

2002

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### Recommended Citation

Lucie White, *In the Interests of Justice: A Digression*, 70 Fordham L. Rev. 1921 (2002).

Available at: <https://ir.lawnet.fordham.edu/flr/vol70/iss5/28>

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## In the Interests of Justice: A Digression

### Cover Page Footnote

Lewis A. Horvitz Professor of Law, Harvard Law School. B.A., 1971, Radcliffe College; J.D., 1981, Harvard Law School.

# IN THE INTERESTS OF JUSTICE: A DIGRESSION

*Lucie White\**

## I. OPENING QUESTIONS

What can be done to teach law students the skills they need to work, throughout their legal careers, in the interests of justice? How can the work we do as law teachers motivate law students to take the possibility of justice seriously throughout their professional lives? How can our teaching help law students take the hope of justice seriously, over the long haul, without eventually retreating into cynicism, denial, or despair?

## II. JOB CHANGES

When I decided to go to law school, I was trying to teach low-income youth to read at a community college in a stressed urban neighborhood. I had encountered three obstacles to my students' capacities for effective learning and good citizenship, and I thought that the law could somehow help us overcome these obstacles. My students' hope was stymied by the interlocking problems of economic inequality, social exclusion, and political powerlessness. This knot of troubles seemed to sap their enthusiasm for learning or civic involvement. The notion that they were supposed to feel and act like enfranchised *citizens* seemed, to these young people, like a message from Mars.

We all know that poor people have little or no money to pay lawyers. Thus, when I graduated, I signed up for the obvious job for someone with my inclinations: working for Legal Aid. Legal Aid paid rock-bottom salaries. My starting salary, in the fall of 1982, was approximately \$12,000 a year. Even then, my law school classmates on Wall Street were making a lot more. In order to sit for my state's bar exam, I had to swear to the Bar Examiners that I had not willfully defaulted on my law school student loans. This was before the era of low-income protection plans.

Money, however, was not the only problem I encountered while working for Legal Aid in that era. The endless forms we had to fill

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out to keep track of our clients posed an even greater challenge. The paperwork was worse than what my sister faced as a first grade teacher in a Texas public school. And it was almost as bad as what the welfare workers in my county dealt with.<sup>1</sup> The forms and rules were aimed at restraining us in two ways. First, they made us show them that our clients actually were poor. And second, they made us swear we were not getting too bold in our efforts to help them.

There was also the problem of bad vibes on the shop floor. In just about every Legal Aid office of that era, including my own, the white guys ran things and handled the important lawsuits. They called these the "impact" cases. The white women, like me, worked on the high volume cases, such as evictions, divorces, and welfare terminations. They called our work the "service" cases. And the black women handled the high-stress, low-wage clerical and paralegal jobs. The white women, who had put off having children in order to work long hours, would often whisper among ourselves that the black women in the front office seemed to lack the passion that we brought to our jobs, and we didn't know why.

Finally, there was the law we had to work with; the intricate rules that made us treat our clients like Bingo cards, intruding into their lives so we could fill up the boxes to get them some cash.

Thus, five years out of law school, I decided to jump ship on Legal Aid to teach law. My defection was the result of a cool cost-benefit calculation: I figured that the subsidy I could get to work with poor people from inside a law school carried fewer strings than a Legal Aid wage. I also had the idealistic thought that at a law school, I could find some young folks to help me. And, after five years at Legal Aid, I knew that I needed their insight to keep me naïve enough to be effective.

Through all of this calculation, it hardly crossed my mind that my job as a law professor would include the task of teaching these young people "the law." It hardly crossed my mind that I might *want* to teach them something about using law to work against injustice. I just was not thinking about my reasons for moving from Legal Aid practice into law school teaching in those terms.

### III. SUBVERSIONS

As a novice law professor, I wanted to draw my students into working with low-income people against injustice. At the same time, however, I felt a gut-level aversion to the notion that this work had anything to do with "exposing" these students to the "realities" of poverty. I guess I did not believe in the "reality" of poverty. Nor could I imagine why such "exposure," if it could be carried out, would

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1. Ronald Reagan put most of the paperwork in place. Talk about irony.

help students become more attuned to the art of working against injustice. I also rejected the notion that my job should involve recruiting students to “serve” the poor. I have always felt uneasy about such missions. My grandmother’s people, good Methodist folks from the hills of Carolina, had dispatched entire families from their close-knit congregations to the missions they had set up in the Congo.

