THE NEW PUBLIC INTEREST LAW: FROM OLD THEORIES TO A NEW AGENDA

BY
LOIS H. JOHNSON*

I. INTRODUCTION

Public interest law has always been controversial. Since the 1960's and 1970's when public interest practice gained popular and scholarly recognition, it has been alternatively lauded and marginalized by the private bar, and both criticized and championed by radicals and conservatives. Today, many American scholars and practitioners are postulating the contours of a "new public interest law," urging a theoretical and practical re-thinking about using law for social change.[1]

New thinking about public interest law integrates a critical approach to legal theories and practice with a visionary approach to social change. This new thinking reflects a more fundamental critique of the ideals of liberalism embodied in our legal system. It builds on previous critiques of public interest law which have already exposed ways in which the goals and methods of progressive lawyering have limited its social impact. The new thinking also incorporates critical scholarship to show how the goals and methods of traditional public interest lawyering are internally contradictory and, as a result, fail to realize aspirations of social transformation. Writers in this new tradition call for empowerment strategies which can overcome barriers to sociolegal change. They envision an alternative source of legitimacy for public interest law in a new moral vision developed through social movements and client participation.

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[1] *See generally*, Gabel, *The Phenomenology of Rights Consciousness and the Pacts of the Withdrawn Selves*, 62 TEX L. REV. 1563 (1984) (hereinafter *Phenomenology*); Simon, *Ethical Descretion on Lawyering*, 101 HARV. L. REV. 1083 (1988) (hereinafter *Ethical Descretion*); Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469 (1984) (hereinafter *Visions*); L. Trubeck, *Critical Lawyering: Toward a New Public Interest Practice* (Center for Public Representation Policy Paper 1990) (on file), 1 B.U. PUB. INT. L. J. 49 (1991); White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Some Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990) (hereinafter *Subordination*); White, *To Learn and Teach: Lessions from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (hereinafter *Learn and Teach*); White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U REV. L. & SOC. CHANGE 535 (1987-1988) (hereinafter *Mobilization*); Gabel, *Dukakis' Defeat and the Transformative Possibilities of Legal Culture*, TIKKUN. 4, no. 2 (1989) (hereinafter *Dukakis' Defeat*).

This paper discusses the visions of the "new public interest law" in the context of old and new analyses of the use of law for social change. First, I will describe the goals and methods of the "old" understanding of public interest law and some original criticisms of the project. Second, I will demonstrate how the insights of the critique of liberal legalism pose a more profound challenge to the practice of social change lawyering. Third, I will describe common themes in the visions of four proponents of the "new public interest law." Finally, drawing from these works, I will suggest an agenda for further thinking about using law for social change.

II. DEFINING PUBLIC INTEREST LAW

A. *The Public Interest Model*

While not entirely new at the time, the concept of lawyering for social change gained momentum in America in the 1960's, corresponding with the emergence of many social movements, including youth protest against the Vietnam war, civil rights, poverty/welfare rights and the rights of criminal defendants.[2] Tracing its roots to both the legal aid movement and the advent of interest group litigators, such as the National Association for the Advancement of Colored People Legal Defense Fund, public interest law gave new shape to legal efforts for social change.[3]

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[2] For a history of the social and political upheaval of the 1960's and 1970's, *See* T. GITLIN, THE SIXTIES: YEARS OF HOPE, DAYS OF RAGE (1987).

The connection between social movements and social change lawyering is an important one. *See* Rojas, A Comparison of Change-Oriented Legal Services in Latin America with Legal Services in North America and Europe (Institute for Legal Studies Working Paper 1986) and unpublished manuscript (untitled) (on file with author). Rojas argues that the connection is fundamental, at least in the Latin American context where the legal services movement has derived its vitality and success from the strength of the multiplicity of social movements. Such a connection may have described some of the upsurge of progressive lawyering in America during the 1960's and 1970's. *See* J. HOWARD, THE CUTTING EDGE: SOCIAL MOVEMENTS AND SOCIAL CHANGE IN AMERICA (1974). The lack of this connection in most public interest practice today may explain the inability of public interest law to invoke and express the kind of "new moral vision" that the "new" public interest thinkers hope for. *See* text accompanying notes 73-84, *infra*.

[3] This brief account of the development of public interest law and the sketch of public interest activities which follows are by no means comprehensive. The history of public interest law is analyzed thoroughly elsewhere. *See, e.g.*, N. ARON, LIBERTY AND JUSTICE FOR ALL: PUBLIC INTEREST LAW IN THE 1980'S AND BEYOND 6-23 (1988); COUNCIL FOR PUBLIC INTEREST LAW (CPIL), BALANCING THE SCALES OF JUSTICE: FINANCING PUBLIC INTEREST LAW IN AMERICA 19-76 (1976); Rabin, *Lawyers for Social Change: Perspectives on Public Interest Law*, 28 STAN. L. REV. 207 (1976). For a concise history of public interest practice, see the introduction to PUBLIC INTEREST LAW GROUPS: INSTITUTIONAL PROFILES (O'Connor and Epstein eds. 1989). These authors view public interest practice as a distinct model which incorporates elements of

Three different forms of social change lawyering fall under the rubric of what became known as public interest law:[4] 1) radical lawyering - politicized representation of political movements and figures;[5] 2) poverty lawyering - welfare rights and other advocacy focusing directly on the poor[6] ; and 3) interest advocacy such as consumer rights, environmental, health and open government issues.[7] Each form of progressive law practice reflected the different goals and styles of its lawyers, constituencies or interest groups. The civil rights movement, for example, was overtly political and used litigation as one tool in an overall strategy for change. Alternatively, consumer groups focused on narrower issues and used lawyers to assert their interests through the legislative process. Welfare rights advocates used individual litigation and "impact" cases to effect incremental change in the status of the poor.[8]

With the increase in progressive legal activity, many lawyers tried to create alternative legal organizations structured differently than traditional legal practices. Many firms also experimented with ways to offer subsidized services instead of the traditional fee-for-service model. For example, legal cooperatives and collectives with non-hierarchical, egalitarian structures served non-traditional clients and groups.[9] Law collectives were initially popular, but most groups eventually disbanded under financial constraints. In contrast, the more traditionally structured neighborhood law office was a successful experiment. Neighborhood offices multiplied and still continue to be a stable provider of alternative legal services. Many neighborhood offices were institutionalized under the government's National Legal Services Corporation (LSC) as part of the Office for Economic Opportunity's (OEO) "War on Poverty."[10]

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its historical precursors, legal aid and interest group litigation. *Id.* at xi-xvii.

[4] In this paper, I will use the terms "public interest law," "law for social change" and "progressive lawyering" somewhat interchangeably to mean forms of practice using law to change social, political and economic inequities and promote greater justice. My term "public interest project" incorporates each of these forms of practice. *See* text at notes 13-14, *infra.*

[5] For example, radical lawyers represented the Black Panthers and the Chicago 8 conspiracy. The introduction to RADICAL LAWYERS at 19-23 (J. Black ed. 1971) gives other examples of political trials.

