

5-1-1994

## What's a Theory For?: Notes on Reconstructing Poverty Law Scholarship

Gary L. Blasi

Follow this and additional works at: <https://repository.law.miami.edu/umlr>

---

### Recommended Citation

Gary L. Blasi, *What's a Theory For?: Notes on Reconstructing Poverty Law Scholarship*, 48 U. Miami L. Rev. 1063 (1994)

Available at: <https://repository.law.miami.edu/umlr/vol48/iss5/4>

This Article is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

# What's a Theory For?: Notes on Reconstructing Poverty Law Scholarship

GARY L. BLASI\*

I. INTRODUCTION . . . . .	1063
II. A CONTEXT: HOW "THE CAMPS" CAME TO AMERICAN CITIES . . . . .	1065
<i>Theory on the Concrete: A Constructed Interview</i> . . . . .	1068
III. THREE OF MANY THEORIES: EXPLAINING HOMELESSNESS . . . . .	1069
A. <i>Marxism and the Mobility of Capital</i> . . . . .	1069
B. <i>Social Science: Bureaucratic Disentitlement</i> . . . . .	1070
C. <i>Silenced Narrative: One Postmodern Turn</i> . . . . .	1071
IV. HOW THESE THEORIES <i>MIGHT</i> HAVE CONSEQUENCES . . . . .	1071
V. CONCRETE, CONSEQUENCES, CONTINGENCIES, AND CONTEXT . . . . .	1074
A. <i>Capital Movement and the Wage Markets</i> . . . . .	1075
B. <i>Social Science Models of Bureaucracy</i> . . . . .	1075
C. <i>Postmodern Critical Theory</i> . . . . .	1077
D. <i>These Three Theories in Local Historical Context</i> . . . . .	1078
VI. A PRAGMATIC, COGNITIVIST VIEW OF THEORY . . . . .	1080
VII. RECONSTRUCTING POVERTY LAW THEORY . . . . .	1085
A. <i>Attending to Many Voices and Standpoints, Including Those of Practicing Advocates</i> . . . . .	1088
B. <i>Attending to Problems Beyond the Microworlds of Lawyer/Client Interaction</i> . . . . .	1089
C. <i>Seeking Evidence Beyond Individual Narratives</i> . . . . .	1090
D. <i>Engaging Practice, Confronting Practical Questions, and Helping to Solve Problems</i> . . . . .	1091
E. <i>Not Giving Up Too Soon</i> . . . . .	1093
VIII. CONCLUSION: A MODEST PROPOSAL . . . . .	1094

When a man has finally reached the point where he does not think he knows it better than others, that is when he has become indifferent to what they have done badly and he is interested only in what they have done right, then peace and affirmation have come to him.<sup>1</sup>

## I. INTRODUCTION

Stanley Fish provoked a considerable reaction by publishing a law review article that suggested that "theory" (by which he seemed to mean much of what is published by *other* people in law reviews) has no conse-

---

\* Acting Professor of Law, UCLA School of Law. I am grateful to my student Susan Ortmeyer for her help in preparing this paper.

1. Georg Wilhelm Friedrich Hegel, handwritten note preserved at Widener Library at Harvard, *THE PHILOSOPHY OF HEGEL* (Carl J. Friedrich ed., 1954). Though less catchy than some of Georg Wilhelm Friedrich Hegel's other aphorisms, this note expresses the stance toward the work of others (even Hegel) which everyone ought to aspire. That it remains only an aspiration for many of us is demonstrated by the limitations of this Essay.

quences.<sup>2</sup> By virtue of the reaction, Fish thus proved in practice what his article denied in metatheory: metatheory does have consequences, but only *if* one includes the reaction of academics (perhaps we should call these metaconsequences). This seems overbroad. Legal academic discourse sometimes escapes the confines of academia, but only rarely.<sup>3</sup>

This Essay describes one view of the possible consequences of the theoretical work produced in law schools, particularly work that is intended to be relevant to poverty law practice. I first describe a context in which some advocates confront certain decisions and describe three of many possible theories that might help inform their decisions. I next describe a view of "theory" from the perspective of cognitive science, which casts light on how practitioners incorporate theory of all sorts into their cognitive apparatus. I then discuss two recent currents in scholarship about poverty law practice: postmodern critical scholarship that uses and emphasizes client narratives and a much smaller body of work by clinical scholars and practitioners growing out of the Interuniversity Poverty Law Consortium.<sup>4</sup> Finally, I suggest some ways in which this "new poverty law scholarship" might be reconstructed so as to be of greater use to practice.

As I shall try to explain more directly later, all talk of theory needs a context. This is mine.

---

2. See generally Stanley Fish, *Dennis Martinez and the Use of Theory*, 96 YALE L.J. 1773 (1987). What Fish said he meant by theory was:

[A]n abstract or algorithmic formulation that guides or governs practice from a position outside any particular conception of practice. A theory, in short, is something a practitioner consults when he wishes to perform correctly, with the term "correctly" here understood as meaning independently of his preconceptions, biases, or personal preferences.

*Id.* at 1779.

I will not burden this paper with reference to all of the law review articles that Fish provoked. The LEXIS LAWREV library reports 41 articles that cite Fish's piece. Of those I have read, I find most appealing that of Steven L. Winter, *Bull Durham and the Uses of Theory*, 42 STAN. L. REV. 639 (1990), both for its "bait and cut" approach to Fish, and because Winter is one of the few legal scholars who seems to share my enthusiasm for the utility of the cognitive paradigm in law.

3. *C.f.* Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 932 (1990). There is in legal academic discourse a substantial body of scholarship about scholarship. I will not add to the infinitely recursive possibilities in this trend anything beyond this footnote and a reference to Lasson, *supra*, at 932 n.35 (1990). Lasson shares my contempt for unnecessary and self-referential footnotes.

4. Under sponsorship by the Ford Foundation, and initially organized by legal scholars at the law schools at Harvard, Wisconsin, and UCLA, the Consortium brought together law school teachers from many different schools to reexamine ways in which law schools might contribute to work at ending or ameliorating poverty. For a description of the Consortium, see 42 WASH. U. J. OF URB. AND CONTEMP. LAW 57 (1992). The papers there collected describe some of the activities undertaken at various law schools as part of the Consortium.

