Hastings Law Journal

Volume 43 | Issue 4 Article 4

1-1992

Paradox, Piece-Work, and Patience

Lucie White

Paradox, Piece-Work, and Patience

by
LUCIE WHITE*

In June of 1991 Professor Anthony Alfieri published *Reconstructive Poverty Law Practice* in the centennial issue of the *Yale Law Journal*.[1] His essay is at once a subtle reflection on his own practice and an effort to theorize more generally about poverty advocacy. In the year since the essay was published, it has been read widely by law students and their teachers. It has offered these readers a model for how the "theoretics" of practice might be carried out. This Comment is a brief reflection on Professor Alfieri's essay. It seeks to suggest, rather than comprehensively examine, some of the risks—the silences—that his essay unwittingly imposes. I write not so much to criticize a single essay as to endorse a way of theorizing that continually, and collectively, puts into question the assumptions that even our best efforts to do theory take for granted.

In his essay Professor Alfieri explores how our day to day habits as poverty advocates, our ways of seeing, hearing, and responding to our clients, all too often have the ironic—indeed perverse—effect of repressing the capacities and aspirations of the very people and communities we seek to help. Alfieri argues that as poverty lawyers we too often perceive, and thereby construct, clients as passive, dependent recipients of our services, rather than savvy and often subversive individuals who have learned to survive in a hostile world. Professor Alfieri is careful to focus his critique on common routines of poverty law practice, routines that are embedded in the broad institutional structures of legal aid for the poor; he does not question the good will of the people who, like Alfieri himself, have practiced poverty law. Yet in spite of the author's careful focus, the essay speaks to deep feelings of conflict, indeed of tragedy, among poverty lawyers, feelings that sometimes seem an inescapable part of the job.[2]

* Professor of Law, University of California at Los Angeles School of Law. B.A. 1972, Radcliffe College; J.D. 1981, Harvard Law School.

1. Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991).

2. *See, e.g.*, Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L.J. (forthcoming 1992).

Professor Alfieri does not undertake his critique gratuitously. Rather, in contrast to the tradition of "trashing" in the early critical legal studies literature,[3] Alfieri writes with a clear reconstructive goal. He wisely admits that poverty lawyers cannot easily "break out" of the prison-house[4] of their routines of practice, and the taken-for-granted descriptions of their clients that give those routines their common sense. He wisely admits that advocates cannot invent a new tradition of poverty law practice out of whole cloth. Yet he claims that we can transform our practice, at least at its margins, by approaching the work with four themes in mind. He argues that "suspicion," "metaphor," "collaboration," and "play" can help poverty advocates reshape the most deeply entrenched traditions of poverty law practice.[5]

Such themes sound repeatedly in the recent scholarship about poverty law practice that is the occasion for this symposium.[6] Gerald López was one of the first writers to seek a new approach to change-focused advocacy, in his "rebellious" alternative to the "regnant," or dominant, approach to poverty law.[7] López has since been joined by others in the painstaking work of documenting what this alternative might look like in the harsh landscapes where poor people and their lawyer-allies work.[8] Alfieri's essay furthers that collective effort.

Yet Alfieri's work stands out in this emerging scholarship in one respect. Much of this new advocacy literature is rigorously committed to a situated theoretical practice[9]—to the slow learning that comes from multiple, partial perspectives, from uncertain readings by advocates of their own day to day work. In this view, the project of doing theory is

3. *See* Mark G. Kelman, *Trashing,* 36 STAN. L. REV. 293 (1984) (defending the rhetoric and strategy of "trashing" in critical legal studies scholarship).

4. *See* FREDRIC JAMESON, THE PRISON-HOUSE OF LANGUAGE: A CRITICAL ACCOUNT OF STRUCTURALISM AND RUSSIAN FORMALISM (1972).

5. Alfieri, *supra* note 1, at 2134.

6. In addition to the other works in this volume, see the works that Professor Alfieri cites in footnote 42 of his article.

7. López contrasts these two approaches to poverty advocacy. In the "regnant" approach, the lawyer positions himself as an expert, and sets out singlehandedly to solve the problems of the poor. In the alternative, or "rebellious," approach, lawyers and other "outsiders" see themselves as allies or collaborators with poor communities in a collective project that draws on the full range of skills and competencies of all the group's members. These concepts will be explained and illustrated in much greater depth in López's forthcoming book, THE REBELLIOUS IDEA OF LAWYERING AGAINST SUBORDINATION (forthcoming 1992).

