

# KEEPING SHARP YOUR CUTTING EDGE

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I appreciate being invited to speak here tonight about the *Review of Law & Social Change* and this theme of “Page to Practice.” Your focus speaks well of your determination to remain in the avant garde of social change writing for lawyers. But to be honest, I have to acknowledge that I am facing a couple of conundrums.

The first is that when it comes to *Lawyers, Law, and Social Change*, the article I wrote in 1984 envisioning a very limited role for lawyers, I am not sure that I have changed my mind a lot.<sup>1</sup> I still don’t think much of lawyers. I said in 1984, and I still believe now, that it is organized people (those who have been organized into groups for taking action) that make social change, not lawyers—and if lawyers have anything to contribute to social change, it is by using their skills to help the social changers to organize.

My second problem is that I remain quite ambivalent when it comes to writing pages, even though I like to write a lot as a person and have written a lot as a lawyer. As a lawyer in general, I know that a lot of our job is to invent words to justify the infliction of pain, degradation, and death. Words allow humans to exploit and kill each other with greater ease and less guilt. Words at their worst have been used to justify a lot of obscene violence, including war, torture, executions, incarcerations, elimination of health, destruction of the environment, seizures of property, and more.

As a lawyer worried about social change and organizing, I know that words, in addition to affirming evil, can also assist it by making us into apathetic lumps. If a bad page cannot seduce us into doing evil, it will settle for making us stupid and passive.<sup>2</sup> The Right mobilizes cliché to

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1. Steve Bachmann, *Lawyers, Law, and Social Change*, 13 N.Y.U. REV. L. & SOC. CHANGE 1 (1984–85).

2. See THEODOR ADORNO, *THE CULTURE INDUSTRY* (J.M. Bernstein ed., 1991) (comparing popular culture to a factory producing standardized cultural goods); HANS MAGNUS ENZENSBERGER, *CRITICAL ESSAYS* 3–14 (1982) (criticizing what the author calls the “mind industry”); MARCEL PROUST, *TIME REGAINED* 296–99 (Andreas Mayor &

make us think we live in a best of all possible worlds that should not and cannot be changed. Yet the Left does something similar when it encourages people to believe that polysyllabic logorrhea can serve as a substitute for concrete political action.<sup>3</sup>

So when all is said and done, I must admit that talking about “Page to Practice” is, for me, almost a contradiction in terms.

However, in the days of my Hegelian/Maoist youth, we used to say that contradictions make the world go ’round—or something like that. So in the limited time I have tonight, I think I can wrestle with some of these contradictions and make some suggestions about what the *Review of Law & Social Change* should consider when it contemplates “Page to Practice.”

FIRST, I would reiterate my theme that we should be careful about our priorities. Our priorities should be organizing first, law second. Good organizing creates good law. Or it creates bad law. Look at what labor unions and African Americans did between 1930 and 1965. But also look at what the New Right has done over the past forty years.

Beyond being an organizer first, be careful about privileging intellectual work over other forms of work. Even Foucault said “it is not with ideas that history is made to move forward, but with a material force, that of the people reunited in the streets.”<sup>4</sup> We should keep in mind that Barack Obama *might* say that his years working as a community organizer on the South Side of Chicago were more valuable than his years on the *Harvard Law Review*. Of course, had he worked with the *Review of Law & Social Change*, his choice would be clearer . . .

SECOND, pages from the *Review of Law & Social Change* should put words to *good* work. They should identify bullshit and critique cliché. “Death Tax” should be called “excuse for hereditary aristocracy.” “Enhanced interrogation” should be called torture. War criminals should be called war criminals. Pages should expose the myth that humans are nothing but consumption machines and the lie that the market is free and always produces happy endings.

THIRD, the *Review of Law & Social Change* should produce practical pieces that help lawyers working in particular fields. One example that *Social Change* can cite from its own pages includes an upcoming article by K. Babe Howell, who will speak to you tonight as part of the next panel. The title of her article, *Broken Lives from Broken Windows: The Hidden*

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Terence Kilmartin trans., 1993) (1927).

3. See, e.g., TODD GITLIN, *THE TWILIGHT OF COMMON DREAMS* 147 (1995) (“The new academic left tended to mistake strong language for steady, consequential political engagement.”).

4. MICHEL FOUCAULT, *POWER/KNOWLEDGE* 24–25 (Colin Gordon ed., Colin Gordon, Leo Marshall, John Mepham & Kate Soper trans., 1980).

*Costs of Aggressive Order-Maintenance Policing* gives you an idea of the type of piece I am referring to.<sup>5</sup>

FOURTH, the *Review of Law & Social Change* should consider publishing occasional war stories. By “war stories” I mean stories of legal work done “in the trenches,” so to speak—stories that address details of actual practice that seldom come to the attention of other lawyers unless it’s around a tavern table assisted by a good number of beer bottles. These stories don’t have to be long, and they don’t have to carry a truckload of footnotes. But I do think a few pages of war stories per issue might give people a sense about how the law works in real life. The stories might provide some hints about how to survive emotionally or financially as a social change lawyer. They might include a hint or two for effective legal practice.

By way of example, in my 1984 article I wrote one story about law practice in the savannahs of deepest Arkansas. The context was an ACORN campaign to give citizens more power over their local utilities. In reflecting on the role of lawyers in social change, I wrote about my personal experience working with organizers and community members—not speaking for them, but giving them legal research and political theatre—to help move the campaign forward.