[6] *See* M. JAMES, THE PEOPLE'S LAWYERS (1973); S. Wexler, *The Poverty Lawyer as Radical*, in RADICAL LAWYERS, *supra* note 5, at 209-231.

[7] CPIL, *supra* note 3, at 77-152.

[8] For more details of the variety of activities and organizations in the public interest law industry, *See* B. WEISBROD, PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 42-101 (1978).

[9] CO-OPS, COMMUNES AND COLLECTIVES: EXPERIMENTS IN SOCIAL CHANGE IN THE 1960'S AND 1970'S (J. Case & R. Taylor eds. 1979); Biderman, *The Birth of Communal Law Firms*, in RADICAL LAWYERS, *supra* note 5, at 280.

[10] The important histories of practice in neighborhood law offices and of the creation of the LSC (as well as the intendant political debate over access to legal services and the appropriateness of government-sponsored law reform activities) are detailed elsewhere. *See, e.g.*, Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*,

While the more radically styled cooperatives were short-lived, the public interest law center has become the most institutionally successful and most familiar model for public interest law practice. The contemporary public interest law center is organized as a general-purpose legal center dedicated to pursuing policy and procedural changes on behalf of groups and interests deemed to be either underrepresented, or not represented at all.[11] Funded by charitable foundations, private donors or law schools, these centers are fashioned as independent law firms, staffed by lawyers, legal assistants and often law student interns.[12] In addition to litigation, public interest law centers often engage in a wide variety of legal activities. Each center's clients, interests and strategies vary, although most incorporate some direct client representation as well as law reform projects.

Although diverse, public interest legal activity can be seen as a unified project, characterized by shared theories and aspirations. The "public interest project" includes all efforts to achieve greater social justice or promote social change through law. This article uses the public interest law center as a model to analyze the theoretical foundations and aspirations of the project. The public interest law center's organization and style characterize a model of legal practice that is notably the most long-term and stable effort to use law for social change.[13] This lawyering model has achieved legitimacy within the legal system and continues to capture the imagination of the political left. Currently, legal scholars and practitioners are re-examining public interest practice in the continued debate concerning social theory, law and sociolegal change. New scholarship focuses on this model of public interest law not so much to explain why it has survived, but rather to see how its survival within the socio-political system may explain its inability to transform the system.[14]

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32 UCLA L. REV. 474 (1987); Failinger and May, *Litigating Against Poverty: Legal Services and Groups Representation*, 45 OHIO ST. L. J. 1 (1984); Falk & Pollack, *Political Interference with Publicly Funded Lawyers: The CRLA Controversy and the Future of Legal Services*, 24 HASTINGS L. J. 599 (1973); George, *Development of the Legal Services Corporation*, 61 CORNELL L. REV. 681 (1976); *See also*, J. Katz, POOR PEOPLE'S LAWYERS IN TRANSITION (1982) for an in depth study of legal aid and LSC lawyers in Chicago during the 1970's.

For the purposes of this article, I do not include the direct services activity of LSC lawyers in my public interest "model" set forth, *infra* at text accompanying notes 12-14. However, the LSC national back-up centers do follow the model I discuss.

[11] *See* G. HARRISON & S. JAFFE, THE PUBLIC INTEREST LAW FIRM: NEW VOICES FOR NEW CONSTITUENCIES (1973).

[12] The prototype of this model is the Ford Foundation-sponsored Center for Law and Social Policy (CLASP) in Washington, D.C. Later, many of these multi-issue centers developed specialized "spin-off" projects to focus exclusively on certain issues. An example is CLASP's Women's Rights Project.

[13] *See* ARON, *supra* note 3, at 115-121 for a discussion of the widespread influence and "maturation" of public interest law.

[14] *See* O'Connor & Epstein, *Rebalancing the Scales of Justice: An Assessment of Public Interest Law*, 7 HARV. J. L. & PUB. POL'Y 483 (1984). These authors argued

B. *Theoretical Foundations of the Public Interest Project*

In many ways, the rhetoric of social change lawyers during the 1960's and 1970's is similar to the rhetoric advanced by proponents of the "new public interest law" today. The concern about social injustice continues to be as strong and as urgent. The same issues are on the agenda: civil rights, poverty, women's rights, housing. In addition, the 1980's brought with it new concerns such as AIDS, and homeless advocacy.[15] New thinkers express the same ambivalence about the role of the lawyer. Moreover, they share the same skepticism about the utility of using law for social change that qualified the enthusiasm of many "old" radical lawyers.[16]

Yet, today's thinking is different because it incorporates the insights gained from the experience of public interest practice. During the past twenty years, many progressive law firms have failed; most legal communes and cooperatives have disbanded; the neighborhood law offices incorporated into the Legal Services Corporation have some stability yet restricted functions; popular movement gains against business interests have been countered by the growth of conservative public interest law firms; and early successes of the civil rights movement's litigation strategy are eroding. Such changes have spurred new thinkers to reconsider the theoretical foundations of public interest law as well its practical strategies.

In 1976, the Council for Public Interest Law defined the project as an effort to provide legal representation to groups and interests previously underrepresented in the ordinary legal marketplace, including the poor as well as dispersed, unorganized interests.[17] Public interest lawyers represent individuals

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that the institution of public interest law has been successful because institutions in all three branches of the federal government have facilitated its development. They cite Supreme Court decisions such as N.A.A.C.P. v. Button, 371 U.S. 415 (1963), and *In Re* Primus, 436 U.S. 412 (1978), as well as statutes providing for the payment of attorney's fees, *e.g.* 5 U.S.C. § 504; 28 U.S.C. § 2412; 42 U.S.C. § 1988. Finally, the authors, citing the appointment of several public interest lawyers to prominent positions within the Carter administration, as well as J. CALIFANO, GOVERNING AMERICA (1981) and G. BELL, TAKING CARE OF THE LAW (1982), discuss President Carter's favorable reaction to public interest law firms.

[15] The program of topics discussed at a conference on the "New Public Interest Law" held at New College in San Francisco in January of 1990 indicates this public interest agenda (on file with author).

[16] *See* Wasserstrom, *Lawyers and Revolution in* RADICAL LAWYERS, *supra* note 5, at 74-84.

[17] CPIL, *supra* note 3, at 6. Many have described the public interest law project, including its original architects, critics, and scholars concerned both with its theoretical bases and its financial survival. *See, e.g.*, R. BAUM, PUBLIC INTEREST LAW: WHERE LAW MEETS SOCIAL ACTION (1987), J. HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE (1978) Handler, *Public Interest Law Problems and Prospects,* in LAW AND THE AMERICAN FUTURE (M. Schwartz ed. 1976); TRUBEK & TRUBEK, *Civic Justice Through Civil Justice: A New Approach to Public Interest Advocacy in the United States*, in ACCESS TO JUS-

or groups in both adjudicative and legislative fora. Employing conventional legal tools along with other techniques such as lobbying, organizing and public information campaigns, public interest lawyers work to gain access to the legal system for large groups and unorganized interests. Whether providing direct client services or engaging in law reform, the goal of these surrogate advocates is to enable underrepresented voices to be heard in every aspect of the public arena.