All I knew for sure, when I started teaching law, was that what I *thought* I knew about law and social justice was exactly what I *did not* want my students to believe.

That is not quite true. I *did* want to draw students into working with low-income people in ways that felt creative, upbeat, and alive. And I wanted to get across the upside-down notion that being honest with themselves about the difficulty of the work could be their greatest source of power. I wanted to teach these students the power, indeed, the necessity, of *critique* as the only reliable ground for moral action.

I have thought a lot over the years about why I am at the same time such a critic and an activist. When I was working at Legal Aid, I used to read critical thinkers like Foucault and Derrida to relax. But contrary to the warnings of the centrist legal academics, who denounced the first generation of critical legal studies as a path toward nihilism, asking the kinds of questions that pull the rug out from under one’s own grounds for action has not tied me up in post-modernist paralysis. Especially when the work gets really hard, it is only these nay-saying, groundbreaking kinds of questions that can keep it going.

I know that a big part of my romance with critique must come from my nature. Call it temperament, or quality of mind, or a physiologically-based style of perception and cognition. Perhaps, as Freud said, biology *is* destiny.<sup>2</sup> Yet, I also think my taste for critique comes from the world I grew up in—Jim Crow Carolina. That was a world in which the moral ground never turned out to be quite what it was cracked up to be. Behind every “scene” there always seemed to be black people—silent, angry, hurting—but in no position to talk honestly about what they knew was going on. This was a confusing kind of moral education for a little white girl: a set-up for learning to distrust one’s own perceptions and convictions, especially the ones that seemed most undeniably true. I guess all we can do, in the end, as lawyers and teachers inclined towards the interests of justice, is to teach from what we know.

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2. See, e.g., Steven L. Winter, *Human Values in a Postmodern World*, 6 Yale J.L. & Human. 233, 246 n.58 (1994).

## IV. FIELD-BASED COURSES

Over the years, I have taught a lot of field-based law school courses. These are small classes, in which students work with real people in the places where economic inequality, social exclusion, and political powerlessness come together. In one of these classes, which I called "Work Opportunity and Well-Being," a clinical psychologist and I taught a group of law and medical students who were working with people who had felt pressured to apply for Supplemental Security Income ("SSI") disability benefits. These people were unable to find work they could do in the national economy. As our students took these people through the demeaning steps of the disability certification process, they kept journals of what, following Mikhail Bakhtin, we called "arresting" moments. We explained these as moments when you are *struck* by an experience that refuses either to fit itself into the world that you thought you knew, or to go away.

## V. ARRESTING MOMENTS

A few moments from my teaching immediately come to mind as I write this:

□ The scene is the University of North Carolina Law School's Legal Aid clinic in 1984, at the height of the federal government's campaign to weed malingerers off of the federal disability rolls. A law student is representing an elderly African American couple in a claim to reinstate their SSI disability after an abrupt termination. Both the husband and wife suffer from severe mental illness. At the end of their hearing, the couple gives the student a small token of their gratitude. It is a 45-rpm recording, produced by the couple through a mail order service, on which they recite love poems that they have written to each other over their forty-year marriage.

□ The scene is Los Angeles in 1989, the hey-day of homelessness. Law students are working with Vietnam veterans on Venice Beach. In the early mornings, many of these veterans can be found foraging for food in the garbage cans along the boardwalk. The students take food stamp applications from the few hungry men who are willing to complete them. They probe the others to understand their reasons for refusing the federal assistance to which they are clearly entitled. One of the reluctant veterans, interviewed while rummaging through an overflowing garbage can, explains his choice of foraging over food stamps in the following terms: "I have too much respect for my own dignity to set foot in the West L.A. welfare office."

□ The scene is Boston, in the winter of 1996-97. A group of law students, most of them from "historically underrepresented" groups, work at a local food pantry with elderly immigrants who have been terminated from SSI by the recent federal welfare reform law. The elders welcome the students' efforts. But the food pantry staff,

second-generation immigrants with European surnames and associate degrees in human services, seem to distrust the law students' presence, perhaps because the students go to a powerful university that does not have a good reputation in this local world. The workers express their feelings of distrust and the students get the message. The students graduate from law school with hurt feelings about serving the poor.

