

*Pedagogy of Law and Social Justice**
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[Slide 1] Marc Galanter, in his landmark article *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, analyzes inequality of power in litigation. Repeat players within the litigation setting have many advantages, like the ability to settle cases selectively or to play for long-term rules. In contrast, one time litigants (one-shots) cannot match that leverage. Galanter emphasizes the uneven playing field for one-shot, “have-not” litigants.

Justice Louis Brandeis said: “You can have wealth concentrated in the hands of a few, or democracy. But you cannot have both.” If systematic structures mean that “haves” always win, democracy is at risk. “Haves” may win for many reasons. Repeat player status is only one factor among many social and economic advantages and disadvantages that are built into the operation of the legal system. Structural advantages include the protection of wealth in the form of corporations, the transmission of wealth between generations, the advantages of the wealthy in every area of education, and superior health care. The operation of law includes the leverage provided by campaign contributions to legislatures and the executive branch of government, as well as the influence of lobbyists. In contrast, legal services lawyers are now prohibited from engaging in lobbying or consulting with legislatures on behalf of their low-income clients.

[slide 2] One portion of the interaction of the system of lawyers and the system of law can be found in the role of legal education in maintaining a status quo that supports “haves.”

* Another version of these thoughts appear as Stephanie M. Wildman, *Democracy and Social Justice: Founding Centers for Social Justice in Law Schools*, 55 J. LEGAL EDUC. 252 (2005).

Protecting democracy by combating inequality is the task of social justice lawyers and the practice of democracy mandates inclusion of the diverse populations of this nation into the social order. Yet legal educators have paid insufficient attention to training the next generation of social justice lawyers.

[slide 3] Social justice lawyers seek to give material meaning to democratic ideals in the daily lives of individuals and communities that are marginalized, subordinated, and underrepresented. “Social justice lawyering envisions the practice of law both on behalf of and alongside of subordinated peoples, with the efforts and achievements of members of the community a crucial aspect of the work.” While lawyers are not the complete solution, lawyers remain a key ingredient needed to work with communities struggling to improve their lives.

Leaders in legal education and the bar have been calling on law schools to make consciousness about social justice pervasive in law schools and accessible to all students, even those who might choose other career paths. For example, Dennis Archer, past president of the American Bar Association, highlighted the need for the legal system to promote access and diversity, especially in education. Such calls to action have generated meaningful conferences, but legal educators must begin thinking about how to institutionalize consciousness about social justice as part of the canon of legal education. In spite of bar and academic leaders’ call for change, few lawyers serve the needs of disenfranchised clients.

[slide 4] I believe that most students attend law school because they are interested in and concerned about social justice. Yet legal educators have not done enough historically to ensure that students graduate with that interest intact. Any hope for change in this pattern must begin with professional education. As the gatekeepers for the profession, law schools play a critical role in educating students for social justice. Two groups of students attend law school: those who wish to pursue careers in public interest and social justice work and the rest of the student

population, who need to understand that access to justice is the province of all lawyers. Legal education need not dissociate students from the aspiration for justice that motivated many of them to choose law as a profession.

An anecdote reveals the deeply felt need that students have to connect their education to social justice. In a room overflowing with law students, an attorney described a fifteen-year pro bono project in which he represented a death row inmate who had not been afforded adequate representation. The captivated audience listened attentively while the attorney related details of his work on the case, with many nodding as the attorney reflected on the idea that legal professionalism should include public service and the quest for justice. The notion of a professional as someone dedicated to public service and to the provision of justice needs to attain more prominence in legal education.

[slide 5] Increasing diversity in the legal profession is also a central concern in the social justice education project. The urgent need for access to the judicial system continues at a time when attacks on affirmative action in Texas and California have drastically affected the numbers of students of color enrolling in law schools in those states. These state institutions have been successful feeder schools into the legal profession. Studies show that people of color, in numbers disproportionate to their white colleagues, choose to serve communities that are subordinated and underrepresented. The availability of lawyers to marginalized communities affects not only the individuals who need legal services, but also the nature of cases brought and the legal rules that may prevail. As Cruz Reynoso has explained:

I can point to the program established in New Mexico fifteen to twenty years ago to bring Native Americans into the legal profession. When that program was first established you

could count on the fingers of one hand the number of Native American lawyers nationwide. . . . [This program annually] placed between thirty and fifty Native Americans in law schools around the country. In but a few years, there were literally hundreds of Native American lawyers. Soon we started seeing cases coming out of Arizona, for example, in which Native American tribes sued to receive water that they were entitled to under treaties. Rights mean nothing if nobody enforces them.

