1994

Practicing Community (Book Review)

Anthony V. Alfieri

University of Miami School of Law, aalfieri@law.miami.edu

Follow this and additional works at: https://repository.law.miami.edu/fac_articles

Part of the Law and Society Commons, and the Legal Profession Commons

Recommended Citation


This Article is brought to you for free and open access by the Faculty and Deans at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.
BOOK REVIEWS

PRACTICING COMMUNITY


Reviewed by Anthony V. Alfieri2

“Yeah,” he said, “we used to call it nigger removal.” Pretending not to hear, I looked away to the soot-coated New England church where the night meeting had just ended. People milled around on the sidewalk, some stepping into the street. They talked about crime and housing. They wanted more police, better housing, cleaner streets.

This was my first meeting. My job was to organize community education and outreach programs for the housing unit of the local legal services office. The community was multi-ethnic, multi-racial, and poor. Waves of immigrants — Irish, Southern black, Portuguese, Laotian — had left their mark on storefronts, streets, and homes. Sometimes new storeowners never bothered to take down an old sign: a Chinese restaurant housed in a former gas station still bore the name of the station in tall black letters painted over the front door.

Some homeowners also left untended the ramshackle repairs of previous owners. Their houses stood crooked and stooped on small cement or tar-covered lots, many with surrounding chainlink fences. Most had little time or money for renovation; they were either too busy with jobs and children or too old and impoverished. After a few months of walking house-to-house and knocking door-to-door, I developed an aesthetic of urban displacement that helped me to learn the history of a block, a store, or a home by surveying its outward signs of decay and renewal.

“Yeah,” he said, “in the sixties they called it urban renewal. They kick you out of your house, move you away from your neighborhood,

1 Kenneth & Harle Montgomery Professor of Public Interest Law, Stanford University.
2 Associate Professor of Law, University of Miami School of Law; A.B. 1981, Brown University; J.D. 1984, Columbia University School of Law.

I am grateful to Gary Bellow, Tom Baker, Naomi Cahn, Wes Daniels, Bob Dinerstein, Ellen Grant, Chris Harvie, Marguerite Holloway, Keith Kerman, Gerald López, Martha Mahoney, Peter Margulies, Rick Marsico, Charles Ogletree, Michael Perlin, Susan Stefan, Paul Tremblay, Lucie White, the students of my Public Law and Ethics seminar, and the participants in the American University Washington College of Law Clinical Colloquium for their comments and support. I also wish to thank Felicity McGrath, Eileen Moorhead, and the University of Miami School of Law library staff for their research assistance.

This Book Review is dedicated to Amelia Hope.
and put you up in a high-rise where you don't know anybody." I didn't know the man's name. We had happened to walk out of the meeting together. In the dim street light, I could see only a short and thickset black figure. From his closely cropped hair with scattered patches of gray, I guessed he was in his fifties, though poor people often look older.

I asked him what he thought of the meeting. He asked me what I was doing there. I explained that I worked for a legal services program coordinating community outreach. He smiled. I asked him about the problems in the community. He laughed. I asked him whether he wanted to help organize a community, block, or tenants' association to improve the neighborhood. "Urban renewal," he said, "nigger removal." Then he turned and walked away.

Some years later, I worked for a legal services office in a Lower East Side neighborhood of New York City. Like the New England community I came to know, the neighborhood had been swept by periodic but distinct swells of immigration: Italian, then Jewish, and later, Puerto Rican. One summer night, a senior legal services attorney and I attended a meeting called by a local community group trying to rehabilitate abandoned buildings. The meeting took place in a vacant storefront on a side street. The organizers had closed all the windows and doors to keep out the street noise. There was no air-conditioning.

When we walked in, one of the community organizers, a young Puerto Rican woman, quickly spotted our suits and ties and seated us. The storefront had been emptied and the walls razed, leaving a large, unevenly painted room with steel and plastic chairs arranged in a big circle in the middle of the floor. Just before the meeting began, an older black woman seated nearby stood up, walked to a table where several pitchers of water stood, poured out two cups, walked back, bent over, and, without a word, handed them to us. They were the last two cups on the table.

What do the acts of subordinated people toward progressive lawyers signify? What does it mean to walk away from a lawyer or to offer him a cup of water? Is the meaning tied to a local setting or does it extend to a wider, universal context? Is it influenced by class, ethnicity, gender, race, or power? Is it discoverable or knowable?

I believe that we can partially decipher the meaning of people's acts, contingent on the epistemic, interpretive, and linguistic stance of both participants in and observers of those acts. Lawyers are both

---

3 I employ the term "subordinated people" to describe individuals — here poor people of color — who inhabit the bottom of political, social, and economic hierarchies for reasons of age, class, disability, ethnicity, gender, race, or sexual orientation.

4 I use the term "progressive lawyers" broadly to encompass civil rights, legal services, and public interest lawyers.
participants and observers; their acts of knowing, interpreting, reading, writing, and speaking construct as well as witness the construction of meaning. Law inscribes fragments of this constructed meaning into its oral, written, and social texts, which in turn shape the roles and relations of lawyers, clients, and institutional decisionmakers. Out of these roles and relations community sometimes comes.