8. One excellent example of this new contextualized scholarship is Austin Sarat, "... *The Law is All Over": Power, Resistance, and the Legal Consciousness of the Welfare Poor,* 2 YALE J.L. & HUMAN. 343 (1990).

9. For theoretical discussion of a situated theoretical practice, see RENATO ROSALDO, CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS (1989); Gerald López, The Well-Defended Legal Academic Identity (unpublished manuscript, on file with author, 1990).

itself "reconstructed" into a collective practice. Rather than a task reserved to scholars, theory becomes a habit of ongoing conversational reflection about how to describe the problems, make alliances, devise strategies, and thus move together toward a better world. Theory is the ongoing practice of reflection among the communities of poor people and their allies that are constituted by the work they come together to do.[10] This kind of theoretical practice does not yield the static artifacts, the articles and books, that we have learned to equate with "theory." Rather, this kind of theoretical practice is enacted in those elusive moments of insight that mark good conversations, or in those tactical innovations that work. This kind of theoretical practice could be "written up," finally, only in a situated, reflective history of the practice itself.

Alfieri's essay, in contrast, seems to picture the making of theory in a very different way. He seems to envision theoretical work as the bringing *of* static, prepackaged insights *to* poverty lawyers from a perspective that is curiously freed from the concrete engagement, the partiality, and hence the ambiguity of its own vantage-point. In doing this kind of theory, Alfieri seems driven by a sense of impatience. Understandably distressed by the "historical failure of poverty law traditions to countenance the values and to design effective methods of client and community empowerment,"[11] he seeks, singlehandedly, to produce a body of prescriptive knowledge that might jar poverty lawyers out of their old routines. This kind of "theory"—impatient, imperative—conceals or represses at the same time that it appears to enlighten and enable. This is a lesson that Jacques Derrida has taught us through much of his work. He has taught of the hazards that follow when one seeks to pass over the counterpropositions that are suppressed by every theoretical pronouncement one might make:

> all the propositions carry within themselves a counterproposition: sometimes virtual, sometimes very explicit, always readable, this counterproposition signals what I will call . . . a *double edge* and a *double bind,* the singular artifact of a blade and a knot.[12]

10. For two accounts of this process at work, see JACQUELINE LEAVITT & SUSAN SAEGERT, FROM ABANDONMENT TO HOPE: COMMUNITY HOUSEHOLDS IN HARLEM (1990) (providing an account of the situated "theorizing" of members of impoverished "community-households" in Harlem), and Lucie White, *Representing "The Real Deal,"* 45 U. MIAMI L. REV. 278 (1990-91) (providing an account of collective reflection by a group of so-called "homeless" people and advocates in Los Angeles).

11. Alfieri, *supra* note 1, at 2120.

12. Jacques Derrida, *Like the Sound of the Sea Deep within a Shell: Paul de Man's War, in* MEMOIRES: FOR PAUL DE MAN 155, 180 (Peggy Kamuf trans., 1989).

If we lose patience with the slow, dialogic[13] exploration of the collective practices in which we are embedded, and leap toward an imperial, imperative style of doing theory, we risk *repeating* within our own theories the very "interpretive violence" that our theories seek to move us beyond.

Professor Alfieri goes to great lengths in his essay to avoid the danger of speaking in a single, abstract, imperative theoretical voice. He lets us hear the words of his client. He walks us through his encounter with her in great detail. Yet in the end, these efforts prove ineffective to counter the message that is locked into the essay's formal structure and underlying conception. In spite of his gestures toward a dialogic, situated, open-ended exploration of his own practice, the essay leaps toward certainty, closure—Narrative Authority. It repeatedly betrays an impulse to *tell* us what to do. In spite of the author's professed intentions, the essay tries to reach further than its basis in self-reflection can support. The essay seems too willing to speak for others, rather than presenting one person's experience so that others might think more deeply about their own. It seems too willing to project the author's insights about his own practice onto the work of other advocates, and to project the author's own images of his clients' aspirations onto their souls. Contrary to Professor Alfieri's intentions, the essay too often slips from the "edge," the paradox, on which any "theoretics" of emancipatory advocacy in "impoverished communities" must stay poised.[14]