Outside the civil rights area, public interest law developed out of criticism of the operation of the American welfare state.[18] Social reformers recognized that legislating social welfare programs was not enough to solve persistent problems of poverty, racism and social subordination. Although social welfare policies acknowledge the interests of the disadvantaged, the government may not enforce those rights without legal representation. Although legislation may prescribe needed benefits, individuals may be daunted by considerable administrative hurdles. In response, public interest law advocates argued that legal intervention was also necessary.[19] Public interest lawyers would act as surrogate advocates for the disadvantaged beneficiaries. They would combat lagging enforcement by organizing and representing interests and designing procedural protections to make the welfare state's programs work better. Consequently, most public interest legal activity was geared toward enforcement of the rights created by the state — including statutory and constitutional rights and entitlements to administrative programs.

Theories of public interest law reflect the realization that the government and legal system fail to meet the needs of many interests and groups in America. However, the theories also reflect the idealistic view that public interest legal efforts can close that gap.[20] Public interest advocates identified unorganized groups and interests who were underrepresented in the political process, particularly those disadvantaged by race, sex, age and poverty, and sought to give them a voice. They argued that these individuals and groups should have been legally represented in order to fulfill the promises of a democratic government. Moreover, they argued that the "system," the government and the private bar, should encourage, fund or even provide lawyers to advocate for unorganized groups, and thereby assert their interests in the

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TICE AND THE WELFARE STATE (M. Cappelletti ed. 1981), WEISBROD, PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS (1978); Berlin, Roisman & Kessler, *Public Interest Law*, 38 GEO. WASH. L. REV. 675 (1975); Rabin, *Lawyers for Social Change: Perspectives on Public Interest Law*, 28 STAN. L. REV. 207 (1976).

[18] I use the term welfare state to describe the network of social welfare and entitlement programs administered by federal, state and local governments to provide basic needs for disadvantaged citizens.

[19] Friedman, *Legal Culture and the Welfare State*, in DILEMMAS OF LAW IN THE WELFARE STATE 13-27 (G. Teubner ed. 1988); F. PIVEN & R. CLOWARD, REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE (1971); D. Trubek, *Balancing the Scales of Justice* (Book Review) 1977 WIS. L. REV. 303, 304.

[20] Trubek & Trubek, *supra* note 17, at 122-23.

political process.[21] Thus, public interest law based its legitimacy on a need to perfect the operation of the democratic welfare state.

In this way, original theories conceived of public interest law as corrective. By providing legal advocacy for unorganized interests and underrepresented groups, public interest law would correct the welfare state apparatus and make the existing system work better. It would also correct the failures of the legal marketplace and compensate for the inequities of resource distribution by providing representation.[22] The correction model has three versions: private bar *pro bono* work, private self-sustaining public interest law firms, and government-sponsored "public advocates."[23] In all instances, state policies defined the parameters of public interest legal activity; advocates were to work within a government-created framework of defined rights and benefits and sought to carve out new rights and benefits within this framework.

Most definitions of the concept of the "public interest" rest on the idea of pluralism.[24] This theory contains two notions central to the legitimacy of the public interest law project. First, pluralism asserts that all voices and interests are equally valuable and should be equally represented in the political process. Second, the validity of the decision-making process which selects among competing interests depends on access to that process. Since the process itself will determine what is in the "public interest" of society, the process is flawed if some interests are underrepresented. Public interest lawyers hoped to correct flawed processes to attain the pluralistic ideal.[25] The "public interest" could be seen as the *result* of a fair and just legal process itself, the outcome of a pluralist system. Consequently, public interest law's central goal was to improve processes of judicial, legislative and particularly administrative decision-making through access.

The architects of this project believed that improving access to legal services and instituting procedural rationality would yield substantive results. Although the ultimate goal of public interest law was to effect substantive changes in social life, most lawyers' immediate strategies were often procedural. Access to the legal marketplace would increase participation in the political arena, which would truly reflect "the public interest." The operation of the welfare state would be perfected through rational legal reforms as well as through the vindication of the rights of those who fell through the gaps.

III. Evaluating Public Interest Law: Old Critiques

A. *Accomplishments/Failures*

Evaluated according to its stated goals, public interest law has been somewhat successful. Poverty advocates have won many procedural reforms, partic-

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[21] CPIL, *supra* note 3, at 6-10.

[22] *See* Weisbrod, *supra* note 17, at 4-26.

[23] *See* Trubek & Trubek, *supra* note 17, at 123-125.

[24] Weisbrod, *supra* note 17, at 26-29.

[25] *Id.*

ularly in administrative law;[26] environmental interests have gained considerable legislative clout;[27] efforts of lawyers for the elderly and mentally handicapped have spawned governmental agencies responsive to these constituencies.[28] While not realizing its grandest aspirations for radical social change, public interest law has had many symbolic victories including securing formal participation rights, and generating political leverage as well as public awareness through publicity.[29]

But, the successes of the public interest project must be examined more closely. Middle-class or "mainstream" interests are better organized and can afford full-time lobbyists while other disorganized, under-resourced groups are still left without a voice. Bureaucratic co-optation and compromise are the likely results of governmental alliances which dilute group interests and stunt rather than further radical transformation. Many recognize that strategies which attempt to achieve substantive social change through the legal process may have mixed or even harmful results. Some warn that the goals and methods which characterize the project's self-definition and rallying rhetoric embody an empty promise.[30] Public interest efforts may legitimate and stabilize the socio-political order, effectively immunizing it from radical transformation. The institutional success of public interest law may preclude the opportunity to effect substantive change.

B. *Criticism from the Right, the Left and the Field*

Throughout the history of the public interest project, critics have challenged both its substantive and procedural goals. Before moving to a discussion of the deeper critique posed by the new critical thinking, the following section reviews some of the "old" critiques of public interest law. At the core of these are questions of legitimacy and utility: whether using the legal process to effect social change is legitimate or even useful; whether progressive legal activity could be legitimized based on the self-understanding articulated above; whether lawyers were doing too much or not enough; which interests should be organized; which groups should be given a voice and whose voice should that be.

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[26] *E.g.*, Goldberg v. Kelley, 397 U.S. 254 (1970); *See* Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1667 (1975).

[27] *See* ARON, *supra* note 3, at 71-72, 117; WEISBROD, *supra* note 4, at 151-217.

[28] For example, the State of Wisconsin's Bureau on Quality Compliance, which monitors elderly nursing homes for health and safety violations, was created largely in response to the efforts of elderly and health care advocates.

[29] The direct (substantive rights, changes in rules and laws) and indirect (publicity, political leverage) successes of public interest law activity are described in detail in HANDLER, *supra* note 17, which analyzes and evaluates public interest law efforts through case studies.

[30] Trubek & Trubek, *supra* note 17, at 135-144.