My encounters with poor people in New England and New York City signify for me the loss and redemption of community. Like many progressive lawyers, I have long searched for community among people who look upon me as an outsider. By community, I do not mean a collection of individuals united by a shared class, gender, or race, but rather, a congregation of different individuals drawn together by a commitment to particular legal rights and political entitlements. The congregation may be large or small. The commitments may be abstract (economic justice) or concrete (the right to shelter). Neither the size of the congregation nor the object of the commitment is of great consequence. What matters is the recognition and the appreciation of difference. Communities forged from difference bridge the epistemic, interpretive, and linguistic boundaries that prevent individuals from collaborating to achieve common goals. Cast as outsiders, lawyers stand at the borders of these communities, their entry impeded by difference.

Differences in knowledge and education, cognition and interpretation, language and symbol all erect boundaries. Some boundaries are visible in the trappings of lawyer dress (suit and briefcase); others resonate in the content of lawyer speech (substantive rights and procedural rules). Additionally, the knowledge structures, cognitive frameworks, and interpretive practices of lawyers establish boundaries through certain conceptions of clients (dependent, inferior, passive), through spatial relations (gesture, posture, seating), and through patterns of speech (formal, monologic).

Boundaries of difference crisscrossed the neighborhood meetings I attended in New England and New York City. They cut across class, education, gender, language, and race. For me, this cleavage produced both loss and redemption. Community is lost when people assume that difference precludes understanding. By contrast, community is redeemed when people believe that difference provokes understanding, even if that understanding is difficult to reach and only partial in scope.

5 In organizing community education and outreach programs, I collaborated with people who expressed both abstract and concrete forms of normative commitment. Some participated in program activities out of religious conviction, motivated by a spiritual sense of community service. Others collaborated to fix problems—for example, to remove the crumbling chimney of a dilapidated house located across the street from a school playground.

6 See Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law 49–78 (1990) (examining the unstated assumptions of difference dilemmas).
The man who turned his back on me and walked away rejected the chance of community. He had good historical reason. I am a white, male lawyer — an outsider. For twenty or more years, he has witnessed people who look and sound a lot like me march unsummoned into his neighborhood to fix problems, to "do good." He has watched them bulldoze his home, fracture his neighborhood, and segregate his housing. He has seen people like me come and go. Not surprisingly, he may distrust me; indeed, he seems implicitly to hold me responsible for the errors and ephemeral convictions of forgotten advocates. With no chance for understanding between us, he repudiates my romantic bid to "save" him.

The woman who offered me a cup of water may be no different. She too may hold me in contempt for the arrogant and wrongheaded acts of my predecessors. She, however, may be more politic. She might seek to evoke sympathy in me for the cause of her community group, or she might want to court favor in the event she needs to retain me some day. Perhaps she is acting out the ritualistic flattery and servility expected of the poor when in the company of "helping" professionals. More simply, she might have seen us sweating in our suits and ties, and thought us to be thirsty.

Whatever her intent, the woman won our gratitude and notice. That human connection created the opportunity, decidedly narrow and perhaps illusory, for the redemption of community. Every meeting between progressive lawyers and subordinated people affords the opportunity to redeem community in small moments of human connection and in large events of group mobilization. The humanist faith that guides progressive advocacy embraces that opportunity.7

In Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice, Gerald López undertakes a penetrating analysis of progressive lawyering practiced on behalf of subordinated people in impoverished communities. Not since the 1978 publication of Gary Bellow and Bea Moulton's groundbreaking work, The Lawyering Process,8 has a book presented such a thorough critique and so bold a vision of progressive lawyering in the fields of civil rights and poverty law.

Notwithstanding López's aspirational vision, I harbor little faith in the ability of progressive lawyers to redeem community in their individual and collective meetings with subordinated clients. All too often, lawyers exploit these valuable encounters to advance personal

---

7 Lucie White echoes this faith in her work. See Lucie E. White, Seeking "... the Faces of Otherness ...": A Response to Professors Sarat, Felstiner, and Cahn, 77 CORNELL L. REV. 1499, 1511 (1992) ("We must seek, in our encounters with others, not just to map the power or read the text, but also to recognize, in all its alterity, the other's face.").

moral and political agendas. In carrying out their own agendas, progressive lawyers give too little and take too much.

What do progressive lawyers give to subordinated people? The conventional answer is rights. Lawyers give people their legal rights. The logical correlate of rights is power, for judicially enforced rights constitute power. On this reasoning, giving people their rights is empowering.

What do progressive lawyers take from subordinated people? The answer is dignity: the value of independent action and speech. Lawyers take people's dignity. The taking deprives them of the opportunity to demonstrate — in private and public spheres — their competence as autonomous, self-determining agents. That deprivation denies people a vital component of their personhood (self-esteem and self-sufficiency) and denies communities a crucial element of their solidarity (organization and mobilization).

How do we explain the give and take of progressive lawyering? Some turn to theory and winnow insights from the writings of critical race, feminist, and critical legal studies scholars. Others sift for connections in the interdisciplinary literature of the humanities and

---


14 Because critical legal studies (cls) scholars have neglected the analysis of practice, the task of combining theory and practice has been left to sympathetic observers. See, e.g., Anthony V. Alfieri, Disabled Clients, Disabling Lawyers, 43 Hastings L.J. 769, 778-94 (1992); Phyllis Goldfarb, Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory, 43 Hastings L.J. 717, 727-39 (1992).