## II. A CONTEXT: HOW "THE CAMPS" CAME TO AMERICAN CITIES

By the middle 1980s, many thousands of poor people, most of them people of color, lived on sidewalks, under bridges, in vacant lots, in makeshift scavenged shelters of cardboard, plastic, and the other detritus of American cities.<sup>5</sup> The responses of local governments varied in some ways, but were primarily similar. After a modest nod of concern and a bit of charity had failed to make homeless people disappear, the local ruling elites turned from social services to concerted police action.<sup>6</sup> Sometimes lawyers, including myself, got involved. In Los Angeles in 1987, poverty lawyers temporarily frustrated the efforts of Police Chief Darryl Gates to lead mass arrests of homeless people in the sidewalk encampments of skid row by obtaining a restraining order.<sup>7</sup> In 1992, a federal judge found that Miami had "a pattern and practice of arresting homeless people for the purpose of driving them from public areas" and entered a limited injunction.<sup>8</sup>

In both Miami and Los Angeles, what seemed like limited legal victories began to evolve in odd and ominous ways. Although the district court in Miami found that the City had a policy and practice of systematically violating the 4th, 8th, and 14th Amendment rights of homeless people, the court did not simply enjoin the unconstitutional practices. Rather, the trial judge ordered the parties to agree on two "safe zones," limited areas where homeless people might have their

---

5. Katherine Bishop, *Tent Cities Becoming the Front Lines*, N.Y. TIMES, Sept. 11, 1989, at A14. The local history of homeless encampments and street dwelling in some cities can also be read or inferred in court decisions that eventually resulted from the legal controversies the encampments created, most recently: *Roulette v. City of Seattle*, 850 F.Supp. 1442 (W.D. Wash. 1994); *Joyce v. City and County of San Francisco*, 846 F.Supp. 843 (N.D. Cal. 1994); *Johnson v. City of Dallas*, No. 3:94-CV-991-X, 1994 U.S. Dist. LEXIS 11723 (N.D. Texas Aug. 18, 1994); *Pottinger v. City of Miami*, 810 F.Supp. 1551 (S.D. Fla. 1992), *remanded*, 40 F.3d 1155 (11th Cir. 1994); *Tobe v. City of Santa Ana*, 892 P.2d 1145 (Cal. 1995).

6. See Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons From American Cities*, 66 TUL. L. REV. 631, 646-47 (1992); NATIONAL LAW CTR. ON HOMELESSNESS AND POVERTY, GO DIRECTLY TO JAIL: A REPORT ANALYZING LOCAL ANTI-HOMELESS ORDINANCES 1 (1991).

7. Temporary Restraining Order, *Bennion v. City of Los Angeles*, No. C637718 (L.A. Super. Ct. filed Feb. 25, 1987). The restraining order did not stop police "sweeps" directly. *Id.* Rather, by requiring the police to give 12 hours notice before destroying encampments, it allowed homeless people to maintain their encampments by moving them from one side of the street to the other. In compliance with Section II of the "Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities" adopted by the Executive Committee of the Association of American Law Schools, I note that I was one of the counsel for plaintiffs in this action.

8. *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1554 (S.D. Fla. 1992), *remanded*, 40 F.3d 1155 (11th Cir. 1995). As a member of the Board of the National Coalition for the Homeless, I am involved as *amicus curiae* on behalf of the plaintiffs in the pending appeal to the Eleventh Circuit.

rights, free of random police harassment.<sup>9</sup>

Lawyers in Los Angeles did not perceive the Miami decision as a victory, for reasons of their own local experience. The trial judge in the 1987 Los Angeles case refused to completely enjoin police "sweeps" of the street camps, imposing instead only notice requirements. To deal with the public relations problems posed by the continuing sweeps, the city defined twelve acres of vacant land in the industrial bowels of the City as an "urban campground." The street camps were then bulldozed and the homeless effectively driven by the police into the urban campground. There, behind high steel fences, on the bare blowing dirt of the city's land, soon lived 900 homeless people, nearly all of them African-American or Latino, including many children. The Salvation Army provided a soup kitchen and bathrooms. Individuals donated some tents and brightly colored party awnings to provide protection from the hot summer sun. The city called it the "urban campground". My clients who lived there called it many other things: Camp Dirt, Bradleyville,<sup>10</sup> and Soweto, USA.<sup>11</sup> Even though it was isolated in the industrial warehouse district of Los Angeles, next to the dry concrete of the Los Angeles River, there were nonetheless calls to move the camp further away, perhaps to the local mountains<sup>12</sup> or to the California desert.

In looking for some way to force the city to improve the conditions at the urban campground, I found nothing in the housing codes (since there was no housing). I did, however, find some points of reference in a document setting forth minimal standards for human habitation in a campground setting: the War Department's regulations governing the internment camp for Japanese-Americans at Manzanar. The urban campground was itself bulldozed some months later, not in response to any advocacy or legal effort, but to make room for the Los Angeles subway construction project. This dismal experiment thus came to an end. However, for the many who spent time there, the experience lives on all too vividly. The urban campground was not Manzanar, and certainly not a concentration camp.<sup>13</sup> It did not, however, require much

---

9. *Id.* at 1584.

10. After Mayor Tom Bradley. Discovery in the *Bennion* case, which was later made public, revealed that Mayor Bradley was responsible for the initial effort to drive the street camps from skid row.

11. This information is based upon my personal observations during many days spent at the Urban Campground. I have previously described these observations in Gary Blasi & James Preis, *Litigation on Behalf of the Homeless*, in *HOMELESSNESS: A NATIONAL PERSPECTIVE* (Marjorie J. Robertson & Milton Greenblatt, eds., 1992).

12. Councilman Gilbert Lindsay was quoted: "My sympathy is running out . . . I'm not sympathetic to the 'y'all come.' Put them up in the Santa Monica mountains. That would be a beautiful place for them."

13. I accompanied a rabbi friend and two survivors of the Nazi death camps to the urban

imagination to see how we could get from the urban campground to something much more horrible.

A proposal is now before the planning authorities of the City of Los Angeles to make such "urban campgrounds" a permanent feature of Los Angeles life.<sup>14</sup> Under contract to the city's Community Redevelopment Agency, two social scientists from the University of Southern California (USC) conducted a study of the present street camps<sup>15</sup> and proposed that the city create several "24-hour camp/parks" with showers, lockers, cooking pits, and toilets. This recommendation was based in part on interviews with homeless people, who were asked if they would prefer such a place to their current circumstances—which typically consist of a makeshift cardboard and plastic shelter, an occasional barrel fire, and the sporadic harassment of the police. Notably, the USC researchers did not ask street dwellers whether they might prefer an apartment, or perhaps a room in a fraternity or dormitory at the University of Southern California, to either the street camp or the city's "deluxe" outdoor alternative. Not surprisingly, the researchers reported back to the City's planning authorities that there was great support among homeless people for the "camp/park" concept.

I currently advise another study, commissioned by the Los Angeles Coalition to End Homelessness (the "Coalition").<sup>16</sup> This study relies on more open-ended interviews with a sample of people in the street camps, so that their voices might be translated more directly and in terms beyond the predefined vocabulary and choices presented by the Redevelopment Agency and the USC researchers. Just beneath the surface of both the USC study and this one is a question: Why are these people living on the street? The unspoken assumption of the USC study—that they live on the sidewalks as a matter of personal preference—resulted in the recommendation to present a slightly more attractive choice: the "park/camps." The Coalition study makes fewer assumptions. The interviews are not yet complete, so I cannot offer either statistics or individual narratives. Over the years, however, I have talked with hundreds

---

campground one afternoon. The survivors spoke, through tears, both of the differences and of the similarities: not only the high steel fence, but also the concentration of minority people and the seeming indifference of the majority community.

14. Tina Daunt & Tina Nguyen, *Homeless Camp Weighed in L.A. Industrial Area*, L.A. TIMES, Oct. 14, 1994, at A1.

15. Jennifer Wolch & Michael Dear, *Views from the Street: Interviews with Street Dwellers* (Jul. 17, 1992) (unpublished manuscript on file with author). By sheer force of the existence of perhaps 15,000 homeless people in the Skid Row area of Los Angeles and the exhaustion of the police, the street camps have quietly returned in large numbers. Rich Connell, *A Night in the Floating Cities of the Streets*, L.A. TIMES, June 4, 1994, at A1.