Diversifying the legal profession, especially by including attorneys from disenfranchised communities, enhances the potential for a representative democracy in which participants can influence decisions that have impact on their lives.

[slide 6] Diversity, of course, has been a critical issue in California and at Boalt Hall, where one response to the restrictions on affirmative action was the formation of the Boalt Center for Social Justice. The creation of such centers is part of the growing national consciousness that legal educators need to do more for students who come to law school because they care about justice and to provide support for the diverse student population.

Increasingly, faculty and deans have been founding centers and institutes in social justice law. The creation of these centers leads a cutting-edge trend, ensuring that social justice issues have a place in legal education. They mark a philosophical change in legal education that has policy implications nationally. Centers create a way for their associates to be change agents, seeking to make the institutions responsive to the needs of students, the community, and educators. I have been privileged to work with centers at both Boalt Hall and Santa Clara University, so they serve as my examples for how institutions can build social justice programs.

Now is a fruitful time for strategic thinking about social justice and legal education and

for examining the institutional structures within law schools. Establishing centers for social justice creates a site for legal work representing marginalized, subordinated, and underrepresented clients and causes. A center or institute makes this work both visible and accessible. A social justice center serves two constituencies. First, social justice and public service need to be part of the professional training of all lawyers. Second, because some students will choose this career path, they need training, direction, and education in how to pursue their social justice goals. Coordinating the faculty's and the institution's social justice work and making that work visible will attract strong students to legal education as well. A longer-term part of the project needs to be outreach to undergraduate institutions and high schools in order to attract those students who might otherwise never consider social justice lawyering as their life's work.

[slide 7] In founding their centers, both Santa Clara and Boalt began by looking at all the parts of the law school that were related to social justice, public interest, and public service. Each school had many such pieces, but they were not sensibly organized within the institutional framework and not easily accessible to students, applicants, or foundations. By weaving together these separate elements, both schools are making the whole greater than the sum of the parts. [As we think about institutionalizing legal training for social justice work, it is important to acknowledge that clinical legal educators have been pioneers in offering students direct experience in working for social justice. But clinical faculty cannot do this work alone.]

Communication and inclusion are preeminent institutional values for building a center. Key components of a successful social justice program include a curriculum that coordinates theory with practice in the traditional classroom and clinical settings; faculty scholarship and

related social justice practice; involvement of students, student groups, and staff; an intellectual climate that promotes extracurricular events and work with other centers of specialization within the law school and university; and alumni/community relations and fundraising.

Communication and Inclusion [slide 8]

Communication and inclusion are critical to a social justice program. Communication ensures that students, faculty, staff, and graduates will learn about the program. Valuing inclusion assures that everyone will feel welcome. Evaluate communication by assessing the institutional culture, including how information about events circulates, how faculty learn about each other's work, how students learn about faculty interests, and how students link with other students. Conventional communication methods at Boalt and Santa Clara include paper notices on bulletin boards and in mailboxes as well as electronic messages by e-mail, Web site, and weekly school bulletin. The most effective means of reaching students at Santa Clara is often by writing on the white boards in classrooms. Publishing a beginning-of-semester calendar, showing scheduled events, encourages everyone to save dates. This multilayered communication effort requires institutional staff resources.

Brand-naming events also builds institutional awareness. For example, both schools have a regular speaker series, meeting eight to ten times throughout the academic year, called Social Justice Mondays. That brand-naming encourages faculty, staff, and students to think on Monday, "Is there a social justice event today?" Similarly, a reading group for first-year students bears the name Social Justice Thursdays.

