the U.S. economy who are able to engage in work that is consistent with and meaningfully expresses our deepest values. Unlike the majority of U.S. workers, our work is not typically closely supervised, physically taxing, or spiritually deadening. And unlike many attorneys in private firms, social justice lawyers pursue outcomes we wholeheartedly endorse. In our jobs, we creatively express, rather than ignore or mask, our interests, values, and key aspects of our lives. We also note how social justice workplaces are far more cooperative than competitive, with co-workers usually willing to pitch in and support each other if workloads become crushing. We discuss, as well, the joy of working to achieve outcomes we feel good about, with colleagues, clients, and allies who share our values and commitments. And we reassure these students that most people find being a social justice lawyer, representing clients and causes they care deeply about, far more engaging than they found their law school classes and activities; it does indeed get better.

Frequently, however, our efforts are met with examples of organizations that do prioritize containing lawyers’ workloads to close to forty hours a week. The students who raise these examples share legitimate concerns of preventing burnout, as well as compelling stories of having experienced as children the consequences on their families of long parental work hours. Occasionally, a student will express the sentiment that social justice lawyers’ low salaries (perhaps combined with substantial educational debt) justify limiting work hours to close to forty a week. Eventually, someone counters that social justice lawyers’ pay is only low in comparison to salaries in private firms and government and still supports a solid middle-class standard of living, especially for couples who both work for wages. Without perfectly predicting positions in these discussions, the impacts of
race and familial socioeconomic class background on these conversations are apparent.

In all these discussions, we steer our students away from thinking about work-life balance in terms of a comparative tally of (presumptively draining) work hours vs. (presumptively recharging) leisure hours. We suggest instead a focus on how much time social justice lawyers spend in fulfilling, self-affirming, meaningful activities—at work and at home—that lead to outcomes that matter, serve those we care about, improve our communities, bring us satisfaction, uplift our spirit, express our authentic selves, and enable us to grow in the ways we desire. We urge our students to appreciate the ways in which social justice lawyering enables us to integrate, rather than to separate, our work life and our social and family life.35 We suggest that this seamlessness in one’s life is a precious gift that few others experience.

In pessimistic moments, I worry that losing the persuasive struggle over this final sensibility endangers the odds of successful implementation of the first five. The optimist and fighter in me, though, usually retort that we simply need to redouble our efforts to ensure that social justice lawyers share a personal or visceral connection, rather than simply a philosophical one, to their organizations’ and clients’ attainment of their aims. We need to ensure that as social justice lawyers we do not view our work as a bestowal of charity upon clients and communities—who, as recipients, are only to express gratitude, but not to shape or redirect the service we provide. We must continue to push to be accountable not only to supervisors and boards of directors, but also to clients and communities. Perhaps most importantly, we must recruit and welcome into the social justice lawyering community attorneys who come from the communities we serve, who see themselves or their loved ones in the faces of those with whom we work.36

35. We and the social justice lawyers whom we bring in as guests to our class describe, for example, the ways in which our parenting is enhanced by being able to discuss with our kids the ends that we pursue and the values we act on through our work.

36. One of the reasons that we changed the name from the Public Interest Law Concentration to the Social Justice Lawyering Concentration was our sense that many students of color and students from working-class or low-income backgrounds have come to associate the “public interest” label with White, middle-class, well-meaning-but-naïve do-gooders.
As social justice lawyers, we are at our best when we fully internalize that our lawyering is not primarily about our own self-expression. It is about the vital end we seek: the survival, advancement, and flourishing of our clients and our communities. Our aim is not simply to “fight the good fight,” but to win it.