1. From the Right

Public interest advocacy has always had its conservative critics. Conservatives accepted a version of the "access to the legal marketplace" justification, conceding only a limited role for public interest law. Under this view, the lawyer should simply provide individual client service to those who cannot afford it. These critics believed that group-based advocacy, impact litigation or representation on behalf of political causes are inappropriate activities for lawyers whose goal should be individual client representation.[31] Conservative critics attacked the legitimacy of the project by challenging the ethics of politicized representation. Furthermore, they drew a distinction between the legal marketplace and political arena. They asserted that lawyers should be disinterested counselors -not political insurgents. Such "lawyering with an agenda" sacrifices individual interests and contradicts the accepted tenet that law is, and should remain, distinct from politics.[32]

From this perspective, lawyers may correct small-scale governmental inefficiency, but should not transform the system. As a result, many conservatives resisted all attempts to use government funding for public interest or legal access projects.[33] They charged that public interest law should be nonpolitical and limited to providing "corrective" individual-based access to the legal marketplace. [34]

2. From the Left

By contrast, many leftist critics argued that public interest law was too limited in its vision of legitimacy and too reformist in character. They challenged both the goals and constituencies of public interest practice. Radicals claimed that the issues pursued were too middle-class, safe and procedurally-oriented. Indeed, some argued that the 1960's-1970's public interest law movement conjoined three conservative interests, elite law students, foundations and the organized bar, and resulted in a relatively conservative project.[35] Other radical thinkers argued that social change could never occur through the legal process

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[31] For an analysis of the ethical debate concerning access to legal services and politicized representation, *See* D. LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY (1989).

[32] *See* Bellow & Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U.L. REV. 337 (1978). For a discussion of the ethical difficulties of representing group interests, *See* Rhode, *Class Conflict in Class Actions*, 34 STAN. L. REV. 1183 (1982).

[33] ARON, *supra* note 3 at 19-22.

[34] Breger, *Legal Aid for the Poor: A Conceptual Analysis*, 60 N.C.L. REV. 282 (1982).

[35] Trubek, Trubek & Becker, *Legal Services and the Administrative State: From Public Interest to Public Advocacy*, in INNOVATIONS IN THE LEGAL SERVICES (E. Blankenburg ed. 1980) at 134. At the same time, however, such critics argued that since public interest law is "all we've got," then we should try to make it better - through adequate support and governmental commitment. *Id.* at 155-156.

since the legal system itself is part of the hegemonic structure they challenged.[36] Radicals asserted that traditional legal tactics were fundamentally useless for social change because the law merely perpetuates the status quo.[37] Instead, they asserted that legal strategies should be subordinate to other forms of political and community activism that could truly effect political transformation. Underlying this vision is a deep distrust of the state and a desire to look beyond it for legitimacy and power. Radical thinkers idealized social movements and invoked a notion of "pure" politics. In addition, this view reflects a deep pessimism about using law for social change. Many of these critics charge that public interest law could never represent more than a symbolic, limited function because it only secures formal participation rights and provides only token representation.[38]

3. From the Field

Practitioners and sympathetic scholars have analyzed social change lawyering from a practical perspective, closely evaluating its utility for specific issues and groups. Some attempted to determine which strategies are most effective and when the client, interest group or cause is best served.[39] Practitioners have found that social reform groups use public interest lawyers most effectively when they are already organized, funded and mobilized.[40] Independent resources and stable organization are necessary for a group to wage a successful litigation or lobbying campaign and to survive as an autonomous interest group with continued political power.[41]

Both scholars and practitioners noted the ways in which the bureaucracy itself neutralizes advocates' efforts and limits the success of public interest law through compromise and co-optation.[42] Many advocates typically respond to social problems by trying to "make the system work" by seeking solutions solely within the system itself and tinkering with the bureaucracy rather than looking beyond it. However, public interest lawyers have often found that their goals have been co-opted by the state, lost in the procedural machinery they

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[36] For a description of the "legalism" of public interest strategies, *See* Trubek & Trubek, *supra* note 17, at 132-135. The "a-legal" or marxist perspective is outlined and criticized in Bachmann, *Lawyers, Law and Social Change*, 13 N.Y.U. REV. L. & SOC. CHANGE 1 (1984).

[37] J. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA (1976); Gabel & Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369 (1982-83).

[38] Gabel & Harris, *supra* note 37, at 369; HANDLER, *supra* note 17, at 232-233.

[39] HANDLER, *supra* note 17, at 34-41, 43-189; F. PIVEN & R. CLOWARD, POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL (1977).

[40] Arriola & Wolinsky, *Public Interest Practice in Practice*, 34 HASTINGS L. J. 1207, 1225-26 (1983).

[41] HANDLER, *supra* note 17, at 25-34.

[42] Handler calls this "bureaucratic contingency." *Id.* at 18-22, 192-209.

themselves set in motion.[43] Many practitioners have found that the interests of their clients are disserved by additional layers of bureaucracy which remove the advocates further from the problem and their clients further from real solutions.[44]

Based on their experience, "practical" observers doubt that public interest law alone can transform society. They conclude that legal efforts can offer "incremental, gradualist, moderate" change, but cannot disturb the economic and political organization of American society.[45] Nevertheless, many public interest practitioners have carved out areas for effective advocacy and continue to inject a familiar, necessary voice in local political debates.

C. *Legitimacy and Utility: Refocusing on the Problems of the State, Legal Culture and Social Movements*

These diverse criticisms of public interest lawyering identified three major issues in the use of law for social change: the complex relationship between law and the administrative state; the relationship between law and politics and the importance of social movements; and questions about the utility of legal strategies.

However, the scholars and practitioners who have raised the "old" questions have not challenged the assumptions of the "classic" public interest law model to address the frustrations and failures of public interest law or to identify the more pervasive, fundamental obstacles to sociolegal change. The classic theoretical understanding of public interest law rests on assumptions about pluralism, the rationality of legal process as a means of vindicating rights and the corrective function of law reform.[46]

Both radical and practical critics questioned the utility of public interest law's methods, but neither directly challenged the definition or the legitimacy of the project. For example, disillusioned advocates realized that phrasing strategies in terms of rights did not necessarily achieve goals, yet few questioned the rights framework itself.[47] Although the radical critics challenged

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[43] L. Trubek, *supra* note 1, at 6, describes how her experience as an advocate has led her to distrust bureaucratic solutions.

[44] The "bureaucracy problem" brings up another criticism of public interest law - that it just creates more work for lawyers at great social cost. Lawyer-crafted procedural gains may have no meaning to clients if a lawyer cannot use them to advantage. Added procedural protections may increase legal costs; consumer protection regulations may add extra consumer costs.

[45] J. HANDLER, *supra* note 17, at 233.

[46] The "classic" theoretical understanding of public interest law is described *supra* at text accompanying notes 17-24.

[47] Public interest law has been called the institutionalization of the ideology of rights. *See, e.g.*, Trubek & Trubek, *supra* note 17, at 122-127.

For examples of such a "rights critique," *See* Simon, *Rights and Redistribution in the Welfare System*, 38 STAN. L. REV. 1431 (1986); and Simon, *Legality, Bureaucracy, and Class in the Welfare System*, 92 YALE L.J. 1198 (1983).

the utility of the public interest project as a whole, they were still tied to a classic vision of social change lawyering and its underlying legitimacy. They accepted a static role of the lawyer and the established compass of her strategies; they never challenged the corrective model of the public interest law project.

