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Achieving Justice Through Rebellious Lawyering: Restructuring Systems of Law and Power for Social Change

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ACHIEVING JUSTICE THROUGH REBELLIOUS LAWYERING: RESTRUCTURING SYSTEMS OF LAW AND POWER FOR SOCIAL CHANGE

By: Ashly Hinmon¹

A dynamic equilibrium of power exists between law and social movements. Our role in social-change lawyering is not only to focus on the law itself, but also to understand and transform the frameworks that create and maintain balanced systems of law in our society. Lani Gunier, the first woman of color to be appointed to a tenured professorship at Harvard Law School, and Gerald Torres, a leading figure in critical race theory and professor of law at the University of Texas, gave a joint keynote address on restructuring systems of law and power for social change at the Rebellious Lawyering Conference (RebLaw), held at Yale Law School in February 2010. Under the broad rubric of social change, Gunier and Torres examined the transformation of deeply entrenched traditions that perpetuate injustice in our society. Racism, for example, impacts the legal system on many identifiable levels but is nonetheless difficult to eradicate because it is bound up within society's mechanisms of power.

Gunier likens the interaction between society's traditions and the law to a game, and asserts that within every game there are three dimensions of power. The first dimension is visible conflict—the players manipulate rules in order to win. The second dimension involves the identity of the game's designers, or the ability of those in power, to shape the rules in a way that benefits the rule-makers. The third dimension involves an examination of the meta-narrative—the story we, as a society, tell to explain why winners deserve to win and why losers deserve to lose.

Gunier and Torres argue that social-change attorneys often focus on the second dimension of power and seek to rewrite the rules in a way that yields more just results. The law, as a societal institution, both allocates power and disciplines power-holders. Gunier and Torres, however, advocate for an increased awareness of and engagement with the third dimension of power—the meta-narrative of law and justice, which functions both to justify the outcomes of the law and to keep the design of our system hidden. According to Gunier and Torres, social-change lawyering can most readily transform the hidden roots of injustice not only by shifting the rules, but also by shifting cultural understandings of justice.

To do this, we must engage on the micro-level. After identifying sources of power, we must increase the democratic potential of specific marginalized groups, in order to enhance their capacity to take control of their own identity and power. Gunier and Torres also emphasize the importance of horizontal relationships and developing “constituencies of accountability” across group lines.

At the conference, these themes were developed

through twenty-four panels and workshops on rebellious lawyering. Some sessions focused specifically on changing the rules of the game through litigation or legislation. For example, one panel, “Domestic Remedies for Human Rights Violations Abroad: The Future of Alien Tort Statute Legislation,” brought together leading Alien Tort Statute (ATS) litigators to discuss how human rights advocates utilize the ATS as a domestic remedy for international human rights violations. The panelists discussed a recent victory in which Nigerian activists were awarded \$15.5 million in compensation in a suit charging Shell Oil with complicity in torture and killings, as well as a current case in which eleven Indonesian citizens are suing ExxonMobil in D.C. Circuit Court for kidnapping, torture, and murder. The panelists discussed the challenges and benefits of the ATS approach in promoting accountability for human rights violators.

Later at the RebLaw Conference, Karen Goodrow, the Director of the Connecticut Innocence Project, led a workshop titled “The Unreliability of Forensics: Detecting Errors in Evidence.” Goodrow works to overturn wrongful convictions through the use of post-conviction DNA testing. In 2006, the Innocence Project secured the release of James Calvin Tillman, who served 18 ½ years in prison for crimes he did not commit. As a result of his case, the Connecticut Legislature passed a new statute in 2008 providing for compensation for the wrongfully convicted. Goodrow is a strong advocate for the abolition of “junk science” in forensic gathering, including such methods as dog tracking, bite mark analysis, and “pour patterns,” a type of arson evidence that frequently leads to false-positive identifications.