16. In addition to being an advisor, I also serve on the Board of Directors of this nonprofit organization.

of homeless people, including people in sidewalk encampments. For purposes of this Essay, I have constructed the following conversation. It is a pastiche, a construction made of remembered fragments of many different conversations, and not a transcript. I believe that it accurately represents what I have heard and understood in conversations with many different people living in the street encampments of Los Angeles.<sup>17</sup>

*Theory on the Concrete: A Constructed Interview*

Q: Why are you here?

A: You mean, this piece of sidewalk? I was over there, by the fish market, but they sprayed my stuff with water.

Q: No, I mean, why are you living in this kind of a place?

A: Well, I've thought a lot about that. There are lots of reasons. Easiest one is: I got no job, I got no money, and I never found a landlord that would let me slide forever.

Q: Why aren't you on GR [General Assistance]?

A: I was. I got cut off so many times I gave it up. By the time you spend all that time standing in lines, doing your work project, getting screwed by your worker over some paper, you don't get enough to pay the rent anyway. Better to scuffle out here, collect cans and what not.

Q: Why don't you use the shelters or missions?

A: Sometimes I do. But here nobody makes me pretend to pray to eat, there are no guards trying to prove their manhood, and I have some friends and this dog.

Q: Do you drink?

A: Sure. Don't you?

Q: Some.

A: If you lived here, you would drink more, if you could get it.

Q: How did you get along when you did have a place?

A: I was on GR some, but mostly I worked.

Q: At what?

A: Last job was unloading trucks. Best job was at the Murphy plant, running a forklift.

Q: What happened to that job?

---

17. Between 1983 and 1991, all of my professional life and most of my personal political work involved representing and working with people who were homeless. I claim no objectivity as to what I heard or what I remember. Most of the people I have known in the camps were either African-American or Latino men. My mental image of this person is Robert, an African American man in his 30s, whom I knew in one of the street camps in skid row. This construction is roughly what I remember of his story, although it was—as all real stories are—much more complicated than this. I do not claim this story is representative. For example, the trajectories of homelessness for women are generally quite different.

A: It went south, to Mexico, 4 years ago.

Q: What about GR?

A: Well, the reason I can't stay on GR is they got it fixed so nobody can stay on GR. There are a million things you got to do, and one little screw-up and you are off. Even if it's them that screws up, a paper gets lost or something. I think they planned it that way. If every person out here got on GR, they each wouldn't get much, but there are so many of them it would cost the County a fortune. So they got a little system that is doing pretty much what they want it to do: keeping a lot of people off GR and on the street.

Q: Did you get help from Legal Aid?

A: Yeah. I went to them a couple of times. They will call the welfare workers for you. Once they got me back on. But then I just got cut off again. And when I go there, it's like being at the welfare office all over again: a long time in the waiting room and then they got no time to hear your whole story or anything. They are off on their own trip.

### III. THREE OF MANY THEORIES: EXPLAINING HOMELESSNESS

It is no insight that "theory" is an elusive and ill-defined notion, representing many different things in many different disciplines and discourses. In their recent writing, some clinical legal scholars have adopted the definition of Mark Spiegel: "By 'theory' we commonly mean a set of general propositions used as an explanation. Theory has to be sufficiently abstract to be relevant to more than just particularized situations."<sup>18</sup> As so defined, theory is obviously not the exclusive domain of theoreticians; it is easy to agree with Gerald P. López that everyone is a theoretician.<sup>19</sup> Certainly, our homeless interviewee has a number of theories, although he did not expound them in a form familiar to any academic discipline. If he had, they might have included the following:

#### A. *Marxism and the Mobility of Capital*

This person is homeless because he lost his job. Whatever the Murphy company manufactures, apparently it can be manufactured in

---

18. Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 580 (1987) citation omitted; see also Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717, 722 n.26 (1992) Barbara L. Bezdek, "Legal Theory and Practice" *Development at the University of Maryland: One Teacher's Experience in Programmatic Context*, 42 WASH. U. J. OF URB. & CONTEMP. L. 127, 136 (1992).

19. See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* 65-69 (1992).



Mexico more cheaply. So long as the costs of transportation of raw materials and goods are not excessive, and the international financial markets and trade agreements permit, capital will flow to those areas of the world where labor is cheapest.<sup>20</sup> As market imperfections like labor unions disappear, people in the United States who have only comparable skills to sell will lose in the increasingly direct competition with workers in Mexico or elsewhere.<sup>21</sup> In industries where the costs of transportation are less, the competition is greater. As wage rates become more internationalized, workers in Mexico or Malaysia may be able to afford better housing, but some workers in the traditionally high-wage countries will be unable to afford any kind of stable housing. We expect these processes to persist because they serve the interests of the social and economic classes that have the most power in the relevant countries. Through state action, those in power will preserve the features of these economic arrangements that benefit them. These phenomena affect all industries and economic sectors to varying degrees.<sup>22</sup>

### B. *Social Science: Bureaucratic Disentitlement*

This person is homeless because he is not receiving welfare. As the number of unemployed and homeless people rises, the social welfare institutions that evolved in easier times, or to mollify a once more restless populace, become overwhelmed by the increased demand and resources diminished by the recession, decreased tax collections, and the artifacts of Reaganism: immense government deficits and a crippled public finance system.<sup>23</sup> In response, state and local governments may

---

20. For a Marxian analysis of the expected consequences of NAFTA, see Arthur MacEwan, *Globalization and Stagnation; impact of the North American Free Trade Agreement*, 45 MONTHLY REV. 1 (1994).

21. *Id.*

22. The evidence is close at hand: The computer on which this Essay is being written contains chips manufactured in Malaysia, El Salvador, and the Philippines. Only the central processor chip comes from the now depressed Silicon Valley in California. Some of the information used in the preparation of this essay from WESTLAW and LEXIS/NEXIS was likely keypunched in Hong Kong or the Philippines; the remainder not already in machine readable form was translated to computer readable form by optical character recognition programs on still other computers. WESTLAW has moved its keypunching operations around the world in search of cheaper labor. Skilled data entry services can be purchased very cheaply in the Philippines, Jamaica, or India. *Offshore Data Entry Becoming Popular*, NEWSBYTES NEWS NETWORK, March 29, 1993. These phenomena are not restricted to jobs requiring lesser skills: American software companies now employ programmers in India, China and Russia at wages far below those paid programmers in the United States. See John Eckhouse, *Turning to Foreign Engineers: European Computer Programmers Do the Same Work for Less*, S. F. CHRON., Feb. 19, 1992, at B1.

23. The systems of financing social expenditures in the United States underwent dramatic change at all levels of government. The "tax revolt" that spread from California across the country beginning in 1978 cut dramatically into the revenues available to local governments. Michael deCourcy Hinds, *Cash Crisis Forces Localities in U.S. to Slash Services*, N.Y. TIMES,

cut directly and deeply into the fabric of the already tattered social safety net, disempowering substantial subgroups or eliminating entire programs. When such direct methods are thwarted, government resorts to "bureaucratic disempowerment"—relatively obscure and often informal changes in procedural rules and processing systems that effectively exclude large numbers of people.<sup>24</sup> Although these changes are often carefully planned, to welfare recipients they appear as irrational, arbitrary, and increasingly burdensome requirements, and seemingly random terminations of their means to survive.