That edge can best be recovered by searching out one of the "counterpropositions" that Alfieri's essay has repressed. Alfieri shows how poverty lawyers do "interpretive" violence in the ways they imagine, perceive, address, and respond to their clients. Their traditions and practices have the unintended effect of rendering their clients as dependent, passive objects of the lawyers' professional expertise. He explains that his concept of "violence" "is not intended to denote acts of physical violence."[15] Rather, interpretive violence is a metaphor, deployed to "summarize[ ] interpretive practices destructive of client narrative meaning."[16] Yet the violent *interpretive* practices of poverty advocates are themselves embedded in worlds where other violent practices, many of them *not* so "metaphorical," pervade people's lives.

13. *See* Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment,* 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-88) (providing a monologic theoretical justification for the need for a dialogic theory/practice of poverty law).

14. *See* Lucie White, Goldberg v. Kelly *on the Paradox of Lawyering for the Poor,* 56 BROOK. L. REV. 861, 863-64 (1990).

15. Alfieri, *supra* note 1, at 2118 n.36.

16. *Id.*

These "other" violent practices are so common in poor communities that they are often invisible, taken for granted, by the "outside" world. The violence is often race-linked, designed to impress the horror of past atrocities on contemporary communities.[17] Sometimes the violence is more private, but equally devastating. Retaliation, for instance, in the form of firings, evictions, or the termination of welfare claims, is routinely directed against people in impoverished communities who dare speak out.[18] When people are living on the margin, such retaliation translates into the physical and psychic assaults of homelessness, hunger, and rage.

A recurring theme in the feminist and critical race theory that Professor Alfieri cites is that "real" violence is central in exacting the systematic silence of all women, and of women and men of color.[19] The physical violence of lynching, rape, incest, battery, the psychic violence of hate speech, the economic violence of retaliation—eviction, discharge, welfare termination—these may not seem very subtle or sophisticated from the perspective of continental discourse theory.[20] Yet from the point of view of people who live and work in impoverished communities, these direct forms of violence present an overwhelming barrier, a barrier

17. *See, e.g.*, Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 34 & n.98 (1990) (noting how a creek in an impoverished African American community still bore the name "Nigger-head" in the early 1980s, to mark the site of a lynching).

18. This observation is repeatedly confirmed in my personal experience, and by the reports of poor people with whom I have worked. To my knowledge, there are no reliable empirical data about the scope of retaliation in impoverished communities. Regina Austin has collected data on subtle practices that inflict emotional distress on low level workers, but these data do not focus specifically on retaliation. *See* Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 STAN. L. REV. 1, 20-49 (1988); *see also* JAMES C. SCOTT, DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS (1990) (describing indirect speech practices that subordinated groups devise to protect themselves against retaliation for expressing their feelings more forthrightly).

19. *See, e.g.*, CATHARINE A. MACKINNON, *Sex and Violence: A Perspective, in* FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 85-93 (1987) (emphasizing the central role of sex-based violence, such as rape, battery, and incest, in silencing women); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1358-59 (1988) (critiquing early critical legal studies analyses of racism for their failure to take full account of the role of real violence, as opposed to ideological mystification, in suppressing communities of people of color); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2332-35 (1989) (noting the link between racist speech and physical violence against communities of color); Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L.J. 81, 94 (1987) (arguing that women redefine themselves in response to the pervasive threat of physical violence they face).

20. For a survey of the range of theories to which I refer, see sources cited by Fraser and Palmer, *infra* note 21.

preventing people from speaking out in any but the most guarded, most constrained ways if they are serious about their own survival.

Several theorists, all of them thoughtful critics of Foucault, warn of the risks inherent in theorizing about "interpretive" violence.[21] This is a danger that Professor Alfieri does not fully escape. In order to define a concept of "interpretive violence," he must create a dichotomy between his "metaphor" of "interpretive violence" and a "real" violence—the actual conduct of violent acts—to which his metaphor is opposed.[22] After constructing this dichotomy, Alfieri's story emphasizes the metaphor, and thereby devalues the opposite pole. Thus, the essay unwittingly works to de-emphasize the "actual conduct of violent acts" in poor communities. It turns our attention away from cops kicking poor people—with boots and with racist slurs—and of landlords locking them out. By repressing these images, Professor Alfieri's story has the ironic effect of doing precisely what it seeks to avoid. His story of lawyers' interpretive "violence" shifts our attention away from these other kinds of violence. His admonition that we listen for stories of dignity and power from our clients, as well-founded as this advice may be, renders us less attentive when a client attempts to name for us the violence that threatens her life.[23]