Melissa Sontag Broudo, a Consulting Attorney with the Sex Workers Project in New York City, led a lunch workshop entitled “Legislative Advocacy for Sex Workers: Vacating Prior Prostitution Convictions & No Condoms as Evidence.” The Sex Workers Project uses human rights and harm-reduction approaches to protect and promote the rights of individuals who engage in sex work, regardless of whether they do so by choice, circumstance, or coercion. Broudo discussed two crucial pieces of legislation and how they can be used to help disadvantaged groups. Namely, Broudo focused on New York State Assembly Bill A03856, a bill to stop police and prosecutors from using possession of condoms as evidence that people are engaged or intending to engage in prostitution, and New York State Assembly Bill A07670, a bill to vacate prostitution convictions for trafficked people, which passed the assembly and is now awaiting action in the New York Senate.

Other sessions at the conference focused on the meta-

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narrative process of rewriting the stories that society tells itself about what is “just.” For example, a panel titled “Identity Construction and the Law: How Civic, Racial, Gender and Sexual Identity Operate and Converge in the Legal Arena” explored the interaction of these four identities, among each

Identities achieve dominance within a particular setting, group, or circumstance illuminating the courts’ and society’s treatment of these identities.

other and with the law. Each panelist analyzed how people formulate these identities, how some identities achieve dominance within a particular setting, group, or circumstance, and which legal theory illuminates the courts’, and by extension society’s, treatment of these identities. Imani Perry, a professor at Princeton University’s Center for African American studies, examined racism as a cultural practice transmitted through language, symbols, media, and other mechanisms of cultural construction. She emphasized the importance of seeing each marginalized group in a more complex and nuanced way and encouraged a reading of identity that allows each category to be embedded with distinctions. For example, she noted that the construction of patriarchy is not simply a category that divides men from women; patriarchy also constructs the category of “the man” in a way that disadvantages many men who are not acting to reinforce the dominant paradigm of masculinity. Professor Perry argued that, while many forms of discrimination are deeply entrenched in the legal system, a paradigm shift to allow a holistic analysis of oppressed groups would permit a more functional understanding of how oppressed groups encounter the law and how the system can be restructured to produce more just and equitable results.

Tony Varona, another “Identity Construction” panelist and a professor at the American University Washington College of Law, discussed recent losses by the lesbian, gay, bisexual, and transgender (LGBT) community in individual states

and identified ways to make the gay rights community more encompassing and effective. He focused on the importance of restructuring the movement’s leadership to be more racially and culturally diverse and argued that the LGBT movement must create alliances with faith communities and religious institutions. Professor Varona also encouraged more LGBT people of color to come out of the closet and challenge prevailing stereotypes within their communities—stereotypes, for example, that might label homosexuality as completely external to that community. In light of some states’ use of ballot initiatives to target gay rights, Professor Varona argued that it is even more important for the LGBT community to find effective ways of engaging and transforming the dialogue to become as inclusive and encompassing as possible. Only then would direct democracy systems be unable to manipulate the biases of dominant groups in order to stall the progress of gay rights.

The RebLaw Conference advanced the transformation of our society by bringing together exemplary public-service

The Conference urged lawyers to be rebellious and to dismantle those social structures that reinforce hierarchy and injustice.

lawyers and activists focused on a range of social justice issues and by pushing participants toward greater engagement with exigent issues of injustice and inequality. It challenged participants to think locally and on specific issues, as well as to ask how to transform broad social structures that perpetuate injustice yet go unnoticed. It rejected the notion that social change equals taking a few people from a marginalized group and inserting them into the top tiers of society’s hierarchy. Instead, the Conference urged lawyers to be rebellious and to dismantle those social structures that reinforce hierarchy and injustice.

Endnotes

¹ Ashly Hinmon is a first year law student at the American University Washington College of Law. She received her B.A. from Reed College, where she studied anthropology and gender. At the Washington College of Law she is President-elect of the Women’s Law Association and an editor for the Human Rights Brief. Before coming to law school she worked as a domestic violence advocate. This summer she will work with Legal Aid Services of Oregon on their domestic violence project.