### C. *Silenced Narrative: One Postmodern Turn*

There are many possible readings of this narrative, one of which is that this person is homeless partly because Legal Aid lawyers did not help him, empower him or even hear him. The global economic forces and social processes previously described increase the stress on the local legal services office, making it even harder to deal with existing problems. The voices of clients disappear or are distorted in the chasms that separate professional from "client" and that separate people of different classes, races, genders, sexual orientations, and life experiences. No one listens to or hears the stories of desperately poor people. As a result, already powerless people become further disempowered. Moreover, the insights and understandings poor people have of their own situations are ignored. Possibilities for individual and collective action rooted in those understandings are effectively suppressed. This homeless person is trapped by both circumstance and the real violence of the streets. The possibility of his resistance is impaired by the metaphoric violence done to his narrative by lawyers.

## IV. HOW THESE THEORIES *MIGHT* HAVE CONSEQUENCES

These three theories, implicit in and evoked by the reconstructed interview, are, obviously a limited subset of the possible interpretations. Other possibilities include: the social construction and functions of welfare, including the play of gender and race in welfare; the consequences of land economics in urban centers for the housing costs for the very poor; the consequences of the still highly segregated educational system; and the insurmountable limitations of social science and street corner

---

June 3, 1991, at 1; Scott J. Paltrow, *Cries for Help Go Unheeded*, L.A. Times, Feb. 4, 1991, at A1. At the federal level, the national government borrowed approximately one trillion dollars to finance tax cuts to the very rich. Robert S. McIntyre, *Borrow 'n' squander: the Reagan legacy*, NEW REPUBLIC, Sept. 30, 1991, at 11.

24. See generally Michael Lipsky, *Bureaucratic Disempowerment in Social Welfare Programs*, 58 SOC. SERV. REV. 3 (1984) (coining the phrase "Bureaucratic Disempowerment").

interviews. Further, apart from the structural context, the individual biography of any real person always consists of a tangled and ultimately indecipherable web of tragedy, accident, charm, evil, misplaced desire, and violated trust, as well as hope, love, joy, friendship, and luck. Everything we think we know about people, history, power, and politics—indeed, everything we know or think we know—has *some* relevance and explanatory power for the situation of any given person.

The three limited examples I have given will, however, suffice for this discussion. Each of them meets Spiegel's metatheoretical criteria; each generalizes beyond the context of this particular street corner to thousands of other street corners. Each offers an explanation and an implicit answer to a more general question: Why are there so many homeless people in the United States? Each of them is "true" in the sense that the explanations each provides are coherent and consistent with a significant body of data. While none of these theories offers a completely "true" explanation, it is not entirely false to say that this person is homeless because: (1) he is less mobile than the capital that made his wage labor possible; (2) the local version of the welfare state has implemented a plan of bureaucratic disempowerment, of which he is one of many victims; *and* (3) his voice was effectively silenced by those who might have helped him to be one of the few who escape the broader forces described by the other theories. A more difficult question than whether these theories are true is whether and how they might have consequences.

As a general proposition, for any discrete set of phenomena, there may be an indefinitely large number of explanatory theories, answers to questions in the form, "Why is X?" The range is narrowed, however, by considering a simple antecedent question: "Why do we want to know?", or more precisely, "What use might we, or anyone, make of the answer?" Consider the contexts in which our sample theories either have been or might be used.

The "mobility of capital" theory might be used in polemics for the solidarity of international labor, in quiet discussions about the ramifications of the North American Free Trade Agreement (NAFTA), or in academic discourse about the long-term prospects for homelessness in the United States. This theory *might* inform coherent action on a truly global scale, if an international labor movement existed. As it is, the theory is certainly worth including in discussions in American labor unions and elsewhere about NAFTA. Such discussions might eventually affect policy in ways that would reduce the number of people whose jobs "go south." If this theory has consequences, it is by providing a construct that makes intelligible what would otherwise seem random,

unrelated phenomena. Further, by naming the phenomena it purports to describe, the theory enables conversation and *common* understanding. If enough people understand what is happening to them, their families and their friends in these terms, they might be inclined to act in ways that are congruent, even if not entirely cohesive. What actions they might be able to take in light of this theory would depend on those opportunities for action that exist or can be created. A person concerned with homelessness might call his Senator, whereas the limited act of signing a petition requires that someone else circulate one. In short, the consequences any theory has are highly contextual, dependent upon the array of social and political forces confronting those who understand the theory.

The second sample theory, the social science theory of "bureaucratic disenfranchisement," illustrates the point in the context of at least one sustained effort by poverty lawyers. As understood and applied to the General Relief program in Los Angeles County, California, this theory helped guide litigation in seven related cases over a period of seven years.<sup>25</sup> This litigation resulted in increased general assistance caseloads and benefits worth more than a half billion dollars.<sup>26</sup> It successfully predicted the reactions of the Los Angeles bureaucracy and political structure to litigation and organizing efforts and thereby allowed poverty lawyers to anticipate those reactions. It helped litigators and their clients avoid some strategies they would not have otherwise understood as doomed to failure. It was part of a larger set of systems-theoretic approaches that enabled for advocates to construct computer models that predicted with high accuracy the consequences of procedural changes. It ultimately provided a means of explaining to the press, the public and judges what was really going on in an otherwise indecipherable and chaotic mess. Finally, it explained how temporary courtroom victories can be slowly buried under the accretion of new disenfranchisement devices. In any event, the consequences of this theory were significant, concrete, and even measurable in dollars. These consequences were also contingent on context: the existence of a coalition of civil rights and poverty law organizations willing to devote substantial resources to a lengthy litigation effort, a political context that made it possible to secure nearly

---

25. These cases included the following cases in the Superior Court of Los Angeles County, California: *Robinson v. L.A. County Bd. of Supervisors*, No. C655274; *Rensch v. L.A. County Bd. of Supervisors*, No. C595155; *Paris v. L.A. County Bd. of Supervisors*, No. C5623361; *Blair v. L.A. County Bd. of Supervisors*, No. C568184; *Ross v. L.A. County Bd. of Supervisors*, No. C501603; *Eisenheim v. L.A. County Bd. of Supervisors*, No. C479453; *Mendly v. L.A. County Bd. of Supervisors*, No. BC017558.

26. The first phase of this litigation is described in Gary L. Blasi, *Litigation Strategies for Addressing Bureaucratic Disenfranchisement*, 26 N.Y.U. REV. L. & SOC. CHANGE 591, 596 (1987-88). I served as lead counsel and coordinator of lawyers from six public interest law firms and several private law firms in this litigation.

a million dollars for litigation costs, and the existence of appellate cases giving new and more precise meanings to ancient statutes.