Moreover, both radicals and conservatives conceived of the same disjunction in thinking about law and politics. For conservatives, law and politics should not meet; for radicals, they could not. Although old criticisms highlight many problems of social change lawyering, they do not connect them to the questions about the nature of law, its rhetoric and the broader legal culture.

IV. New Critiques of Public Interest Law

New thinking about public interest law adds the critique of legal culture to the debate over sociolegal change. The new thinking steps outside of the "classic" assumptions of the public interest project, moves beyond traditional notions of law and lawyering and rejects the law and politics distinction. It starts from the alternative premise of examining legal culture itself, enabling a constructive re-visioning of the public interest law project.

The new public interest law grapples with the problems of legitimacy and utility of the public interest project. It questions the nature of law and legal culture and the foundations of liberal legalism. It further analyzes the relationship between public interest law and the administrative state and rights culture, and reasserts the importance of law and the development of social movements.

The new thinking draws on the tradition of critical legal scholarship which examines the fundamental assumptions of liberal legal thought. The challenge to liberal legalism began with Legal Realism and has emerged full blown in the work of Critical Legal Studies, Law and Society, Feminism and Critical Race Scholarship.[48] Critical scholars attempt to show how the law, from legal

[48] Critical Legal Studies, and other critical movements in legal scholarship, attempt to explain the questions left open by the Legal Realists' challenge to established legal thought. In the 1920's, the Legal Realists exposed the contingency of formalist legal doctrine and posited its fundamental indeterminacy. Some Realists tried to stabilize legal uncertainties by asserting an underlying objective, empirically knowable reality and redefining law as a policy science. In contrast, contemporary critical legal scholars see the law as complex and contradictory, locating law's fundamental indeterminacy in legal doctrine and language itself. For an excellent account of these ideas, *See* Singer, *Legal Realism Now* (Book Review), 76 Calif. L. Rev. 465 (1988). Some examples of works exploring and using these ideas include: D. Bell, And We Are Not Saved: The Elusive Quest for Racial Justice (1987); C. MacKinnon, Feminism Unmodified: Discourses on Life and Law (1987); the articles compiled in the Critical Legal Studies Symposium, 36 Stan. L. Rev. 1 (1984); Kennedy, *Form and Substance in Private Law Adjudication*, 89 Harv. L. Rev. 1685 (1976); Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323 (1987).

doctrine to administration, preserves race, class and gender hierarchies. They argue that liberal law cannot be neutral, rational, or policy-based. They claim that the individual focus of the legal system limits the possibilities for political transformation. Although this scholarship is diverse, multi-textured, and by no means harmonious, it does cohere as a critical project revealing the law, its doctrines and practices as complex and contradictory — and particularly resistant to social change.

Critical scholars challenge notions of individualism at the heart of the liberal discourse. They charge that liberal legal doctrine depends on a false model of an autonomous, rational legal actor. Liberalism presumes that individuals are adequately protected in a legal system of rights, which permits judicial intervention or protection only when an individual does not fit the model. These scholars assert that our legal system's focus on the vindication of negative individual rights denies the imbalance of existing power relations.

Moreover, scholars claim that liberalism's focus on individualism denies needs of inter-connection and dependence. They argue that values of individualism privileged in liberal legal doctrine are reasserted in cultural discourses and resonate in our consciousness and throughout society.[49] However, critical scholars assert that communitarian values exist in our selves and society and are also embodied in many aspects of our legal system. The desire to awaken values of community and interdependence animates much of the critical approach to legal thought and practice.

The pivotal aspect of these critiques is the deconstruction of the organizing dichotomies which underpin legal rhetoric and practice and limit its sphere of possibility.[50] In particular, critical scholars reject liberal legal doctrine's distinctions between *public/private* and *law/politics*.[51]

The implications of these critical theories for public interest law are complex and paradoxical. They show the limits of the liberal legalist ideal which public interest lawyers adopted as their credo and actually furthered in their efforts. Alternatively, they suggest that legal practice c*an* still transform society. Critical thinkers expose the possibility for a communitarian social order by asserting that within the indeterminacy of legal discourse are competing world visions and political choices. But, critical works suggest that change must be accomplished in a different manner than that imagined by the old public interest law model.[52]

Applied to public interest law, this critique reveals that liberal legalist ideals

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[47] Gabel & Harris, *supra* note 37, at 370-374.

[48] Gordon, *Unfreezing Legal Reality: Critical Approaches to Law*, 15 FL. ST. U. L. REV. 195 (1987).

[51] *See* Singer, *supra* note 48, for an overview of the development of critical scholarship and an explanation of what the distinctions between public/private and law/politics mean in our understanding of how law works in and shapes society. For other discussions of critical legal theories, *see* Peller, *The Metaphysics of American Law*, 73 *Calif. L. Rev.* 1152 (1985) and Gabel & Harris, *supra* note 37, at 370-374.

[52] *See* Simon, *Visions, supra* note 1, at 490-495.

inherently limit its social change efforts. This scholarship recognizes that poverty lawyers and public interest lawyers, like their corporate counterparts, practice the legal system's liberal paradigm.[53] Like elite legal professionals, they use the received discourse of neutrality and rationality; they use conventional legal methods; and, they appeal to "pure" constitutional principles and rhetoric.[54] In this way, public interest law established its legitimacy in the legal profession and operated within the individual-focused legal discourse of liberalism.

Viewed from the critical perspective, public interest lawyers are the mirror images of corporate lawyers.[55] They are trained to be neutral, ethically distanced from clients and disembodied advocates. Public interest lawyers speak in the same technical language of legal reasoning and adopt a similar disembodied professional role. Although progressive lawyers help their clients and believe in the interests for which they advocate, the traditional public interest style discourages lawyers from engaging with clients and from making moral connections. The critical view contrasts this professional style of distance with an alternative style of connection. This style acknowledges and uses the inherently moral and political aspects of legal work. From this perspective, traditional lawyers who remain morally disengaged from their clients cannot radically change the structure in which they function. As a result, radical social change and the ultimate political goals of the represented groups may remain unattainable.

Through its successes, efforts of public interest lawyers actually revitalized the ideal of pluralism — at the cost of masking social ills.[56] Public interest law activity may indeed limit the possibility of true, radical social transformation, while preserving the hope that law can achieve it. The critique of liberalism suggests that social change efforts in the legal system are limited both in their vision and methods. Limited by the arena, the language, the concepts and the structure of liberal law, public interest law merely strengthens the myth of liberalism and promotes a false pluralism.

Under the new critical perspective, the central flaw of the old public interest law is that its means actually contradict its own goals.[57] The pursuit of abstract principles and rights staves off substantive change and redistribution. Without challenging the individual-focused rhetoric of liberal law, public interest advocacy can never achieve political equality for its beneficiaries and

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[53] *Cf.* Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1988) (applying critical theories to the strategies of poverty law advocates); Bachmann, *supra* note 36.

[54] Gabel, *Dukakis' Defeat*, supra note 1, at 111 (It is not surprising that law reform rather than service-oriented poverty lawyering was more highly valued and more prestigious); *See* Alfieri, *supra* note 53, on elitism of public interest lawyers.