□ The scene is Accra, the capital of Ghana, in the year 2000. The nation is still recovering from the decade of "structural adjustment," in which a bloc of "donor" nations required poor nations to unravel what was left of their social service programs in order to get foreign loans. A group of U.S. law students, most of them white, have come to Accra to work with students from the University of Ghana's law faculty on a health rights campaign in a high-poverty area of the city. The 1990s brought spiffy new freeways, shopping centers, and five-star hotels to central Accra. Yet the community of almost one million people in which the students are working came out of the 1990s with fewer public services than it had before structural adjustment policies were imposed. Thus, there is little garbage pick-up, sewage disposal, water treatment, or primary health care in this vast urban village. Instead, the people tend to use traditional remedies for cholera and tuberculosis and to defecate in plastic bags. The Ghanaian students do not want to admit to ever having set foot inside this quarter, which they refer to as a "slum." They have trouble understanding why rich American students would come all the way to Ghana to spend time in such a place unless the American students are spies, and they let their feelings be known. The American students get the message, reasoning that their Ghanaian counterparts cannot deal with poverty in their own country because of class bias. The American students have come to Ghana for the summer because it has become cool for justice-minded U.S. law students to spend their summer vacations in exotic places like Ghana, working with "indigenous" community groups on human rights campaigns.

□ A few days have passed. The Ghanaian slumlord who is renting space to the indigenous human rights organization that is hosting the American students informs his tenant that because white folks are hanging around the group's office, a new source of money must be somewhere in the picture and threatens to raise their rent.

□ The scene is Harvard University in the Spring of 2001. Students take over the Provost's Office to protest the university's refusal to pay some of its custodial workers what the students consider to be a living wage. Other students host conversation sessions with small groups of the workers whose welfare the protesters seek to further. The leader of the conversation project writes a paper that recounts repeated moments during the protest in which eloquent, monolingual students, impatient with the pace of simultaneous translation, eclipse the workers' voices.

□ The scene is today and tomorrow. A group of single mothers meet weekly with law students and teachers in a low-income neighborhood in Cambridge, Massachusetts, to stave off the demons of despair. The students invite the women to meet with the law school seminar that wraps around the project. The women's words make it clear that they are every bit as astute and articulate as these future lawyers. The students get the message. They are gracious and responsive, as their values dictate, but they are thrown off by the women's eloquence. They are uncharacteristically flustered, awkward, and at a loss for words.

## VI. LESSONS

When I started teaching law, I thought hard about how to teach the theories and skills that lawyers need to work in the interest of justice. I imagined young law school graduates moving into the profession knowing how to use the law against the sort of inequality, exclusion, and powerlessness that the law itself has helped to design. Thus, I tried to create the appropriate pedagogical settings for this kind of teaching project. I tried to erect the appropriate pedagogical "scaffolding" to support this kind of learning. I sought assessment tools that could ascertain whether good learning was taking place.

More recently, I have begun to ask different kinds of questions: Why do some moments from my teaching seem to *arrest* me, sticking so stubbornly in my mind? Does time really go around in circles, in spite of the path of the law? And what about the interests of justice? What have those interests been up to over the last several decades? Why does the knot of inequality, exclusion, and powerlessness seem so bound up with the question of justice and so resistant to it? Why do I distrust questions that seem to presume their own answers?

Last spring, on the last day of one of my field-based courses, the students asked me to say a few words about why I was teaching the class and what I had hoped the students might learn from it. I talked about a seminar that I had taken, while in graduate school, with the French literary critic Roland Barthes.

In the first class of that seminar, Professor Barthes asked us to give him words that we had fallen in love with. We vied with each other to bring our favorite words to his attention as he wrote, furiously, on the blackboard. Suddenly, he paused and began to circle the words from the list that intrigued him. Those words became our syllabus for the ten-week course. We spent the first three classes on *café*, which, we learned, was at once a beverage, a system for gender-ordering public space, and a site of resistance to colonial hegemony. We then turned to a word that he had chosen: *addas*. He told us that *addas* comes from the Arabic language and means any word that means both itself and its opposite, at the same time.

By the end of that seminar, I knew I had learned something important about undoing the knot of inequality, exclusion, and powerlessness in the interests of justice.

We started the Accra health rights project with a week-long seminar, in Ghana, for U.S. and Ghanaian law students. The students worked together to design and facilitate the seminar, which probed some of the intersections of economic policy, social and economic rights, and democratic participation. One of the ground rules that they set for themselves was that whenever someone spoke, she had to address the previous speaker by name—a fairly simple rule. At the end of the week, one of the students, from Ghana, said that he had never before been in a classroom in which he felt that his voice was taken seriously.

By the end of that seminar, I knew I had learned something important about undoing the knot of inequality, exclusion, and powerlessness in the interests of justice.

*Notes & Observations*