It may be, however, that not all theory is as dependent on material contexts for its consequences. Consider the insights of the critical, postmodern scholarship. By deconstructing and destabilizing settled but often misplaced understandings of power, practice, and subjectivity, postmodern scholarship has the potential for altering the sense individual people make of their practice, and for suggesting new modes of communication and the possibilities of alliance and dialogue between poor people and poverty lawyers.<sup>27</sup> Certainly, the consequences that flow from these insights are not contingent upon the existence of political movements or litigation resources; they can operate at the level of a single lawyer, client, or person.<sup>28</sup> No mass movement is required, not even a litigation fund. This scholarship can be appropriated into a single interview, a beginning dialog between lawyer-person and client-person. All that is required is comprehension of the theory, although this is no small contingency.<sup>29</sup>

## V. CONCRETE, CONSEQUENCES, CONTINGENCIES, AND CONTEXT

Enough about what consequences there *might* be. Let us return to the perspective from the cold concrete of the Los Angeles sidewalk. What has each of these theories to offer in the very real context of what

---

27. A representative sampling of such works would include the following: Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing Mrs. G.*, 38 *BUFF. L. REV.* 1 (1990); Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 *Geo. L.J.* 1603 (1989); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 *YALE J.L. & HUMAN.* 343 (1990); Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 *CORNELL L. REV.* 1298 (1992).

28. Indeed, with the exception of the article by Jerry López, each of the articles in the previous footnote takes as universally paradigmatic the interaction between a single lawyer and a single client.

29. The import of this discourse is often buried in a prose that seems to value most highly subtlety, nuance, suggestion, gesture, and indirect references to other, even more obscure works. Like much of legal scholarship, it seems mainly designed to impress other scholars with those qualities tenure committees and established scholars are thought to hold dear. That tendency is amplified in this particular genre by the inaccessibility of the work of those giants of postmodern thought upon which it draws. To all but the truly initiated (a status to which I do not pretend), some of these streams of discourse seem hopelessly muddy and opaque. Indeed, only my great respect for the intelligence of colleagues with other views restrains my instincts, which are to go beyond the "muddy" metaphor to embrace the double entendre of the nameless philosopher who described Derrida as "the sort of philosopher who gives bullshit a bad name." John R. Searle, *The Word Turned Upside Down*, *N.Y. Rev.*, at 74, 78 n.3, (Oct. 27, 1983) (book review) quoted in Michael S. Moore, *The Interpretive Turn in Modern Theory: A Turn for the Worse?*, 41 *STAN. L. REV.* 871, 872 (1989).

to do about the impending creation of city-sponsored "safe zones" or campgrounds as an alternative to the street camps?

### A. *Capital Movement and the Wage Markets*

We must first ask what use we can make of the more global theory of capital movement and the equalization of wage rates. For one thing, if we believe that this is a fundamental and long-term phenomenon, then it seems likely that the pressures producing the street camps will exist for a long time. We therefore expect that the economic recovery anticipated in 1995 will not reach the bottom of the labor market. Given a competition effectively unchecked by labor organizations or political intervention, the equilibrium wage rate for unskilled labor across the relevant labor markets will be so low that even more people in the United States will be essentially destitute. Such knowledge can help inform long-term strategic decisions. For example, our fear of modern concentration camps would be reduced if we thought an economic recovery would absorb most of the present population of homeless people. Our prototype might be the temporary Hoovervilles of the Great Depression rather than the more sinister (and likely permanent) alternatives. If we believe that mass homelessness is likely to exist for a long time, we may stiffen our resolve to prevent "pilot" park/camps that may be steps down a more disastrous path.

### B. *Social Science Models of Bureaucracy*

Next, we must inquire about the "bureaucratic disentanglement" theory. It may be worth explaining a bit more about the litigation I referred to above. Between 1983 and 1991, this litigation<sup>30</sup> sought to remove both the particular disentanglement devices<sup>31</sup> then existing and to enjoin the practice of bureaucratic disentanglement itself. We settled the last piece of this litigation on the eve of trial with a new, liberal majority of the governing body, the Board of Supervisors.<sup>32</sup> Given the legal uncer-

---

30. The consolidated case was known as *City of Los Angeles v. County of Los Angeles*. No. C655274 (L.A. Super, CT. filed July 22, 1987). I served as lead counsel for the co-plaintiff class of indigent persons in Los Angeles County.

31. For example, approximately 5,000 people per month were rendered homeless each month when they were terminated from General Relief and prohibited from reapplying for 60 days, as punishment for an infraction of one of many rules of the program. The regulations regarding the "60 day sanction" are contained in the Los Angeles County Department of Public Social Services, GENERAL RELIEF MANUAL OF REGULATIONS, Section 42-690 (1988).

32. The majority was "new" as the result of a redistricting ordered in a Voting Rights Act case in which some of the same lawyers were involved. See *Garza v. County of Los Angeles*, 756 F. Supp. 1298 (C.D. Cal.), *aff'd*, 918 F.2d 763 (9th Cir. 1990). The *Garza* decision led to the replacement of an older white, male Reaganite Republican supervisor, Peter F. Schabarum, by a young, liberal Latina supervisor, Gloria Molina. This changed the balance of power on the 5-

tainties and the new political reality, the plaintiffs agreed to a settlement that removed the significant disentitlement devices then existing, but did not enjoin the future practice of "bureaucratic disentitlement" itself.<sup>33</sup>

In the short run, the consequences were dramatic: with the disentitlement mechanisms disabled, the caseload exploded from about 50,000 to over 77,000 people in the space of a few months.<sup>34</sup> In response, and under the pressure of the declining California economy and budget, the "liberal" Board directed its lobbyists to sponsor legislation that would undo aspects of the consent decrees, and directed its bureaucrats to explore yet new ways to increase denials and terminations from General Relief.<sup>35</sup> If the current trends continue, unchecked by other litigation or political pressure, it seems likely that about 50,000 of the present GR recipients will return to the streets, swelling the street camps dramatically.<sup>36</sup>

Of what use, then, is the "bureaucratic disentitlement" theory? It facilitated legal work that had some obvious utility for a substantial period of time to the 50,000 people who would not otherwise have received the means of a bare subsistence.<sup>37</sup> Now, it only helps explain what the government is doing.<sup>38</sup> It provides no clear guide for action, however, unless another iteration of the same kind of litigation is legally and practically possible.<sup>39</sup> At the least, the theory helps advocates and

---

member Board, from very conservative to somewhat liberal. Richard Simon, *Molina Wins Historic Contest for Supervisor*, L.A. TIMES, Feb. 20, 1991, at A1.

33. *Robinson v. County of Los Angeles*, No. C655274 (Cal. Super. Ct. July 24, 1991) (stipulation and agreement in settlement of class action).

34. Hector Tobar, *Welfare Rolls Reach Record Level*, L.A. TIMES, March 3, 1992 at A3.

35. For example, the county introduced a mandatory "drug treatment" program. If a county doctor determined that a GR recipient had "a drug problem," General Relief would be denied unless the applicant agreed to spend three months in a locked-down in-patient "treatment" facility 90 miles from Los Angeles. As the county hoped, many people refused to surrender their freedom for \$293 per month, and thus were denied benefits. Somini Sengupta, *Drug Rehab Required of Some Aid Recipients*, L.A. TIMES, Mar. 8, 1993, at B1.

36. Ted Rohrlich, *Cuts May Double Homelessness, Experts Say*, L.A. TIMES, Aug. 16, 1993, at B1.

37. It is, of course, not possible to determine precisely the net effects of institutional reform litigation — even in purely financial terms — both because the effects are complex and because it is difficult to estimate what would have happened "but for" the litigation. If, however, one takes the time-series data thereafter, it is possible to roughly approximate the number of people who actually benefitted from the litigation (here, about 50,000).