In an article I hope to publish in the near future, I will tell a story about a Republican voter suppression effort that ACORN fought in 2004 in Toledo, Ohio. Supposedly it was a grassroots lawsuit objecting to alleged improprieties in ACORN voter mobilization. However, our response to this lawsuit did not restrict itself to the dubious merits of the plaintiffs’ allegations. By pursuing corporate research we demonstrated that the lawsuit was in fact an AstroTurf lawsuit bankrolled by the Republican National Committee out of Washington, D.C.—and, surprise, the supposed grassroots dried up. For the exciting details you should maintain your subscription to *Social Change*.

FIFTH, the *Review of Law & Social Change* should deal with art. When I wrote my article in 1984, I was also working for a Master in Fine Arts degree from the University of New Orleans. I learned a lot about the importance of thinking in a nonlinear, non-lawyerly way. If you insist on sticking with words, look at Walter Benjamin’s *Arcades Project*, a classic in the technique of presentation through collage with words.<sup>6</sup> But you also

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5. K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271 (2009). In her article, Howell argues that policing minor offenses aggressively creates significant hidden costs that undermine the legitimacy of the criminal justice system and create substantial burdens for poor people.

6. WALTER BENJAMIN, *THE ARCADES PROJECT* (Howard Eiland & Kevin McLaughlin trans., 1999). Other notable instances of juxtaposing disparate segments of narrative to

have to look beyond words, because today words count even less than they did in 1984. This is so because the power of visual images and other non-literary stimuli has been appreciated and appropriated by corporate advertisers, Rightwing political hacks, fascist dictators, and pseudo-socialist thugs. The visual and the visceral are what are being used more and more to tell people what to buy, how to vote, what to value, how to think, and so forth. The good news is that a good verbal critique may still undercut the efficacy of a non-verbal cue. But the bad news is that it does not always do so. To undercut the efficacy of these images, I conclude that the *Review of Law & Social Change* may want to consider images—or, at the very least, it needs to publish words that evaluate images and investigate other non-literary approaches.

FINALLY, the *Review of Law & Social Change* should remember that it is building community between humans across space and over time. Evolution tells us we are social beings whether we like it or not. When I wrote my article in New Orleans in 1984, it meant something to me that people somewhere—even here in New York—shared an interest in my passions. It means something to me now that so many of us are gathered here to discuss and celebrate our passions.

Beyond the communities we have created in spite of geographical challenges, let us acknowledge the communities we have created in spite of chronological challenges. For my part, I stand amazed at the scope of historical time that is spanned by the people sitting in this room. Some people here—maybe including me—have written things when other people here were not even born. That to me means that all of us are reaching

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create a higher, metanarrative include JOHN DOS PASSOS, *U.S.A.* (Houghton Mifflin Co. 3d ed. 1960); DORIS LESSING, *THE GOLDEN NOTEBOOK* (1962); JOHN REED, *TEN DAYS THAT SHOOK THE WORLD* (1919); KURT VONNEGUT, *BREAKFAST OF CHAMPIONS* (1973). Under the rubric of “postmodernism” this method of re-presentation has become common, bordering on the orthodox. See, e.g., Philip Auslander, *Postmodernism and Performance*, in *THE CAMBRIDGE COMPANION TO POSTMODERNISM* 97, 102–03 (Steven Connor ed., 2004) (noting postmodern theatre’s turn to a “plurality of voices” and “performers who self-consciously represent a range of very different identity positions”); Steven Connor, *Postmodernism and Literature*, in *THE CAMBRIDGE COMPANION TO POSTMODERNISM*, *supra*, at 62, 76 (noting that literature alludes to arbitrary organizing forms such as the encyclopedia, the guidebook, the dictionary, the game, the tarot pack, and the periodic table); Catherine Constable, *Postmodernism and Film*, in *THE CAMBRIDGE COMPANION TO POSTMODERNISM*, *supra*, at 43, 49 (noting film’s correlation to Frederick Jameson’s characterization of postmodern late capitalism’s schizoid characteristics of “isolated, disconnected, discontinuous material signifiers”); Stephen Melville, *Postmodernism and Performance*, in *THE CAMBRIDGE COMPANION TO POSTMODERNISM*, *supra*, at 82, 89 (noting how visual art resorts to practices of quotation, appropriation, mediation, repetition, and how there is a “marked interest in rhetorical or signifying excess”). Lawyers may wish to familiarize themselves with this emerging cultural form, if not employ it; to a degree, the law school casebook might be viewed as a crude approximation of the postmodern approach.

back to people like seventeenth century Thomas Rainsborough, eighteenth century Mary Wollstonecraft, and nineteenth century Frederick Douglass, all of whom were reaching out to us when we did not exist. And we, through our efforts, will hopefully make our own values and passions available to people who are now toddlers, or who have yet to be born. The English historian E.P. Thompson has called this phenomenon shaking hands across history.<sup>7</sup>

I would like to close with some lines from someone who was trying to shake hands with us when we were not yet alive. In four lines I think he does rather well in summing up these issues of page, practice, and vision:

I will not cease from Mental Fight,  
Nor shall my Sword sleep in my hand  
Till we have built Jerusalem  
In England's green & pleasant Land.

The writer, of course, was William Blake,<sup>8</sup> who wants to shake hands with us and the yet unborn. He and I thank you all for the opportunity to shake your hands and extend our hands to the good dead, the good living, and the yet unborn. Maybe we can still give them a planet that is green, with people living in peace and justice.

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7. E.P. THOMPSON, *THE POVERTY OF THEORY AND OTHER ESSAYS* 42 (1978).

8. William Blake, *Milton*, in *A SELECTION OF POEMS AND LETTERS* 161, 162 (J. Bronowski ed., 1958).