Groups and individuals who are part of the social justice project need to meet regularly to foster communication and build institutional culture. For example, the Santa Clara center's

advisory board meets twice a semester. Such a board ideally includes students, faculty, staff, and alumni. Building a board like this can take years. A separate student board also meets four times a year. It gives valuable feedback and planning suggestions, provides person power for events, and aids coordination of student group activities that relate to social justice.

[slide 9] Establishing a solid communication network requires valuing inclusion, a basic democratic objective. Inclusion is hard to achieve. Students in law school often feel alienated from their education, themselves, and each other. This alienation worsens when students confuse it with the professional persona that they feel they must adopt. Faculty, staff, and alumni may also feel disaffected or alienated in their jobs. Not infrequently I receive messages from practicing lawyers who complain of this alienation. A recent note said, “I have become a completely empty shell of the person I used to be.” These lawyers seek connection to social justice work as a way to heal their professional emptiness. Similarly, many students who came to law school because they care about justice are surprised to feel the absence of that connection during their first year. Thus a link to social justice work provides a vehicle to foster inclusion and to curb professional alienation.

Professional alienation outside of the law schools remains rampant. For several decades lawyers have bemoaned the fact that the profession has changed and become more like a business, concerned only with bottom lines and billable hours. Coinciding with these developments have been reports of attorneys’ increasing dissatisfaction with their jobs and their roles as lawyers. Patrick J. Schiltz has described this professionalization that causes lawyers to lead unhealthy, unhappy, and unethical lives as they become increasingly alienated. Schiltz notes that lawyers do not reflect on the craziness of their lives any more than buffalo meditate about

stampeding. Law students, however, do have time to reflect before joining the stampede.

John Calmore urges law students to accept a resocialization away from the alienating norms of the profession. Valuing inclusion, so that these students, lawyers, and the law school community feel part of an effort toward social justice, is an important first step in that resocialization. The presence of a center helps students see that they are not alone in caring about social justice; it reminds all of us that the work is ongoing. Consciousness about diversity aids the effort toward inclusion and combats alienation. Race consciousness may be unpopular in contemporary culture, but thinking about race, gender, sexual orientation, disability, and all significant identity categories both ensures diversity in subjects and speakers and helps to check the human tendency to replicate comfortable networks that only mirror oneself.

Curriculum: Coordinating Theory and Practice in the Traditional Classroom and Clinic

[slide 10] Curricular reform is a minefield for any faculty. Processes for achieving reform vary by law school, but periodically institutions do review course offerings. This section describes curricular possibilities for different stages of reform.

Ideally the core of any social justice curriculum should include at least one seminar that students are encouraged to take in their second year, although a first-year elective course is another option. Such a class, whenever offered, provides a community-building experience for students and serves as an introduction to both scholarship and case law, providing theoretical underpinnings to social justice work. Santa Clara offers two core seminars, Law and Social Justice and Public Interest and Social Justice Practice. In addition to the core courses, students take at least one class that focuses on issues related to marginalized, subordinated, and underrepresented clients and causes. Choices include Race, Racism, and Law; Gender and Law;

Sexual Orientation and Law; Disability Law; and Consumer Protection. The core curriculum also recommends that students take clinical classes.

Key in any social justice curriculum is a close connection with supervised clinical instruction. Boalt's center works with the East Bay Community Law Center. Santa Clara law students take classes connected to the Katherine and George Alexander Community Law Center and the Northern California Innocence Project. These offices serve as a laboratory for students to engage in community-based lawyering under supervision with a practice course associated with that clinical work.

[slide 11] A core social justice class can take different forms, including a lecture-size class to first-year students, a writing course, or a more traditional seminar course. Martha Mahoney has been teaching Public Interest Law as a first-year elective at Miami since 1995. She has taught between fifty and ninety first-year students, and now she caps the course at sixty to seventy. John Calmore has incorporated writing assignments into his Social Justice Lawyering course at the University of North Carolina, teaching ten to twenty-five students. I have taught a more traditional seminar class at both Boalt and Santa Clara. For some students this seminar is the first opportunity to discuss social justice issues in a classroom setting. The course requires students to work in groups on a case study, examining a social justice issue. The case study assignment gives students a different kind of writing practice and helps them to build their own network in the community, where they talk with all the players related to their social justice subject.