38. Viewed without the aid of any explanatory theory, administrative actions may appear only to reflect common prejudice (e.g., against substance abusers) or simple bureaucratic incompetence (e.g., mailing notices to homeless people at non-existent addresses). Viewed through the lens of the "bureaucratic disentitlement" schema, however, seeming incompetence comes into focus as shrewd manipulation, apparent irrational prejudice is now seen as cold instrumentalism.

39. One of the constants of modern legal life is that it is easier for bureaucrats to promulgate regulations than it is for lawyers to challenge them. Changes in procedures that may take an administrator 10 hours to draft and promulgate may ultimately require 1,000 hours of lawyer time to challenge. Fee shifting statutes may ultimately help redress the imbalance, but fees and costs

homeless people understand the underlying meaning of changes in the currently proposed General Relief rules. It also provides a cautionary tale about how difficult it is to permanently disassemble the mechanisms of disentanglement. This theory tells advocates that, absent more fundamental political changes than the shift from a "conservative" to a "liberal" majority on the county board of supervisors, General Relief will continue to be effectively unavailable to many thousands of destitute people. The pressures building for the "park/camps" that come from the visible presence of thousands of people on the streets will not be lessened by virtue of the existence of the general assistance laws.

### C. *Postmodern Critical Theory*

Finally, we must examine the insights of postmodern critical theory. On one level, it is oxymoronic to talk of postmodern theory: postmoderns reject theory.<sup>40</sup> The only genuine rejection of theory, however, is silence. Different people will attach different meanings to postmodern scholarship. What follows is but one of the many possible interpretations.

Homelessness may actually be evidence of personal resistance, a microrevolution that denies mission preachers and shelter guards their power. Notwithstanding the violence of the streets, at least on the sidewalks, one need not surrender autonomy or dignity at the shelter door along with one's pocket knife. This homeless person may have nothing but the sidewalk beneath the cardboard upon which he sleeps, but at least it is he who decides (until the police come along) which piece of sidewalk that is. As a consequence of our postmodern insights, perhaps we should celebrate this microrevolutionary triumph and return to reading French philosophers.

However, assuming that we have not fully completed the postmodern turn, we can still derive some guidance about what *not* to do. Because there can be no universal, fundamental, or essential standpoint, we pay a lot of attention to who *we* are. We understand that no lawyer, advocate, or *other* can truly speak *for* any single person, let

---

are recovered only at the end of the process (if at all). Litigators must find the human and monetary "capital" to carry the litigation to some conclusion. In just one case, *Robinson v. County of Los Angeles*, plaintiffs expended nearly one million dollars in litigation costs. They received \$990,833 in attorneys' fees at the end of the litigation. (Stipulation and Agreement in Settlement of Taxpayer and Class Action, dated June 8, 1991). In the same case, the defendant County of Los Angeles expended at least \$4.1 million on outside counsel, in addition to the County-employed lawyers who also worked on the case. Ronald B. Taylor, *Supervisors Seek to End Legal Fight Over Homeless Case*, L.A. TIMES, April 2, 1991, at B3.

40. See PAULINE MARIE ROSENAU, POST-MODERNISM AND THE SOCIAL SCIENCES: INSIGHTS, INROADS, AND INTRUSIONS 77-91 (1992).



alone for all the people in the street camps of Los Angeles. Further, even the notion of that one person, as subject, is false. People are not representable in any ordered sense of self or interests. People are but eddies in the turbulent cross currents that comprise them. All questions are contingent on assumptions that are infinitely reflexive. All answers are evanescent, becoming false even as they are spoken, as they suppress other questions and other answers. In less radical form, we believe that we should listen, knowing that we never fully understand and that we must resist imposing our projected orderings and normative sense onto others. Perhaps we decide to join with some of the people in the camps and, together, try to figure out what to do. This is a worthy aspiration, but much easier said than done. The systematic interviews sponsored by the Coalition perhaps represent an effort in this direction, albeit a distinctly limited one.

#### D. *These Three Theories in Local Historical Context*

Assuming we reject the practical paralysis that flows from the more extreme versions of the postmodern view, the most likely outcome in Los Angeles is as follows: Understanding the shortcomings and obstacles, let us suppose that the honest preferences of some people in the street camps can be expressed or ascertained, either through active organization or passive response to the Coalition survey. Suppose, further, that the people in the street camps, of all the alternatives they perceive as real, prefer the government "park/camps" and want them to come about. What ought the Coalition leadership do?

In addition to their understanding of the reasons for the likely continued presence of many tens of thousands of people on the streets of Los Angeles, the Coalition Board's thinking is informed by their pragmatic sense of local history and politics.<sup>41</sup> This sense suggests to them the likelihood of a certain scenario or script: The pressure of the local business community to get people off the street will lead to the creation of more and more camps in the city. The camps themselves initially will be located in Skid Row. The limited land and the opposition of the neighboring landowners and businesses will create great pressure to relocate the camps, first to South Central Los Angeles, where they will face similar, if less powerful, opposition, and then to more remote sites. Many in the Coalition believe that these and other pressures and the huge numbers of homeless people in Los Angeles over the long term might eventually lead to the creation of large camps out in the desert

---

41. This interpretation of the Coalition Board's understanding, here as elsewhere in this essay, comes from my personal knowledge as a member of the Board engaged in these discussions.

surrounding Los Angeles. There, the 1987 Urban Campground might be reenacted in even more ominous form, with thousands of people of color living on the dirt, behind high steel fences and armed security guards, free to leave but with nowhere to go. Some in the street camps share the same visions and understandings as the Coalition leaders.<sup>42</sup> Possibly most do not. A collective local history and perception of local power that is in all likelihood unknown to many people in the camps informs the visions of the Coalition leaders.<sup>43</sup> Given the range of disabilities and situations, there is unlikely to be any clear and coherent voice from the camps. In the end and despite a heightened self-critical sense, the Coalition folks may decide to fight the specter of the mass camps by resisting the proposed "pilot" park/camps, notwithstanding the outcome of the conversation in the camps.

In practice, theories like the three examples inform these decisions, at least in part. Equally important is the sense the Coalition leaders have of local history, politics, and possibility. Their experience with regard to the 1987 Urban Campground is particularly significant. Both provide fragments of a "script" defining likely consequences of actions in Los Angeles. Whether the "script" has predictive value is hard to say. It is very difficult to draw conclusions by analogical reasoning from a single example. The Coalition leaders know of the sequence of events in Miami<sup>44</sup> and an earlier episode in Phoenix.<sup>45</sup> However, they have made

---

42. Speaking of the 1987 Urban Campground, David Smith, a homeless person, was quoted as saying: "Fences, gates and guards. . . . I know a concentration camp when I see one. I'm staying right here on the street." Penelope McMillan, *Urban Campground Draws Only a Few Homeless on Opening Day*, L.A. TIMES, June 16, 1987, at B1.

