

Vulnerable Populations and Transformative Law Teaching

Vulnerable Populations and Transformative Law Teaching

A Critical Reader

Edited by

Society of American Law Teachers

and

Golden Gate University School of Law

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Foreword

Who creates and interprets law? Who has access to power and the force of law? How can we make these inquiries more explicit as a way of exposing the deficits in our system? How do we develop a generation of lawyers who are more aware of these disparities so that they will work to change them?

These are some of the issues we attempted to address at the March 19–20, 2010 “Vulnerable Populations, Economic Realities” teaching conference organized and hosted by Golden Gate University School of Law and co-sponsored by the Society of American Law Teachers, SALT. That conference, generously funded by a grant from The Elfenworks Foundation, brought together law faculty, practitioners, and students to reexamine how issues of race, gender, sexual identity, nationality, disability, and outsider status generally are linked to poverty. We asked in our call for proposals for presentations that offered a roadmap for incorporating these issues into the law school curriculum, both inside the classroom as well as in clinical and externship settings, study abroad, and student activism. The conference offered participants glimpses into “teaching moments,” both intentional and organic, to help trigger opportunities for students, and faculty, to question their own perceptions and experiences about who creates and interprets law, and who has access to power and the force of law. Who benefits from our legal system? How can we make this more explicit as a way of exposing the deficits in our system? How do we develop a generation of lawyers who are more aware of these disparities so that they will work to change them?

This volume is organized in two ways: first, there are three foundational essays, written by John Payton, Richard Delgado, and Douglas Colbert. John Payton, the sixth president and director-counsel of the NAACP Legal Defense Fund, in his keynote address reminds us that the history of the civil rights movement is quite short and that the advances made, although not to belittle them, have failed to unlink race from economic disadvantage, especially in the wake of the economic crisis of 2008 that ravaged the African American community, where jobs, homes, and futures disappeared. Richard Delgado, University Professor of Law at Seattle University School of Law, finds within the 1958 film *The Long Hot Summer*, starring Paul Newman, Joanne Woodward,

Orson Welles, and Anthony Franciosa a metaphor for entitlement that structures an analysis of contemporary majority attitudes towards persons of color and new waves of immigrants. Finally Douglas Colbert, Jacob A. France Research Professor of Law at the University of Maryland School of Law, challenges the legal academy to incorporate throughout the law school curriculum, not limited to a required Legal Ethics course, an understanding that a lawyer has a responsibility as a “public citizen” to act throughout his or her career to improve the delivery of legal services to the underrepresented.

We have also organized these essays in a way that provides the reader with an opportunity to transcend the traditional hegemonic structures of legal education in search of ways to become a better teacher. Rather than categorize through hierarchy or subject matter, we have divided the remainder of the book into two groupings: “Inside the Classroom” and “Outside the Classroom.” These categories are intended only to site literally the physical place where these glimpses into teaching moments happened to occur.

The categories of “Inside the Classroom” and “Outside the Classroom” originated in the essay contributed by Deirdre Bowen, Daniel Bonilla Maldonado, Kathleen Neal Cleaver, Colin Crawford, and James Forman, Jr.: “Engaging Students in Unexpected Ways: Interdisciplinary, Community-Based, Global, and Activist Models.” How law should be taught, explain these authors, requires that the context of law be infused with community, culture, and the perspectives of those people whose lives are impacted by law that has been devised by others. As you read through this essay, that categorization of inside and out is further questioned.

We invite you to browse this volume with some disregard for the subject matter, whether real property, domestic violence, legal research, emergency planning, or contracts; the subject matter is less important than the teaching perspective presented. We suggest that ideas developed within any learning context, whether inside or out, might offer inspiration to an inquiring law teacher. Ideas generated from work in a clinic can infuse a discussion in a classroom no matter the subject matter. Observations about student behaviors when escorting them out of their comfort zone in a clinical or externship program also apply when bringing them to a foreign country during a study abroad summer or through a difficult classroom discussion. These pedagogical observations can inform a lesson about a leasing clause, a constitutional phrase, a class action law suit, or client counseling.

“Inside the Classroom” begins with Gilbert Paul Carrasco’s “The Pedagogics of Poverty in Constitutional Law,” which offers those teaching Constitutional Law a new emphasis on executive and legislative powers, as well as state constitutions, as a progressive strategy for securing greater legal rights for the

impoverished. Deborah Post and Deborah Zalesne in “Vulnerability in Contracting: Teaching First Year Law Students About Inequality and its Consequences” provide concrete ways to explore the assumptions behind contract rules to expose how these supposed “neutral” rules perpetuate the subordination of vulnerable populations.

Steven Bender in “From Sandoval to Subprime: Excluding Latinos From Property Ownership and Property Casebooks” searches property law textbooks and contemporary analysis of property law generally for the missing discourse on Latinos and housing, revealing the reality of inequity in availability, financing, and enforcement of lending and anti-discrimination laws. Florence Wagman Roisman, in a related essay, “Teaching to Address the Foreclosure Crisis,” offers a ready supplement to Property teachers on how to cover the mortgage crisis, with emphasis not only on the racially discriminatory and predatory loans, but on cases brought by law school clinics to encourage students that their participation in these clinics is worthwhile and beneficial.