[55] Gabel, *Dukakis' Defeat*, *supra* note 1, at 110.

[56] *See* J. HANDLER, *supra* note 17, at 99-115, on the direct and indirect successes of public interest legal strategies.

[57] Gabel, *Dukakis' Defeat*, *supra* note 1, at 110.

can never fulfill ideals of pluralism. Thus, because public interest law fails to unhinge the myths of liberal legalism, the social transformation it urges remains elusive.

Significantly, the critical scholarship which adds insight to the strategic and theoretical difficulties of public interest law relies on critical traditions both of deconstruction and reconstruction.[58] Such scholarship can generate new visions, "unstick" old goals and methods and enrich the future of public interest law with transformative potential. The harshest critics of the way in which liberal legalism defines and restrains public interest law may also provide the most hopeful vision for achieving social transformation through law, appealing to a spiritual/moral vision of the self and social life. Even if the critical perspective finds fault with the legal system, it can also be optimistic about the potential to regenerate transformative visions and practices within the law.

With the added dimension of critical theory, public interest law can be viewed as part of the myth of liberal legalism. Therefore, in order to move from rhetoric to social change, any "new" visions for public interest law theory and practice must confront the obstacles these critiques have recognized. William Simon, Lucie White, Peter Gabel, and Louise Trubek, whom I have identified as "new thinkers," do suggest ways in which public interest practice can be transformative.[59] In the next section, I will outline themes in their works which exemplify the new thinking about public interest law.

V. BEYOND THE CRITIQUES: NEW THINKING ABOUT PUBLIC INTEREST LAW

The new thinking about public interest law reconfigures some central aspects of law and legal culture: lawyer neutrality and professionalism, the relationship between law and politics and the subordination of communitarian values to those of the individual. By sketching out a new vision for legal culture, these scholars also re-think the legitimacy of social change lawyering.

A. *Role of the Lawyer: Professional, Personal and Practical*

Gabel, Simon, Trubek and White address the role of the lawyer in a new way which distinguishes their work from the "old" public interest rhetoric as well as radical criticisms. Each calls for a reconceptualization of the lawyer's role, including the ethical and practical dimensions of the lawyer-client relationship and the larger context of professionalism. These thinkers challenge notions of lawyer neutrality and encourage lawyers to engage with and learn from their clients. They also imagine lawyers invoking a powerful, symbolic role for law in group and individual empowerment. For Simon, White, Gabel and Trubek, reimagining the role of the lawyer and redefining the strategies

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[58] *See, e.g.*, Peller, *supra* note 51 (an example of the deconstructive method); Matsuda, *supra* note 48 (an example of reconstructive jurisprudence).

[59] The works of these authors exemplify the new approach to public interest law, but do not exhaust the legal scholarship in this area. *See, e.g.*, Alfieri, *supra* note 53.

and goals of public interest lawyering is pivotal to the transformation of legal culture

First, these thinkers assess the role of the lawyer in the traditional view of legal professionalism. William Simon contrasts the professional vision of law culture with a "critical vision."[60] His work addresses the problem of how the lawyer's role is an obstacle to social change lawyering. This role impedes advocates at the individual level, in terms of lawyer-client relations, as well as at the profession-wide level in the context of the institutions, culture and ethics.

Simon challenges traditional notions of lawyer professionalism and ethics by arguing that lawyers are political and should use their judgement and discretion when representing clients. According to Simon, the traditional view limits lawyering to a rigid "legal system" that distinguishes between law and politics, between representing and influencing a client, and between enforcement and reform. In contrast, the critical vision does not distinguish between law and politics and does not perceive the legal system as static. Rather, the critical vision perspective sees the legal system as indeterminate and open to interpretation and transformation. Simon urges that lawyers use discretion in representation, to pursue or refuse client objectives according to a moral vision.[61]

Simon argues that clients' interests do not pre-exist the practice of lawyer representation. Instead, communities of interests can develop during the process of representation. A client's goals develop with the process of representation and with the participation and guidance of the lawyer, so the means chosen by the lawyer shape the objectives of the client or group.[62]

Similarly, Peter Gabel demands a re-thinking of the role of the public interest lawyer. Challenging the traditional lawyer-client model, the new public interest lawyer would not assume a neutral, managerial role with her client.[63] Gabel asserts that public interest lawyers must be politically engaged with clients and community and should not be identical to "hired gun" corporate attorneys. Advocating for her client or group, a new public interest lawyer would not invoke abstract legal theories; rather, she would appeal to concrete needs and community values, and imbue claims of rights with a moral vision that engages the lawyer with her client.[64]

Second, these thinkers reassess the ultimate goals of public interest lawyers. In her reflections on social change lawyering, Lucie White addresses more concretely the problem of the lawyer's role in terms of both the lawyer-client relationship and the effect of legal strategies on groups.[65] She argues that traditional models of the lawyer-client relationship underplay the most significant goals of social change lawyering: client empowerment and group mobilization. The lawyer's task to is facilitate individual and community empower-

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[60] Simon, *Visions, supra* note 1.

[61] Simon, *Ethical Discretion, supra* note 1.

[62] Simon, *Visions, supra* note 1, at 484-489.

[63] Gabel, *Dukakis' Defeat, supra* note 1.

[64] *Id.* at 110-111.

[65] White, *Mobilization, supra* note 1.

ment by adopting the role of listener, organizer and helper. White encourages lawyers to be listeners and students of groups they seek to represent. The process she calls "lawyering in the third dimension" demands that the lawyer create an "active, critical consciousness" in the oppressed groups with whom she works. In this vision, the new poverty lawyer will eschew traditional professional lawyer-client models in favor of engagement, participation and shared advocacy.[66]

The flexible, creative thinking about legal strategies adopted by these writers gives public interest law an expansive definition. For example, to accomplish the goal of client empowerment, White advocates using a wide variety of strategies from litigation to community organizing to non-law activities, such as street theater. In this way, she proposes a new model of client participation as well as new roles for lawyers. Moving beyond individual service or law reform, "lawyering in the third dimension" attacks the process of social subordination itself. By using multiple strategies with new models for client participation, the lawyer's goal is group empowerment and engendering a critical consciousness that coheres and mobilizes groups.[67]

While many have criticized public interest efforts as "merely symbolic," White suggests an alternative view of the symbolic role of law. White imagines that law can be used to bring communities together and strengthen disadvantaged groups. She believes law is powerful, not because it offers abstract rights and rules, but because using it can be a process of empowerment. White demonstrates that it is individuals who breathe life, words and meaning into the law - and groups that create social change.[68]

While many critics of public interest law aver the disutility of "impact" litigation efforts to produce systematic reform, White asserts that litigation strategies can be multi-dimensional political tools which, in community contexts result group self-definition, mobilization, and political empowerment.[69] She views poverty litigation as both symbolic and actual political activity: first, it provides actual educational, participatory experiences for poor groups; second, it is the vehicle through which a community coheres and mobilizes. By moving beyond a traditional understanding of both the goals and means of litigation, White urges that client interests will be better served.