15 Some have borrowed the tools of linguistic and symbolic analysis from the humanities. See, e.g., Marie Ashe, The "Bad" Mother in Law and Literature: A Problem of Representation, 43 Hastings L.J. 1017, 1019-29 (1992); Naomi R. Cahn, Inconsistent Stories, 81 Geo. L.J. 2475, 2493-2515 (1993); Clark D. Cunningham, The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse, 77 Cornell L. Rev. 1298, 1357-83 (1992).
Others, like López, struggle to integrate theory and practice.

This Review cannot hope to provide a full account of López's attempted integration. The richness of his exposition, its narrative intricacy and sweep, defy summary treatment. Accordingly, I pursue a less tailored, thematic analysis that nevertheless ties *Rebellious Lawyering* to progressive legal scholarship, a tradition both reinvigorated and revised by the emerging theoretics of practice movement. The focal points of this analysis are López's ideas of "regnant" and "rebellious" lawyering.

I confront López's ideas of lawyering in the same spirit that I confront my clients in impoverished communities: I try to be open and to connect. Like my clients, López views me with skepticism. I am his regnant archetype: the privileged, white, male, straight lawyer. To many, including López, I may be "too white, too professional, too about to go off to some law office" to get "hooked into" the transformative, community-based work of rebellious lawyering (pp. 275, 329). Even when I "get out" (p. 328) on the streets to learn about a community, my understanding may be too restricted by the boundaries of race, gender, class, ethnicity, and sexual orientation. Because, as López observes, the contrast of boundaries helps define identity (p. 373), I cannot "cross over" (p. 375) to bridge the differences separating progressive lawyers from subordinated clients and communities.

Yet, López adds, I can "bear witness" (p. 275) to the harm visited upon clients and communities and, moreover, "pitch in" (p. 287) to help in their defense. But can I be integrated into a community when I am the outsider, whether regnant or rebellious? Can I take a stand with a community or fight the same fight? López's answer is more ambiguous than the response I encountered in New England fifteen years ago. López will not turn me away on race alone. At the same time, he will not hold out the promise of redeeming community. Instead, he looks to see if I care, if I do good work, if I am willing to reach across boundaries. Only then will he admit the possibility that progressive lawyers and subordinated clients may redeem momentarily a sense of shared community lost to them.


I. REGNANT LAWYERING

López begins *Rebellious Lawyering* by challenging the progressive tradition of regnant lawyering. The roots of this challenge are visceral. López grew up in East Los Angeles, "then the Chicano part of Los Angeles," he notes (p. 1). During the 1960s, López recalls, East L.A. was the landing site for the "first wave of self-consciously progressive lawyers" (p. 1). These lawyers were "outsiders — white and male" (p. 1). To López, "they all appeared to dress, speak, and act alike — or at least to dress, speak, and act not at all like us" (p. 1). The avowed purpose of this "cadre of new lawyers" was to fight the good fight (p. 1). Fighting the good fight, López adds, meant fighting "our fights" (p. 1).

López's impression of these early progressives is "mixed at best" (p. 2). Although he praises their intentions and dedication, he finds their ideas of law practice and professionalism striking in their coincidence with the subordinating assumptions of "traditional legal and popular cultures" (p. 2). These same assumptions, López observes, "long had kept Latinos, among others, at the margins and on the bottom" (p. 2). In this way, the reproduction of prevailing legal culture in progressive practice reinforced the conditions of subordination the activist lawyers originally intended to change (p. 2).

López's disapproval of progressive law practice goes beyond historical grievances concerning the treatment of the Chicano community in East L.A. (p. 3). His indictment of progressive practice faults the short-sightedness, moral lassitude, and hypocrisy of lawyers. Progressives, he complains, fail to understand "the relationship between what they do and what they hope to change" (p. 5). Moreover, they seem unperturbed by their ignorance and stubbornly unwilling to learn.

In mounting such a sharp attack, López seeks not only to explore the problems of progressive law practice, but also to reform the ideas and methods animating that practice (pp. 5-10). López calls the conventional vision of progressive lawyering "the regnant idea of practice" (p. 23). The regnant idea, he explains, "defines a lawyer's connection to her job, to what she knows, to those who work with and around her, to the institutions in which she functions, and to the society she desires to change" (p. 23). In this sense, the idea both "surrounds" and "dwells within" progressive lawyers (p. 23).

López describes the idea of regnant lawyering in terms that echo the critique of conventional lawyering tendered by other theoreticians of practice scholars. According to this critique, lawyers are self-styled "political heroes" (p. 24). They are the "preeminent problem-solvers," rushing to cure situations of injustice, even though they know little about the cultural, political, and socioeconomic structures of subordination and "try little to learn whether and how formal changes in
law penetrate the lives of subordinated people" (p. 24). The few who overcome subordination, struggle to pursue professional education and training, and return to impoverished communities often adopt the teaching of their own education and training that subordination is natural and necessary.