Sarah Valentine in “Leveraging Legal Research” explains how to reshape the first year legal research class into a dynamic introduction to social justice lawyering. Cynthia D. Bond in “The Legal Writing Classroom in the World: Teaching Skills in a Social Context” argues that construction of legal writing exercises can reinvigorate thinking about how the law treats vulnerable populations, even among seemingly “post-racial” students.

Robin R. Runge in “Increasing Awareness and Understanding of Representing Vulnerable Populations and their Economic Realities by Integrating Domestic Violence into Law School Curriculum,” details two exercises that uncover student assumptions about the victims of domestic violence, offering a methodology for understanding the pervasiveness of such violence across the entirety of a client’s life and raising issues about the conflicts and ethical challenges that attorneys may face in the process of representing domestic violence victims.

Anne Marie Hawkins and Robin Clark in “Planning for the Worst-Off in the Worst Case Scenarios: Emergency Planning for the Economically Disadvantaged” illustrate how issues of disadvantage and vulnerability need to be addressed in disaster planning and highlight this area as a possible career choice.

Doug Simpson, a litigator, in “The Unseen, Unheard, Unknowledgeable, and Underrepresented—How Can Law Schools Develop Student Interest in Helping Disadvantaged People?” devises an across-the-curriculum exercise that would engage students in a holistic approach to analyzing legal problems while integrating professional skills and values and understanding the true impact of economic and political disparities on how the law operates.

Once the volume moves “Outside the Classroom,” Raquel Aldana and Leticia Saucedo in “Learning in Mulukukú: A Journey of Transformation” recall a

study abroad program they organized in a small rural village in Nicaragua and how they guided students, along with themselves, through a transformative learning experience that challenged neo-liberal individual rights theory.

Marci Seville in “Chinese Soup, Good Horses, and Other Narratives: Practicing Cross-Cultural Competence Before We Preach” uses her own and colleagues’ assumptions as ways to gently open the door to having students expand their understanding of how clients might see the world differently than they do. Susan Rutberg along with three of her students in “Wrongfully Convicted: The Overrepresentation of the Poor” identify the failings within the criminal justice system that cause wrongful convictions and offer solutions to ameliorate at least some of them.

Michael L. Perlin and Deborah Dorfman in “‘The Sources of This Hidden Pain’: Why a Class in Race, Gender, Class, and Mental Disability?” truly move out of the classroom in describing the New York Law School’s masters and certificate programs in mental disability advocacy offered online.

Libby Adler in “Teaching Sexuality and Gender as Distributional Issues” challenges a rights-based analysis, illustrating how to introduce students to how sexuality and gender affect the problems and solutions facing young LGBT youth. MaryBeth Musumeci, Elizabeth Weeks Leonard, and Brutrinia D. Arelano in “Medical-Legal Partnership: Three Voices from the Law School Clinic” offer a range of vantage points, from an experienced legal services attorney and clinic founder, a traditional law school classroom instructor, and a recent law graduate and clinical fellow, on utilizing medical-legal partnership (MLP) law school clinics to expose students to the economic realities of vulnerable populations.

Paulette J. Williams in “Financial Planning for the Poor: A Community Lawyering Approach to Eliminating Poverty” argues that law school clinics are well-suited to provide financial planning and literacy services to clients while also providing systemic solutions to revitalize communities.

Lastly, Mary B. Culbert and Sara Campos in “We Are Them and They Are Us: Preparing Clinical Law Students to Serve Economically Disadvantaged Communities” present how they screen students to participate in a law school mediation clinic and how they introduce them to the art of judgment-free mediation.

The “Vulnerable Populations, Economic Realities” conference was supported by the dynamic and generous Drucilla Stender Ramey, dean of Golden Gate University School of Law, who offered the resources of the law school to convene this group of activist scholars.

We thank the authors for their diligence in transforming their often interactive and lively presentations into chapters. When we put out the call for pa-

pers, we were delighted to receive the response we did, and have incorporated each into this book. We thank individual members of the *Touro Law Review*, guided by Editor-in-Chief Madeline Zuckerman (Touro Class of 2011), David Berg Public Interest Fellow, for her dedication to this project. Over the summer of 2010, Ms. Zuckerman took charge of this project and then supervised Brian Elliott (Touro Class of 2012), cite-checking each of the submissions. Their professionalism and exactitude have greatly added to this project. In addition, we thank *Touro Law Review* members Daniel Evers, Christopher Cosolito, and Megan Sterback (all Touro Class of 2011) for their assistance with cite checking. Lastly, we thank Rebekah Morrissey (McGeorge Class of 2012) for her help in gathering sources for one of the essays.

We also thank Linda Lacy from Carolina Academic Press for her commitment to this project.

We offer this volume to law faculty in hopes of broadening the parameters of teaching about law and policy so that this next generation of attorneys will be dedicated to their roles as public citizens, broadening the availability of justice.

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