Similarly, Louise Trubek is concerned from a practical perspective about the role of social change lawyers.[70] She asserts that for "critical lawyering" to overcome the practical and theoretical disappointments of traditional public interest lawyering, it must move beyond its traditional goals and means to create truly transformative results.[71]

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[66] White, *Learn and Teach, supra* note 1, at 761.

[67] *Id.* at 742-746, 760-766; White, *Mobilization, supra* note 1.

[68] White, *Mobilization, supra* note 1 at 552-557 (speak-outs), 557-563 (street theater) and 563-564; White, *Learn and Teach, supra* note 1, at 760-766.

[69] Such as Driefontein, South Africa. White, *Learn and Teach, supra* note 1.

[70] *See* L. Trubek, supra note 1.

[71] *Id.* at 10-11.

Like White, Trubek strives to revise traditional strategies for advocacy.[72] She asserts that a new model for practice must be flexible, ever-critical and imaginative. Along with White, she urges that lawyers should no longer advocate exclusively for governmental or bureaucratic solutions, but should also incorporate other non-traditional strategies. She has learned that no arena of advocacy should be privileged; clients' interests can be advanced effectively in every forum, from the legislature to administrative agencies to the media. Through experience, Trubek knows that working with client groups themselves enables her to imagine and explore non-bureaucratic solutions which are more transformative and more resistant to state co-optation.[73]

Simon, Gabel, White and Trubek approach the question of the role of the progressive lawyer from different angles. Yet, each asserts that the need to re-imagine the role of the lawyer in terms of the lawyer-client relationship, professionalism and practical strategies is a crucial step toward the transformation of the legal culture. Taken together, these four visions of the role of lawyer represent three "radical" moves: from the notion of neutrality to engagement; from the disjunction between law and politics to politicized representation; and from limited legal strategies to those which engender participatory empowerment and popular resonance.

B. *New Moral Vision, Communitarian Values*

Underlying these moves, is a theoretical shift which makes the new thinking about public interest law even more radical. These writers invoke the need for a new moral vision on which to base the new legitimacy of public interest law. This vision is necessary to cultivate a new professional ethos and to transform the legal culture. This moral dimension grounds the new thinking and suggests the direction in which public interest law should move.

New thinkers urge that a new moral vision must legitimize public interest law. This moral vision has two aspects: first, it rests on communitarian values; second, it should develop through the process of representation itself, or in new social movements. These writers suggest that lawyers can invoke these community values.

For Simon, the goal of this version of critical lawyering is to seek the "ideal of the non-hierarchical community." Simon theorizes that the lawyer is free to respond to a new community-based moral vision. Because he sees no difference between working within and against the "system," he describes a vision of legal practice that is full of moral and political opportunity.[74]

Similarly, Peter Gabel articulates a communitarian goal for social change

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[72] *Id.* at 6-7.

[73] For example, the Center for Public Representation, a public interest law firm in Madison, Wisconsin uses lay advocates in a state-wide health care information system. *Id.* at 6.

[74] Simon, *Visions, supra* note 1, at 484-489.

lawyering, "the realization of greater social connection and mutual respect."[75] Gabel directly addresses the need for a new moral vision to ground the legitimacy of a new public interest law. The notion of community is also central to his thought. He connects the need for moral vision to the larger political arena which has the power to control how and to what end those community values will be invoked. He asserts that public interest law has failed to capture and engage a moral vision of community, comparing it to the moral emptiness of democratic politics, which he believes has failed to inspire Americans at a moral level.[76]

Gabel's alternative to the older public interest law model "rejects the strategy of trying to win cases on the others' terms. . ."[77] Gabel argues that lawyers can reshape legal culture by appealing to a vision of the inter-connected self which is generally disavowed by traditional liberal legal discourse. By grounding legal theories in concrete settings, by giving "new political legitimacy" to the psychological and ethical need to be a part of a community and by remaking legal doctrine in a way that tells the truth about this moral vision, he argues, "new" lawyers can achieve the goals of the old public interest law by transforming legal practice itself.[78]

Gabel writes about the need to cultivate such a moral vision which has the potential to transform legal and political culture.[79] For Simon and Gabel, the fulcrum of that vision is communitarianism. But, in order for social change lawyering to invoke such a vision, it must come expressed in the form of a social movement which can use the law and lawyers to further its goals.[80]

Both Simon and White recognize that neither client objectives nor lawyer means are pre-existing, but rather that both evolve together.[81] Similarly, an important aspect of White's conception of social change lawyering is her idea that social movements should be the source of both the lawyer's goals and her strategies. Under her view, true or radical social change will not be led by lawyers. But, lawyers can harness the political energy and moral visions of groups that emerge and become strengthened through the process of representation.[82] And, as Trubek notes, the most successful strategies emerge from the clients themselves.[83] Thus, new thinkers demand more than enriched lawyer-client participatory models; they require a greater focus on group mobilization strategies.

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[75] Gabel, *Dukakis' Defeat, supra* note 1, at 13.

[76] *Id.* at 13.

[77] *Id.* at 12.

[78] *Id.* at 12.

[79] *Id.* at 11.

[80] *Id.* at 11-14; Simon, *Visions, supra* note 1, at 490-5.

[81] Simon, *Ethical Discretion, supra* note 1; White, *Mobilization, supra* note 1 at 546-57.

[82] White, *Learn and Teach, supra* note 1, at 760-65; White, *Mobilization, supra* note 1, at 540-45.

[83] L. Trubek, *supra* note 1, at 3-4.

The goal for the new public interest law would be to empower groups and individuals rather than to compensate for market-based access deficiencies, to transform the system itself rather than simply improve the legal process. Instead of appealing to abstract concepts of "equality" or rights, according to Gabel, new advocates would seek to ground their legal arguments in a new moral vision that is itself transformative.[84] According to the new vision, this means more than providing token access and reallocation within the system. It means transforming the system.

VI. Agenda For More Thought, More Action

Gabel, Simon, Trubek and White's works do not comprehensively address the multiple barriers to using law for social change. Indeed, these largely theoretical works ignore many practical concerns. While the works develop important ideas, practical, institutional, and metaphysical barriers persist: 1) the problem of identifying coherent group interests while fostering individual client empowerment; 2) the complex role of the lawyer, including questions of legal ethics, education and professionalism; 3) the practical dilemmas of implementing alternative strategies; 4) the persistent problem of funding; 5) the resistance of the political/legal culture to change; and 6) the difficulty of connecting social change lawyering with social movements which shape new moral visions.

The new scholarship does not reach all of these issues. However, it provokes dramatic reconsideration of public interest law from the perspective of legal culture and can serve as an outline for future formulations of social change lawyering.

A. *Transforming Legal Culture*

The most innovative, powerful and potentially transformative ideas emerging in this new thinking are also the least well-developed. First, the possibility of transforming legal culture itself through a new form of public interest practice needs further development-in practice. Communitarian ideals and moral visions are appealing. Yet, how those ideals should define the role of law and lawyers and translate into political action remains unclear.[85] Although the

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[85] Gabel, *Dukakis' Defeat, supra* note 1, at 12-14.