López maintains that ignorance of subordination and subordinated people causes regnant lawyers to "suspect" that subordination is culturally embedded (p. 24). This suspicion rationalizes client helplessness and attributes individual dependency to a culture of poverty. Regnant lawyers blame client dependency on society, not moral character. But this "enlightened" reassignment of blame, I submit, is merely rhetorical. The results of social and moral construction are the same. Both authorize lawyers to "assume leadership in pro-active campaigns" that relegate clients to roles of passivity and obedience (p. 24).

López hears the heroic campaigns of progressive lawyers trumpeted in the formal discourse of litigation, either narrowly asserted in providing direct service or broadly stated in devising law reform. Progressive lawyers claim the authority to command this discourse, "to make statements through their (more than their clients') cases about society's injustices" (p. 24). Consistent with the maxim of lawyer heroism, clients are only nominally involved in this discourse.

Progressive lawyers similarly marginalize subordinated communities, according to López. When lawyer-community connections occur, they merely exploit institutions or groups to serve the imperatives of litigation (pp. 3, 24). This misplaced focus discourages community and diminishes the value of education and organization. López decries the activist tendency to see community education as a form of "diffuse, marginal, and uncritical work" (p. 24), rather than as a coordinated and collaborative form of critical pedagogy (pp. 275–329). Likewise, he assails the tendency to construe organizing "as a catchword for sporadic, supplemental mobilization" (p. 24), instead of as a sustained and principal method of grassroots coalition-building (pp. 331–79). Although he is critical of "orthodox organizing" methods (p. 353), he approves of the strategic meshing of collective mobilization with individual problem-solving (p. 329).

López illustrates his critique of regnant lawyering by closely analyzing the legal practice of a number of fictional characters. He deploys narrative and story to describe the daily labor of practice. Among the characters he portrays are Teresa, the Director of Advocates for Justice, a public interest "impact" litigation firm; Abe, an "old left" lawyer in a small, union-side labor firm; and Jonathan, a legal aid housing lawyer (pp. 13–23). López first describes the physical work performed by these lawyers. Next, he interrogates the epistemic and interpretive assumptions of that work. In all three cases, he finds
clients and whole communities repeatedly subordinated and erased in advocacy.  

Teresa’s clients, for example, “nearly vanish[]” in her pursuit of “large-scale, media-covered litigation” (p. 16). Teresa justifies her exclusion of clients from the litigation process as necessary, citing her lack of time and resources, the inadequacy of client expertise, and the “broad social purposes” of test case litigation (p. 15).

Abe, by comparison, “regularly” does “almost exactly” what his client — local labor union leadership — wants (p. 18). He defines the interest of his client, however, to exclude the protests of rank-and-file union members concerning workplace health and safety, factory production demands, and child-rearing (pp. 18-19). Abe defends his firm’s neglect of such “non-legal problems” on the basis of firm economics and labor movement politics (p. 19).

Jonathan, like Teresa, excludes his clients from advocacy. Because of time constraints, he litigates housing cases “independently” of clients, colleagues, and geographic communities (pp. 21-22). Partly due to “his own low opinion about the good sense or intelligence of some of his clients” (p. 21), Jonathan subordinates clients, in effect treating them “like 8 year olds” (p. 22). This treatment, he concedes, excludes clients from participating in fact investigation, negotiation, and litigation strategy (pp. 21-22). When client participation is unavoidable (for example, at eviction hearings) he directs the client to sit “quietly” and to produce information and documents “on cue” (p. 22).

Despite his critical characterizations, López recognizes that Teresa, Abe, and Jonathan stand out among progressive lawyers. They are committed, hard working, and highly competent. Yet they practice in a sociolegal culture suffused with the regnant idea of lawyering. To law students and young lawyers, that idea is “natural”; its adoption normal (p. 25). Subordinated people glean the regnant idea not only

---

19 López shows that the regnant lawyer’s obliteration of the client as an autonomous agent may occur early in the lawyer-client relationship. He detects this obliteration in the technician-oriented actions of Community Law Office (CLO) lawyer Cecilia Bosworth (“Boz”) (pp. 102–16). Clients, López says, “turn over their ‘legal’ cases to her. And that’s exactly what Boz wants” (p. 109). Indeed, “she leads clients to feel entirely dependent on her” (p. 110).

20 To his credit, López points out that some progressive lawyers betray their commitments because of indolence and incompetence. The example he cites is CLO lawyer Charles Shaw (pp. 116–33). Shaw is domineering and insensitive toward clients (pp. 117–26). He is sloppy and unreliable in his note-taking, file-keeping, and written work (pp. 126–32). He also is inconsistent and irresponsible in organizing community outreach (pp. 132–33).

21 López elucidates the institutional sway of regnant lawyering over individual lawyers in his portrayal of Catherine, a law student (pp. 11–82), Helen Padilla, a young lawyer at a nonprofit law office (pp. 133–65), and Martha Fisher, a young lawyer at a small for-profit law firm (pp. 167–273). Because of her institutional detachment, Catherine seems least affected by the
from "street life and popular culture" (p. 25), but also from "professionals" (social workers) and "lay people" (receptionists) involved in advocacy support activities (p. 26).