These courses all use the book *Social Justice: Professionals, Communities, and Law*. The text's premise is that social justice lawyering involves three interrelated components: (1) the

organization of the profession (bringing lawyers into contact with people in need of legal services), (2) work to carve out legal claims on behalf of oppressed and underrepresented people and to defend victories that have been won, and (3) struggles for justice in the lives of people and communities for whom lawyers are only a small part of the story.

[slide 12] The book provides material to study these three interrelated subjects together. Part I, “A System of Lawyers: The Legal Profession and Work for Social Justice,” covers the structure of the profession, delivery of legal services, and professional responsibility and ethics. Part II, “A System of Law: Shaping Claims in Social Justice Cases,” surveys claims of social justice and civil rights as well as questions of access to the courts and the abuse of the power of law. Part III, “A System of Politics: Legal Work and Social Change,” explores the way lawyers work with communities in three areas of struggle toward social justice: urban equality, domestic violence, and rights of sexual minorities. These areas not only signify race, gender, and sexual orientation but also represent three ways of defining community. The urban setting demonstrates geographic community; those resisting crimes against women have formed a community based on a common cause; and the sexual-identity-based community exemplifies an identity connection. In each of these communities, struggles toward legal change continue, with both victories and setbacks. Work toward social justice is the province of all lawyers. Therefore, while professional responsibility is covered at length in Part I of the textbook, it is developed further in notes, hypotheticals, and additional readings in every section. Examples of different types of social justice practices also appear throughout the text.

The Santa Clara law school offers a Certificate in Public Interest and Social Justice Law. Students electing to concentrate in social justice law may receive this certificate at a special

graduation ceremony with additional recognition at the law school graduation. The certificate requirements include fifteen academic units in approved courses, completion of a satisfactory writing project, a public interest and social justice law practicum of 150 hours, and fifty hours of public service. Students may elect to earn this certificate with an emphasis on consumer law, criminal justice, or critical race jurisprudence.

Schools that hope to implement a certificate program can begin with a recommended course sequence or group relevant courses to make them accessible to students. At most law schools many courses relate to themes in social justice or are part of the foundational education for someone entering a social justice practice. Whether by an established certificate program or course guidelines, it is imperative to organize offerings into an advising document to help students navigate their legal education and to ensure that they take classes that will help them achieve their goals. The document can make recommendations for pro bono work and extracurricular activities as well as for skills and clinical courses.

Faculty Scholarship and Social Justice Practice [slide 13]

Faculty scholarship and social justice practice are enhanced in a supportive setting. At Boalt a group of faculty self-identified as interested in social justice scholarship and practice. At Santa Clara seventy percent of the faculty regard their work as related to social justice. These groups meet regularly to read and discuss each other's scholarship and other work; the meetings include adjunct faculty, clinical instructors, legal writing instructors, and academic support staff.

While many formats are possible, an informal presentation of a previously distributed work in progress, followed by comments, has proved helpful to those whose written work is discussed. Those writing briefs have talked over potential case strategies and legal issues,

receiving suggestions and feedback. The many institutional players interested in social justice issues need to be aware of each other's work and projects. So an important institutional benefit, in addition to support for scholarship itself, is developing connections within the institution and a sense of inclusion.

Involvement of Students, Student Groups, and Staff

[slide 14] Social justice should be part of students' legal education as early as orientation.

While ideally the entire first year will be infused with social justice concerns, a reading group expressly for first-year students provides a place for like-minded students to meet and to discuss these issues. The Social Justice Thursday series, with a different faculty member each week leading the discussion, provides an immediate community for students. The fall semester reading introduces race, gender, and other identity-based issues in conjunction with first-year courses.

The second semester focuses on the role of lawyers working with communities.

Students send unsolicited e-mails, like this one, expressing appreciation for the difference these sessions make in their educational experience:

Social Justice Thursdays set the context for some honest talk about practical things we students can do to confront race and gender issues in the classroom. It was nice to have a space where students of color were able to have honest disagreements and for everyone to think about what else is at stake.