[86] White's work makes palpable the daily tension experienced by advocates which represents the convergence of the practical, institutional and metaphysical barriers to radical representation. As White's article, *Subordination, supra* note 1, illustrates, it is extremely difficult to represent a client with the dual goals of winning her case (without demeaning/silencing) and fostering her power/autonomy (without sacrificing a short-term remedy). G. Spence's book, With Justice for None (1989) is a scathing indictment of lawyers and the legal system yet also suggests some targets for new lawyering efforts.

Perhaps new social movements will result in the unification of more powerful constituencies. Lawyers may find new roles within non-governmental organizations which will

goal of transforming legal/political culture is the fulcrum of the new approach to sociolegal change, without concrete articulation of feasible strategies, this vision could become the rhetoric which merely displaces the "process" talk of the 1960's and 1970's.[86]

B. *New Understanding of Social Subordination*

Second, our understanding of poverty and social subordination itself must be transformed. Pure class-based analyses of poverty are no longer useful in explaining the cause and effects of poverty that public interest advocates hope to address. Advocates who work with groups and clients to foster empowerment strategies know they must be sensitive to the convergence of social factors which may describe but do not define their lives. Scholars and advocates must move beyond labels and simplistic notions about poverty and constituencies. Further, advocates must acknowledge the complex, and often contradictory implications of their work. For example, advocates must explore intersections of race, gender and poverty when planning litigation or legislative strategies.

Along these same lines, the possibility of joining causes or interests, such as race and poverty or labor and feminism has a great deal of transformative potential but has yet to be fully articulated.[87] Linking interests in public interest practice would broaden the base of participation, engage more diverse political traditions and methods and harness the political energy of coalitions.

C. *Institutional Forms/Financial Resources*

Third, new thinking has yet to develop practical, concrete proposals for creating the institutions which best facilitate social change lawyering. How should the public interest law center model be modified to accommodate the new roles and methods of lawyers? How should projects be assigned and how should legal and non-legal staffs be organized?[88] The relationship between the

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sprout to replace state-run delivery of services. *See* Rojas, (unpublished manuscript), *supra* note 2, for a description of the role of legal services lawyers in the proliferation of non-governmental organizations (NGO's) in Latin America.

[86] The experience of feminist advocates demonstrates the difficulty of articulating feasible transformative strategies. For example, see the ongoing debate in feminist legal practice and theory about appropriate strategies that can achieve equality while recognizing difference, and that can challenge the system while using its tools. *See, eg.* Williams, *Equality's Riddle: Pregnancy and the Equal Treatment-Special Treatment Debate*, 13 N.Y.U. REV. L.& SOC. CHANGE 325 (1985).

[87] For example, the Poverty Advocates Research Council (PARC) links poverty advocates with the civil rights community. In addition, recent unionization efforts of predominantly female clerical workers at Harvard University links feminism and labor. Kandel, *Finding a Voice Through the Union: The Harvard Union of Clerical and Technical Workers and Women Workers*, 12 HARV. WOMEN'S L. J. 260 (1989).

[88] Some practitioners are experimenting by staffing projects exclusively with lay advocates. For example, the Center for Public Representation in Madison, Wisconsin

form of public interest practice and the style of advocacy must be explored further.

In addition, the persistent problem of adequate financial resources for these institutions must be addressed anew. As the public interest project undergoes redefinition, potential funders must be carefully evaluated. Public interest practitioners must seek funding sources that will support and encourage the new social change lawyering and that will share a commitment to the new goals and strategies that evolve from the new public interest law.[89]

D. *Professionalism*

Fourth, a key underlying factor in the discussion of the direction of lawyering for social change is the transformation of the role of lawyer in the context of professionalism. Critical examinations of legal professionalism - how it is constructed, its "official story" and its "crisis" - are challenging static notions of what lawyers can and should do.[90] Many foresee that the legal terrain is changing as a result of growing numbers of women and minorities entering the profession as well as the transformation of the structure and organization of legal practice.[91] What will this mean for the future of public interest law? The freedom and constraints of legal professionalism must be explored so that opportunity rather than marginalization defines the role of new public interest professionals in legal culture and social life. The implications for public interest advocacy of this inquiry into professionalism (and the related field of legal ethics) could add much to the thinking about obstacles to sociolegal change.

F. *Legal Education*

Finally, the importance of the role of legal education in shaping the future public interest law project cannot be over-emphasized. The future development of the new public interest law depends not only on the availability of committed lawyers but on the substantive commitment of law schools to the project of sociolegal change. The commitment of legal educators should be expressed in two areas. First, transforming legal education is the necessary first step in the transformation of legal culture and professionalism. In training future lawyers, law schools must accept the responsibility of sensitizing students to issues of poverty, race and gender.[92] Through both curriculum development and focused

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maintains a staff of lay health care advocates.

[89] ARON, *supra* note 3, at 50-62 and 122-123, describes the current state of funding of public interest law and outlines some recommendations for developing future resources to ensure the survival of existing public interest groups.

[90] R. ABEL, AMERICAN LAWYERS (1989); Gordon, *Corporate Law Practice as a Public Calling*, 49 MD. L. REV. 255 (1990).

[91] *See* C. Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 LAW & SOC. INQUIRY 289 (1989).

[92] Some law schools are already attempting to restructure their curricula in this

clinical programs, law schools must seek to engage students in the process of redefining the role of lawyers, reassessing the nature of legal culture and re-energizing the public interest project.[93]

Second, legal scholarship on poverty law and public interest practice must be encouraged. The alliance of legal scholars and social change lawyers is central to the development of the new public interest enterprise and must be fostered. Theoretical perspectives of the new public interest law as well as critical accounts of public interest practice should be supported as legitimate scholarship and encouraged as valuable learning tools for the profession. As the works of the new public interest thinkers discussed here demonstrate, the insights of this type of scholarship are valuable not simply within the sphere of public interest practice, but can also contribute much to our fundamental understandings of law, society and social change.

VII. CONCLUSION

Seen in the best light, the thinking about the new public interest law represents more of an agenda for action and more thought than a full-blown theory. It struggles with questions central to the legitimacy of the legal system from a critical perspective and applies the insights of this critical approach — both deconstructive and reconstructive — to the context of public interest advocacy. It demonstrates that the obstacles against social change lawyering are multi-dimensional and deeply rooted in culture, institutions, and ideas. Yet, the new thinking about public interest law seeks to develop visionary, creative, and practical ways to overcome those barriers. By trying to develop a new basis for the legitimacy of public interest lawyering, these thinkers challenge fundamental understandings of our legal system and society. Although these ideas are still formative, the works express a profound faith in the potential of using law for social change.

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way, such as Stanford and the New College of Law. G. SPENCE, *supra* note 84 (a discussion of new law schools). For a comprehensive presentation of an alternative curriculum, *See* Lopez *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989); *See also* Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1989).

[93] The Interuniversity Consortium on Poverty Law has taken a leadership role in this area. Consortium member schools, such as Harvard, UCLA and Wisconsin, are actively developing innovative clinical programs and courses which unite students, scholars and community/political activists. The goal is to enrich both the enterprise of public interest law and legal education by sharing perspectives of advocates, educators and scholars in the area of poverty law.