Widespread acceptance of the regnant idea among lawyers, clients, and affiliated professionals valorizes certain kinds of "knowledge" and "work" (p. 26). What "counts," López asserts, is understanding "how things work and how to get things done" (p. 26). Acquiring this understanding confers "wisdom" and "status" (p. 26) both on professionals and on lay people (p. 27). For this reason, challenging the regnant idea is controversial. At stake is the authority to know, to interpret, and to speak the truth about the sociolegal world. It is the courage to contest and to reimagine the truth that drives López to transform the idea of regnant lawyering.

To López, truth is neither universal nor given. Indeed, there is no truth that "makes sense of everything in the world" (p. 65). Rather, truth is contingent, negotiated, and partial. It arises out of collaboration between lawyers and clients working jointly as co-eminent practitioners in local contexts (p. 29). Lawyers seeking this provisional truth recognize the value of a client's practical knowledge — the "know-how inevitably at work in each and every person's effort to get by day to day" (p. 29). They also realize that such knowledge may lie "outside" their professional "understanding of the social world" (p. 29). Nonetheless, they strive to learn about alternative worlds and ways of knowing and thus renounce the regnant privilege to proclaim absolute truth. For López, this renunciation is the well-spring of rebellious lawyering.

II. REBELLIOUS LAWYERING

López calls his aspirational vision of practice "rebellious lawyering." Both the "look" and "feel" of this practice are "different" (p. 30). The difference, experienced equally by lawyers, clients, and communities, turns on process as well as result. To illuminate that difference, López considers two additional characters: Sophie and Amos. Sophie is a neighborhood legal aid lawyer specializing in immigration (p. 30). Amos is the coordinator of a new, local, non-profit organization concentrating on the needs of families and children (p. 34).
Sophie lives and works in a small, low-income community "largely of color" (p. 31). She is an active member of the local tenants' group (p. 31). Her son attends the local elementary school (p. 31). Consistent with her community activism, Sophie "systematically tries to encourage local people to share experiences and to develop the knowledge that will enable them to better anticipate and address their needs over time" (p. 32). This encouragement occurs in conjunction with conventional litigation strategies (pp. 32–33). The integration of litigation and community organizing strategies, Sophie finds, increases client participation in the lawyering process. López terms Sophie's integrated grassroots advocacy and organizing scheme "community-based lawyering" (p. 33).

Amos is an "old home boy" (p. 37). He grew up locally but left for college and, subsequently, for seventeen years of work as a teacher, youth counselor, Head Start director, and public defender in juvenile court (p. 35). Upon his return, Amos joined the family-law unit of a legal services office, where he worked for eleven years learning firsthand about the problems of organization and cooperation that slow the allocation of resources and provision of assistance to families and children (pp. 34–35).

For López, Sophie and Amos embody "the rebellious idea of lawyering against subordination" (p. 37). The crux of this idea is collaboration: "lawyers must know how to work with (not just on behalf of) women, low-income people, people of color, gays and lesbians, the disabled, and the elderly" (p. 37, emphasis added). Collaboration extends to "professional and lay allies" and thus entails a willingness to educate others and an openness to "being educated" by others (p. 37), however marginal they appear.

In López's vision, to "lawyer rebelliously" is to "ground [advocacy] in the lives and in the communities of the subordinated themselves" (p. 38). This grounding requires advocates to connect legal and "nonlegal" problem-solving approaches (p. 38), to collaborate with others in strategic planning, to remedy particular and general manifestations of "social and political subordination," to build and join coalitions, and to appreciate the regional, national, and international dimensions of "local affairs" (p. 38). To satisfy these requirements, López urges the development of "sensibilities and skills" tailored to the "collective fight for social change" (p. 38).

The sensibilities and skills of López's rebellious lawyering constitute a full-blown theoretics of progressive law practice. Although López and theoretics of practice scholars differ in their descriptive

---

22 Sophie's community strategies include organizing support groups, planning lay-directed rights education workshops, and arranging group cooperatives (pp. 31–32).
and prescriptive analyses, their critiques share a common focus on lawyers' epistemic stances. Lawyers' ways of knowing extend to "law in books" as well as "law in action."23 Judgments regarding the delivery of and strategy for legal services under conditions of scarcity require predictions about both forms of law. Predictions that rely on claims of neutrality and objectivity or on claims of purposivism and practicality hide the moral and political content of lawyer discretionary judgments.24 Both sets of claims provide support, albeit unsatisfactory, for lawyers' exercise of moral and political discretion in making judgments about the delivery of legal services, judgments deemed self-evident to those endowed with legal knowledge.

López treats legal knowledge as merely "one practical knowledge among other practical knowledges" (p. 38). This even-handed treatment reduces the "estrangement between lay and legal cultures" (p. 47) and prompts the recognition that clients, like lawyers, possess "special practical know-how" about "how things work and get done" (p. 50). For López, the knowledge possessed by lawyers, other professionals, lay advocates, and clients consists of "a set of stock stories and storytelling techniques" (p. 40). Because these problem-solving techniques are widely used, lawyers are "not necessarily better able" than clients or other activists to serve as legal representatives (pp. 55–56).