Professor Alfieri should not be faulted for the "violence" done by his essay; that risk is entailed by any monologic, abstract approach to theoretical work. He cannot avoid the risk by rejecting discourse-aware-

21. *See* BRYAN D. PALMER, DESCENT INTO DISCOURSE: THE REIFICATION OF LANGUAGE AND THE WRITING OF SOCIAL HISTORY (1990); Nancy Fraser, *Foucault on Modern Power: Empirical Insights and Normative Confusion, in* UNRULY PRACTICES: POWER, DISCOURSE, AND GENDER IN CONTEMPORARY SOCIAL THEORY 17-34 (1989); Nancy Fraser, The Uses and Abuses of French Discourse Theories for Feminist Politics (1989) (unpublished manuscript, on file with author); Martha Minow, *Interpreting Rights: An Essay for Robert Cover,* 96 YALE L.J. 1860, 1897-1900 (1987); Robin L. West, Feminism, Social Theory, and Law (unpublished manuscript, on file with author) (exploring the risks of Foucault's theory of power for feminist politics). Joan Scott and Linda Gordon have recently engaged in a feminist debate over the place of discourse critique in social theory in an exchange of reviews of their most recent books. *See* Joan W. Scott, *Heroes of Their Own Lives: The Politics and History of Family Violence by Linda Gordon,* 15 SIGNS 848 (1990) (book review); Linda Gordon, *Response to Scott,* 15 SIGNS 852 (1990); Linda Gordon, *Gender and the Politics of History by Joan Wallach Scott,* 15 SIGNS 853 (1990) (book review); Joan W. Scott, *Response to Gordon,* 15 SIGNS 859 (1990).

22. *See* Alfieri, *supra* note 1, at 2118 n.36 (distinguishing the metaphor of interpretive violence from "acts of physical violence").

23. In my oral comment at the symposium, I described several examples from my own current work, in which clients spoke only with great reluctance about experiences of sexual, economic, or racial violence that threatened their lives. A more detailed account of some of these experiences is forthcoming in Lucie White, *Speaking Truth to Power: Violence, Despair, and Healing Spaces in Poor Women's Lives,* 1992 WISC. L. REV. (forthcoming).

ness and shifting his focus from "interpretive" violence to the "actual" violence in the "real" world. As his philosophical mentors show us, he will find no firm footing in the quicksand of "the real world." The challenge, rather, is to critique the "violence" we inflict through language without thereby creating a dichotomy, a hierarchy,[24] that privileges this "interpretive" violence and thereby represses the violence of blood.

This path—this edge—will reveal itself only through a less impatient practice of theory: the situated piece-work[25] of reflecting together as we get on with our work. Only such contextualized reflection can plot the paradox of interpretive/corporal violence, tracing how the subordinating power of "real" violence comes from its social meaning, and how disempowering traditions of law practice arise from, and enhance, the violence imposed by guns and knives. The task is to tell stories that reveal how "literal violence" cannot be experienced separately from the power/knowledge regimes in which it is embedded, and how "interpretive violence" cannot be disentangled from the threat, and the execution, of corporal violation.

Professor Alfieri's essay teaches the powerful lesson that we lawyers cannot "empower" impoverished communities by fitting clients into our own strategic or theoretical schemes. Rather, we must ally with embattled communities and seek ways to support people's efforts to empower themselves. Yet the essay also enacts the lesson it purports to teach. It shows that, in their impatience to theorize their own practice, lawyer-theorists like Professor Alfieri risk usurping from poor people and their advocates the power to name the very forms of violence that pose the most formidable barriers to their empowerment.

24. Jacques Derrida, for one, has astutely described the processes of language through which dichotomies effect patterns of hierarchy between the two contrasting terms. *See, e.g.*, JACQUES DERRIDA, WRITING AND DIFFERENCE (Alan Bass trans., 1978).

25. *See* López, *supra* note 9 (describing all academic work as "piece-work" in a collective institutional practice).