43. The difference in knowledge is not the product of any intellectual deficiency on the part of homeless people, but of the fact that only a few people in the camps have had the luxury afforded non-homeless people to attend to local politics over a period of years. Some of those who have spent time in the camps do demonstrate a sophisticated understanding of local political dynamics. E.g., Norman Colbert, *Skid Row, 2000 A.D.*, HARD TIMES, Aug./Sept. 1994, at 7 (assessing the prospects for street camps for Los Angeles; HARD TIMES describes itself as "L.A.'s Premiere Homeless Newspaper").

44. Judge Atkins aptly described the events leading up to the "safe zone" remedy in *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1553-60 (S.D. Fla. 1992). The possible consequences of implementing such a remedy are best illustrated in Fort Lauderdale, where the "safe zone" implemented after *Pottinger* has been described as follows: "[a]bout 150 people live in tents and bedrolls crammed inches apart on the parking lot. It is one-third of an acre. . . . Serving those 150 people: seven portable toilets that sometimes overflow, one cold shower that breeds athlete's foot, and a single sink." Bob LaMendola, *Conditions Worsen at City Camp, Homeless Agencies Ask Lauderdale to Close It*, FORT LAUDERDALE SUN-SENTINEL, Jan. 11, 1994, at 1B.

45. The Phoenix camp, "just one part of an extensive complex that includes two indoor shelters, a health clinic, counseling and job referral services" was a more humane version of an official camp, though it hardly seemed like a solution: "Pitched near the desert on the ragged edge of the city's south side, the fenced, 3-year-old camp abuts a railroad switching yard, a lumber yard and a cemetery." Frank Clifford, *A Wide-Open Alternative for Homeless*, L.A. TIMES, March 10, 1987, at 2-1.

no systematic study of either. They act on what knowledge is available, knowing that inaction also has consequences.

## VI. A PRAGMATIC, COGNITIVIST VIEW OF THEORY

As these examples should suggest, all theory has at least the potential for consequences, for informing practice and decision, although that potential is highly contextualized and dependent on local opportunities and constructions. Having developed these examples, we can now turn to the more interesting question of *how* theory has consequences. My own understanding of this question has been transformed by my recent efforts to apply the insights of modern cognitive science to understand how practicing lawyers learn from experience and what distinguishes expert from novice attorneys.<sup>46</sup>

The cognitive revolution in psychology and the development of an integrated cognitive science have produced a new, naturalized way of looking at "theory," as one of the many kinds of knowledge representations.<sup>47</sup> From this perspective, theory occupies no privileged place among other forms of knowledge representations, which include not only all the conventional notions of "theory" in propositional form, but also prototypes, "idealized cognitive models," schemas, scripts, images, and mental models.<sup>48</sup> Moreover, we need not rely entirely on the speculations of philosophers and projections from our own limited experience. Instead, we can read and interpret the accumulated results of hundreds of empirical experiments that suggest how cognitive structures, including theory, are acquired and how they affect understanding and ability to act in context.<sup>49</sup> In the naturalized view cognitivism takes of theory, theory

---

46. Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313 (1995).

47. With roots not only in psychology, but also in linguistics, epistemology, artificial intelligence, and neurobiology, cognitive science is the study of intelligence and intelligent systems. See generally HOWARD GARDNER, *THE MIND'S NEW SCIENCE* (1985) (for an accessible account of the early development); 3 *THINKING: AN INVITATION TO COGNITIVE SCIENCE* (Daniel N. Osheron et. al. eds., 1990) (for a more thorough and current summary); Herbert A. Simon & Craig A. Kaplan, *Foundations of Cognitive Science*, in *FOUNDATIONS OF COGNITIVE SCIENCE 1* (Michael I. Posner ed., 1989) (for a short discussion of its origins).

48. A full explanation of these terms is beyond the scope of this paper. Basically, however, people seem to learn and store basic concepts and categories in memory by reference to "prototypes," "metonymic models," or "idealized cognitive models". See GEORGE LAKOFF, *WOMEN, FIRE, AND DANGEROUS THINGS* 5-90 (1987). Our understanding and memory of more complex information is mediated by "schemas" or "scripts" that embody prototypical expectations about objects, situations, and actions. See ROGER C. SCHANK & ROBERT P. ABELSON, *SCRIPTS, PLANS, GOALS AND UNDERSTANDING: AN INQUIRY INTO HUMAN KNOWLEDGE STRUCTURES* 36-68 (1977). We reason about particular situations by constructing mental models from our stored schemas and then "running" the models in simulation. P. N. JOHNSON-LAIRD, *MENTAL MODELS: TOWARDS A COGNITIVE SCIENCE OF LANGUAGE, INFERENCE, AND CONSCIOUSNESS* 182-204 (1983).

49. Virtually all of cognitive psychology bears in some form on these questions. Readers

of all kinds has consequences in much the same way irrespective of form. For example, Darwin's evolutionary theory was at the outset little more than an application of Malthus to animals, and an analogy to domestic breeding.<sup>50</sup> It provided explanations without predictions. Other theory offers the possibility of mathematical prediction,<sup>51</sup> while still other theory suggests little more than which of an infinite range of possible variables are important and which can be safely ignored.<sup>52</sup>

Not all forms of theory, however, have equal power in reframing, understanding or conveying information. Those representations that restructure the central analogs or models we use have the most profound effects. In the sciences, plate tectonics, the Copernican solar system, evolution, neural network computers, and the Watson-Crick model of DNA molecular structure come to mind. Marx and Freud provided similar fundamental restructurings of our understanding of the human world. Perhaps postmodern philosophers have radically restructured understanding as well; perhaps not. In the more mundane world of ordinary professional practice and political knowledge (between the relatively infrequent paradigm shifts), different cognitive phenomena are more

---

seeking a general sense of the focus and content of this discourse should consult any issue of the JOURNAL OF EXPERIMENTAL PSYCHOLOGY: LEARNING, MEMORY, AND COGNITION, published by the American Psychological Association. For examples of empirical work focused more precisely on the cognitive consequences of theoretical knowledge, see Pamela T. Hardiman, et al., *The Relation Between Problem Categorization and Problem Solving Among Experts and Novices*, 17 MEMORY AND COGNITION 627 (1989) (examining effects of various levels of knowledge of theory in physics); and Yuichiro Anzai, *Learning and the Use of Representations for Physics Experts*, in TOWARD A GENERAL THEORY OF EXPERTISE, 64-92 (K. Anders Ericsson & Jacqui Smith, eds., 1991) (same subject). As Steven Winter points out in his contribution to this symposium, he has made extensive use of the cognitive paradigm in his own works, albeit (as I read them) in the more limited realms of jurisprudence and doctrinal analysis. E.g., Steven L. Winter, *Legal Storytelling: The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225 (1989); *Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law*, 137 U. PA. L. REV. 1105 (1989).

50. CHARLES DARWIN, *THE ORIGIN OF SPECIES AND THE DESCENT OF MAN* 428-30, 900 (Modern Library 1936).

51. Mathematically predictive theories are best known in the physical sciences. We have grown so accustomed to the power of classical mechanics, for example, that we no longer marvel that from a few faint spots on photographic plates, we can predict the precise time and location of the arrival of comet fragments on Jupiter many months in advance. J. Kelly Beatty, *Awaiting the Crash; Comet Shoemaker-Levy 9 predicted to collide with Jupiter on July 1994*, SKY & TELESCOPE, Jan. 1994, at 40.