And yet progressive lawyers proclaim their superior problem-solving ability and defend their sole management of the advocacy process. This stance is rooted in the interpretive authority of lawyers. The interpretive, identity-making acts of lawyers are based on a pre-understanding of dependency that operates to marginalize, subordinate, and discipline clients.25 The traditional strategies of progressive legal advocacy — direct service and law reform — reinforce that pre-understanding by circulating myths of inherent client passivity. In oral and written advocacy, it is the lawyer's construction of a client's identity, of her story, and finally, of the law that predominates.26 Justifications for this interpretive dominance assume an immutable and unyielding sociolegal order in which institutional constraints (office caseloads and court dockets) compel clients to yield full authority to their lawyers. This assumption overlooks the variable and opened quality of such constraints, and, equally important, the ten-

23 The distinction belongs to Roscoe Pound, Law in Books and Law in Action, 44 AM. L. REV. 12 passim (1910).
24 This contention is part of a broader argument I make elsewhere. See Anthony V. Alfieri, Impoverished Practices, 81 GEO. L.J. 2567, 2590–2660 (1993).
dency of lawyers to exert excess authority regardless of such con-
straints. Lawyers' exertion of what they perceive to be necessary
authority subordinates clients by erasing their identities, silencing their
narratives, and suppressing their histories.27

López attributes the claim of interpretive and managerial privilege
to legal education and to the social constructions of lawyers. In their
relationships with clients, lawyers construct identity from difference:
age, class, disability, ethnicity, gender, race, and sexual orientation.
Difference suggests inferior ability and weak character. According to
this logic, the older black man and woman I encountered must be
judged incompetent to apply problem-solving and managerial skills
adequate to their own representation.

Recasting the meaning of client identity, difference, and competence
requires lawyers to experiment with “different cultural interpretations”
of the same individual or collective experience (p. 44). Part of
that experiment entails addressing client subjectivity. Contrary to
the conventional myth of dependency,28 a poor client is an autonomous
subject capable of both accommodating and resisting the commands
of sociolegal actors: lawyers, caseworkers, judges.29 Accommodation
and resistance are often intertwined in the same act. A client, for
example, may agree to abide by lawyer-scripted trial testimony, yet
deliberately break from that script for normative or strategic reasons.
In the shadow of this ambiguity, an individual client's voice multiplies,
her narratives compete, and her stories conflict.

The multiplicity of client voice, narrative, and story demands the
practice of “bicultural and bilingual” translation (p. 44). This method
of translation, López explains, moves “in two directions, creating both
a meaning for the legal culture out of the situations that people are
living and a meaning for people's practices out of the legal culture”
(p. 43). Meaning derives from understanding “the client's experience
of the situation” given her own “categories and characterizations” of
daily living (p. 60). For López, getting a “feel” for the client's situation
— what she “thinks, feels, needs, and desires” — is pivotal (p. 61).
By getting the feel of a “client's social (not just legal) situation” (p.
38), lawyers may be able to acquire fluency in discourses of difference
and to construct client identity in terms of problem-solving and man-
gerual competence.

27 On necessity and excess in lawyer interpretive strategies, see Anthony V. Alfieri, The
(reviewing AUSTIN SARAT & THOMAS KEARNS, LAW'S VIOLENCE (1992)).
28 See Nancy Fraser & Linda Gordon, A Genealogy of Dependency: Tracing a Keyword of the
29 See Alfieri, supra note 25, at 2114–18, depicting a food stamp recipient asserting the norms
defining dignity, caring, community, and rights); Anthony V. Alfieri, Speaking Out of Turn: The Story
resisting lawyer storytelling in order to speak out in her own defense).
López hears *talk* of client competence and incompetence echoing throughout law and lawyering. He defines law as “a set of stories and storytelling practices that describe and prescribe social reality and a set of conventions for defining and resolving disputes” (p. 43). Lawyers employ a variety of discourses that describe law (constitutions, statutes, regulations, and judge-made decisions), legal institutions (courts and bureaucracies), and sociolegal relations (lawyer-client, lawyer-state, and client-state). In private offices, the discourses emerge in interviewing, counseling, and negotiation. At trials, they appear in opening and closing statements, direct and cross examinations, and evidentiary objections. On appeal, they come out in oral argument. At public hearings and community education forums, they unfold in testimony and in lectures. Lawyers recast their oral pronouncements in written forms: letters, memoranda, briefs, and press releases. Both oral and written pronouncements constitute stories. Shaped by law and institutional need, the stories make claims about the world subordinated people inhabit, its truths and necessities.

To López, *everyone* possesses lawyering and storytelling skills (p. 39) that can alter social arrangements and remedy disputes (p. 41). It is the job of lawyers to recognize how often subordinated people deploy “story/argument strategies” to contest institutionally assigned roles and relations of dependency (p. 49). Once lawyers realize the force and regularity of that deployment, López asserts, they must help clients understand how to transfer their everyday living skills to legal advocacy (p. 40).

The socially constructed reality of client dependency and incompetence shifts with the content of lawyer stories. According to López, lawyer “stock and improvised” stories and arguments can “help establish meaning *and* distribute power” (p. 43). Consequently, storytelling has the potential to transform the meaning of client difference and identity, and to reallocate lawyer-client power to manage the advocacy process.