Another student wrote that she had not ever spoken in class until she had come to five of these sessions, but then she felt empowered to start participating in her classes:

The Center for Social Justice made me a more active participant in my first year classes. I came to law school to learn how law relates to society. I've encountered challenging

academic insights during Center for Social Justice events. My enthusiasm for these social justice topics carries over into my classes.

For the whole school, a regular speaker series (Social Justice Mondays) brings practitioners and educators to campus to describe their work and how they came to do it. Social justice faculty facilitate those sessions, spending an introductory few minutes reporting on their own work and enabling students to know them better. Many law school staff participate in these noon sessions, which again fosters an inclusive climate.

Many student groups are interested in social justice issues. Organizing these groups into a network, with an umbrella student advisory board as part of a center, facilitates communication between groups. This student board also can provide useful feedback to the center's director about student needs and concerns. Ideally, a student mentoring program keyed to small sections as well as a mentor program coordinated through career services provides different connections. The presence of a staff person in career services dedicated to social justice and public interest can be critically important.

The center also should work with the admissions office. Applicants to Santa Clara indicate an interest in social justice by checking a box in their application. When they are admitted, they get a letter from the center's director, generated by the admissions office, urging them to accept and telling them about the center's activities during the past year. Students and faculty also meet with admitted students at a spring event.

Intellectual Climate

[slide 15] Centers for social justice contribute to the intellectual climate of their law schools and universities by sponsoring multiple extracurricular activities and by cooperating with other

centers of specialization within the law school and university. Boalt and Santa Clara have a visiting practitioner program each semester. Practitioners discuss their work, counsel students about career paths, and meet in a series of dinners, receptions, classroom visits, and office hours over several days. Both centers also sponsor one significant lecture each semester, bringing nationally prominent speakers for a talk, reception, and small dinner. Boalt has a scholar-in-residence program for social justice theorists, often academics on sabbatical from other institutions. Santa Clara supports a teaching scholar program for new law teachers, providing time for aspiring scholars to write and to hone classroom skills by teaching one or two courses. Both centers offer a Social Justice Workshop, a credit course for the students. Nationally prominent scholars present their own work in progress at a forum open to the university community, providing students with an opportunity to interact with scholars other than their own teachers. Boalt and Santa Clara collaborated on the first workshop, on wealth and inequality, by sharing speakers and costs. These speakers, colloquia, and symposia provide excellent material for journals.

Work with other centers of specialization in the law school and university affords an opportunity to strengthen all programs. Proponents of any one area unfortunately tend to assume that someone interested in, for example, law and technology is probably not interested in social justice or international law. Joining together and looking at the intersections illuminates much work that can be done together.

Alumni/Community Relations and Fundraising

[slide 16] Both Boalt and Santa Clara work with the deans and alumni relations staff to identify alumni, friends, and foundations interested in funding social justice work. Opportunities

for giving include funding student financial assistance, supporting students' summer and postgraduate work, endowing lectures, and sponsoring practitioners and scholars in residence. Many graduates who were disaffected during law school are excited to see this social justice emphasis. Establishing an alumni/community advisory board, or joining that group with faculty and students, again creates and fosters interlinking networks. Inviting graduates back to campus, especially for events that provide continuing legal education credit, reconnects them with the law school and the current generation of students.

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We have much work to do. As Charles Reich said at one of the AALS equal justice colloquia, war has been declared against all of us who believe in equal justice.⁴⁴ He exhorted the audience to take this state of war seriously and to think about defenses and counterattacks. He pointed out that the dominant ideology devalues everything that is born of a communal effort. The dominant worldview values only individual wealth and that which can be commodified. It devalues justice, essentially making wealth more important than justice. The system forces justice to compete with more glamorous articles like cars, houses, and boats. In this competition justice is disadvantaged because justice has no advertising agency and no promotions, nor can it fulfill consumer dreams or desires.

We have to encourage our students to dream of justice. We need to start in law school or, preferably, even earlier. We can create the climate to nurture these dreams and thus ourselves. Forging an alliance between legal educators, practitioners, students, and communities can ensure that improving the lives of marginalized, subordinated, and underrepresented members of society remains integral to the lawyer's calling.