López challenges the regnant story glorifying lawyer preeminence and power (p. 61). The differences in lawyer-client authority flowing from that stock story, he warns, “disfigure” individuals (p. 43) and “distort” social arrangements (p. 59). To realign lawyer-client authority, López recommends reversing the “marginalization” of clients' “local knowledge” (p. 51). Reversal hinges on believing clients to be “capable” moral agents equipped “with a will to fight, and with considerable experience in resisting and occasionally reversing subordinated status” (p. 50). Treating clients as capable fighters in the struggle against subordination affirms a practical expertise that complements lawyers' knowledge (p. 50). The inability of lawyers and clients to uncover this complementary potential is in part a function of unequal institutional roles and relations.
Within legal institutional contexts, the imperatives of administration and adjudication dictate conventional roles and relations of practice. For advocates in civil rights and poverty law contexts, the received tradition of practice constructs clients as victims. This construction reduces clients to powerless and pathological objects.

López links client objectification to the tendency of legal institutions to be “hostile” to and “often systematically ignorant” of client needs (p. 47). The institutions pass on “structural constraints” (p. 68) and engender “specific adaptations” (p. 68). Implanted within these social constraints and adaptive strategies are “practical moments” of rebellion (p. 62). Although “unpredictable” (p. 68), those moments provide the “central opportunities” for rebellious lawyering (p. 64).

López contends that lawyers and clients can transform routine acts into opportunities for collaborative problem-solving in which skills are combined and power is shared (p. 74). In advocacy, collaboration may generate lawyer-client, client-client, and client-community alliances. Collaboration is an empowerment or enabling strategy that redefines traditional lawyer-client roles, reorganizes divisions of legal and nonlegal labor, and reallocates the authority to designate and to execute advocacy tasks.

López imagines collaboration as an experimental and “constantly reevaluated” process involving lawyers, clients, and lay advocates (p. 48). Because that process “can relocate and blur the lines between self-help, lay lawyering, and professional lawyering” (p. 79), internal

---


31 In hostile or abusive work environment cases brought under Title VII of the Civil Rights Act, for example, advocates traditionally proffer evidence of concrete harm or injury to a plaintiff’s psychological well-being. Recently, in Harris v. Forklift Systems, 114 S. Ct. 367 (1993), the Supreme Court rejected an evidentiary requirement of “concrete psychological harm” in such cases, but noted that evidence of harm “may be taken into account.” Id. at 371. The Court stated that the employee’s psychological well-being is “relevant to determining whether [she] actually found the environment abusive.” Id. Accordingly, advocates are unlikely to stop producing evidence of a plaintiff’s tangible psychological injury.

32 López concedes that practical moments of rebellion may go unnoticed. Because such moments are by definition routine, he explains, they “arise in the course of activities that many others treat either as trivial or mechanical to good lawyering” (p. 62). Examples of these moments include the “ways in which a receptionist answers the phone” (p. 62), the “ways in which clients and lawyers create and update a file” (p. 63), the “ways in which intake interviews and follow-up contacts get structured” (p. 63), the “way in which clients and lawyers design and carry out fact investigations” (p. 63), and the “ways in which clients and lawyers deploy conventional symbols of power” (p. 64).

tensions may ensue (p. 45). Mitigating those tensions demands "forgiveness and patience" (p. 45), as well as a sense of the "practical and moral limits" of the process itself (p. 52). This sense of limits intrudes upon López's vision of rebellious lawyering, reminding us that lawyers and clients "remain divided" (p. 51) in spite of good faith efforts at collaboration.

López views lawyer-client collaborative problem-solving as part of a gradual, integrated move into "a larger network of cooperating problem-solvers" (p. 55). This network avoids the professional and political "separatism" that plagues progressive lawyering (p. 55), and thereby, allows practitioners to pursue "collective" problem-solving through the teaching of "self-help and lay lawyering" skills (p. 70). Teaching self-help and lay lawyering, López concludes, enables "public institutions and professional service providers [to] help people help themselves" (p. 73).

III. BRIDGES

Bridging the ideas of regnant and rebellious lawyering demands a strategy of reform. For López, the core of this strategy resides in the "familiar practices" (p. 74) of daily lawyering, for it is the "small, everyday details" (p. 382) of practice that offer the greatest chance of reorienting the traditional sensibilities and skills of advocacy. López belongs to a community of lawyers, scholars, and teachers embroiled in debate over the best methods of bridging theory and practice to reform progressive lawyering. Unlike critical scholars of the last two decades, the theoretics of practice community espouses an explicitly normative goal: to foster individual and collective client acts of self-determination in order to broaden social and economic forms of democracy. To reach this goal, López and others have disassembled

---

34 López does not explicitly suggest ways to change regnant lawyer sensibilities, but Amos's story is instructive in this regard:

[Being a person of color and an old home boy doesn't automatically make you an insider, especially if you're a lawyer. Expectations differ, and trust is sometimes hard to reestablish. Only time and shared experiences, he keeps telling Catherine, will renegotiate the terms of his relationship with those in the East Bay and ultimately help him integrate his status and his know-how (p. 37)].

35 Different members of the progressive community find alternate causes for this turmoil. See Paul Tremblay, A Tragic View of Poverty Law Practice, 1 D.C. L. REV. 123 (1992) (citing bureaucratic constraints); Lucie E. White, Paradox, Piece-work, and Patience, 43 HASTINGS L.J. 853, 857-59 (1992) (noting the dangers to poor people posed by theorizing the practice of poverty law).

36 See Richard M. Fischl, The Question That Killed Critical Legal Studies, 17 LAW & SOC. INQUIRY 779, 785-800 (1992) (rebuffing the call to cls by its critics to enunciate a normative vision of social change).
the lawyering process, challenging not only lawyers' epistemological, interpretive, and linguistic practices, but also their basic education and training.

The teachings of legal education and training, amplified by the imperatives of law and legal institutions, compel progressive lawyers to adopt a heroic stance toward communities that condemns them as outsiders. The centrality of lawyer heroism in the progressive canon inhibits experimental forms of lawyer-client collaboration and, thus, frustrates the realization of lawyer-client community. Under the progressive canon, neither lawyers nor subordinated people hold out claims to community. The absence of such claims stems from lawyers' lack of connection to client identities, narratives, and histories. To make these human connections, lawyers must relearn their habits of knowing, thinking, and speaking.

Lawyers must relearn their own convictions. We must learn that our professional autonomy is linked to the autonomy of others and

---

37 To be useful, studies of civil rights and poverty law advocacy must focus on the interactions among lawyers, clients, laws, and institutions. The complex dynamics of these interactions blur such efforts, especially if they consider the backdrop of cultural, economic, political, and social movements, and the indeterminate categories of age, class, disability, ethnicity, gender, race, and sexual orientation. The multiplicity of factors animating the lawyering process and the shifting sociolegal currents buffeting that process complicate any attempt to derive general axioms of practice, whether descriptive or prescriptive. Caution counsels the tentative formulation, provisional dissemination, and continuous revision of hypotheses and remedies.

38 See Gerald P. López, The Work We Know So Little About, 42 STAN. L. REV. 1, 10 (1989) (noting lawyer misunderstanding of the "formal insurrection" signified in legal claims pressed by low-income women of color).

39 See Gerald P. López, A Declaration of War by Other Means, 98 HARV. L. REV. 1667, 1670 (1985) (remarking on lawyers' use of "stock stories" to understand and navigate the world and reviewing RICHARD E. MORGAN, DISABLING AMERICA: THE "RIGHTS INDUSTRY" IN OUR TIME (1984)); Gerald P. López, Lay Lawyering, 32 UCLA L. REV. 1, 5-6 (1984) (discussing the importance of "stock stories" as an "interpretive network").


41 See Gerald P. López, Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education, 91 W. VA. L. REV. 305, 307 (1989) (assailing legal education for "its restricted models of teaching and learning, its disdain for lawyering and for training in all but a relatively small number of skills, its neglect of interdisciplinary theoretical ideas, its disregard of everyday life, and its lack of coordination").

42 López acknowledges that "countering" lawyer privilege, power, and knowledge "is no easy task and no permanent achievement" (p. 53). Legal education can and must contribute to this task. See, e.g., Barbara Bezdek, Reconstructing a Pedagogy of Responsibility, 43 HASTINGS L.J. 1159 passim (1992); Gary L. Blasi, The "Homeless Seminar" at UCLA, 42 WASH. U. J. URB. & CONTEMP. L. 85 passim (1992); Bill Ong Hing, Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses, 45 STAN. L. REV. 1807 passim (1993).
that our claims of neutrality are false. We must learn that our cognitive judgment is impaired, not objective, and that our practical reasoning ignores alternative sources of knowledge. We must learn that our ability to empathize with clients and to translate clients' stories into legal discourse is limited by hierarchy.

Furthermore, lawyers must relearn the sociolegal world. We must learn that a client's speech acts — whether in the form of uncomfortable answers to interview questions, vague assent to counseling options, or rambling testimony at trial — are rhetorical strategies of accommodation and resistance that enable her to maneuver within relationships and institutions under the cover of ambiguous and sometimes inconsistent stories. We must learn to enlarge the discourses of law and legal institutions to fit, rather than silence, these stories. And we must learn to redefine institutional roles and relations to permit clients and communities to collaborate in telling their stories, even if the bridges of collaboration are makeshift and short-lived.

To be sure, the critical evaluation of our convictions and our mapping of the sociolegal world is unlikely to bridge fully the practices of regnant and rebellious lawyering. The legal consciousness and sociolegal practices of regnant lawyering are historically entrenched in law schools, law offices, courts, and the streets. Neither passionate nor persuasive entreaties will overturn them, but instead only the day-to-day struggle of people who suffer their indignities, allied with those who find such suffering intolerable.

**Conclusion**

López inspires those who labor on behalf of subordinated communities to rethink their efforts. Rethinking begins in remembrance — for me, the remembrance of chance meetings outside an old New England church and inside an airless, New York City storefront. Some say that to look for the loss or redemption of community in these meetings is misguided. To look for *some* meaning, for *some* lesson to be learned, is not.

What is the lesson here? The lesson is that lawyers working *for* or *with* subordinated people in impoverished communities need to learn where they *stand*. This means learning from the people who live in those communities; it means learning that lawyers stand *divided* from the communities they represent. The man in New England and the woman in New York City taught me where to stand when confronted by divisions of class, gender and race. Although our meetings hardly mark the deliverance of redemptive community, neither do they signal the hopeless resignation to loss.