52. This is, of course, to use the notion of "theory" in its broadest possible sense, as entailing only a sense of "what matters." In a noisy and chaotic world, however, this is the necessary predicate to the ability even to notice covariation between different aspects of the environment, or to perceive what constitutes an "aspect." In some sense, the underlying tension between the stylized extremes of formalism and realism in jurisprudence reflects principally the tension between beliefs about the salience of abstract rules in predicting the behavior of judges, i.e., the extent to which "law matters," as compared to the extent to which "politics matters." Of course, to notice that some theories begin at this level does not imply that they end here. See, e.g., CORNELL WEST, *RACE MATTERS* (1993).

typically at work. We acquire the knowledge essential to intelligent decisions not so often by revolutionary restructurings of basic metaphors, analogs and models as through experience from which the schemas that capture the similarities are induced. Individual expertise has been explained in these terms:

[E]xperts know a large variety of problem schemas, where a *problem schema* consists of information about the class of problems the schema applies to and information about their solutions. Problem schemas have two main parts: one for describing problems and the other for describing solutions. . . . Routine problem solving consists of three processes: selecting a schema, adapting (instantiating) it to the problem, and executing its solution procedure.<sup>53</sup>

Even experts, however, do not acquire expertise through unguided induction from repeated direct experiences. People, including experts, extract schemas by analogical reasoning from repeated examples. However, experiments demonstrate they do so much more quickly and accurately if they are supplied with an explanation of the principle involved—essentially “naming” the schema implicit in the exemplars.<sup>54</sup> These explanations probably come closest to what we mean by “theory” in everyday life.

Whatever form “theory” takes, its consequences are mediated through the same route of human cognition. Each theory helps us to see order and meaning in what otherwise would seem to be random and meaningless noise. Each provides a framework that structures our understanding of individual experience and of collective history. Each may also lead us to see order and to expect certainty where neither is possible. Most importantly, each permits us to speak to one another about things that are otherwise nearly impossible to verbalize.

The three theories I have used as examples can be described, albeit incompletely, in a common cognitivist framework. The “mobility of capital” theory is most clearly a species of what we commonly call theory: propositions, whether in prose or mathematics, that describe the relationship between abstracted notions like “capital” and “labor.”<sup>55</sup> Whatever ontological status one wants to give these concepts, clearly they and the theory in which they are embedded capture *something* of the what and why a plant owner closes a factory in Los Angeles and moves it to Mexico. They also facilitate prediction: absent non-market interventions, wage rates will continue to move toward an international

---

53. Kurt VanLehn, *Problem Solving and Cognitive Skill Acquisition*, in FOUNDATIONS OF COGNITIVE SCIENCE 521, 545-46 (Michael I. Posner, ed. 1989).

54. *Id.* at 26.

55. See, e.g., KARL MARX, WAGE-LABOR AND CAPITAL 33-34 (Harriet E. Lothrop trans. 1902).

equilibrium and manufacturing wages in the U.S. will therefore continue to fall.<sup>56</sup>

“Bureaucratic disorientation” is a bit more complex. In one sense, it describes a phenomenon of which we can make sense only if we have a certain kind of mental model of bureaucracy as a system, with a definable structure and active, hierarchical decision-making processes. In a sense, we understand the bureaucracy in the same manner its managers do, as a “system” in which the flow of money and people can be regulated. In another sense, it represents, at a summary level, the schemas or scripts we have of prototypical interactions between poor people and “street level bureaucrats,” except that we now understand that there is often some uniformity, consistency and method to the Kafkaesque madness of the welfare offices.

Sometimes, we can also partially reframe the content of postmodern theories in cognitivist terms. Both lawyer and client structure their perceptions through the scripts each has for the other and for their interaction. Each relies on prototypes or metonymic models in ways that both conceal and supply information. How postmodern theory itself operates on a cognitive level is personal, contingent, and more difficult to describe in cognitive terms. Perhaps the most common constructs come in the form of image and metaphor, poetic exemplars after which we might construct our own images of the subtle and complex:

Their intellectual maps were geometric and symmetrical, and covered the entire social world, as we then imagined it. Although there was a lot of movement within their paradigms, that movement resembled a military drill more than a dance. . . . [Power is] like an evanescent fluid, it takes unpredictable shapes as it flows into the most subtle spaces in our interpersonal world. . . . Sometimes we may think we see more or less familiar human actors, who seem to guide the fluid, like children might make giant soap bubbles in a park. Yet at other moments, these familiar ‘persons’ disappear, and we see only the patterns that linger as the bubbles dance.<sup>57</sup>

A consistent postmodernist resists the temptation of theory with pretensions beyond the metaphoric and evocative.

From the cognitivist perspective, the form “theory” takes—whether analogy, sets of related schemas, models, or sets of explicit proposi-

56. At least this is the prediction of the Marxist theory. For a recent example, see MacEwan, *supra* note 20, at 18. A more nuanced and empirically rooted account can be found in BENNETT HARRISON, *LEAN AND MEAN: THE CHANGING LANDSCAPE OF CORPORATE POWER IN THE AGE OF FLEXIBILITY* (1994).

57. Lucie E. White, *Seeking “. . . The Faces of Otherness . . .”: A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499, 1499-1501 (1992). The first part of the quote refers to 1960s structuralist “gurus” Noam Chomsky and Claude Levi-Strauss. The second part of the quote characterizes Foucault’s meta-theory of power.

tions—does not matter. Similarly, it does not matter whether theory meets some standard of epistemology or syntactic metatheory. What *does* matter is how people appropriate theory into their own cognitive structures and how they make use of it. Cognitivism recognizes that the potential utility of all representations depends merely on whether the models we make of them simulate what eventually happens. We thus move beyond the sterile debates of metatheory to the question of whether and how theory helps human beings make sense of the world.

Cognitive science also situates theory pragmatically, in relation to problem-solving. Indeed, cognitive science understands theory *only* in relation to problem-solving.<sup>58</sup> This sense of theory has migrated to occupy an important place in the most sustained metatheoretical discourse, the philosophy of science. Cognitivist and pragmatist currents have infected and transformed the philosophy of science, replacing the once hopelessly formalistic, semantic conception of theory.<sup>59</sup> We now understand that scientific explanation is always situated: “explanation is essentially relative, for an explanation is an *answer*”<sup>60</sup> and intelligible only in relation to the question and the context. A quintessentially modern philosophy of science has been reconceived in quasi-postmodern terms.

Moreover, scientific explanation arises in relation to solving genuine problems. Thus, the two principal theses of one of the leading works in this current in the philosophy of science are that: “[T]he first and essential acid test for any theory is whether it provides acceptable answers to interesting questions: whether, in other words, it provides satisfactory solutions to important problems,”<sup>61</sup> and that “[i]n appraising the merits of theories, it is more important to ask whether they constitute adequate solutions to significant problems than it is to ask whether they are ‘true’, ‘corroborated’, ‘well-confirmed’ or otherwise justifiable within the framework of contemporary epistemology.”<sup>62</sup> These would not be bad beginnings for a coherent, pragmatic metatheory of law and

---

58. See, generally e.g. JOHN H. HOLLAND ET AL., *INDUCTION: PROCESSES OF INFERENCE, LEARNING, AND DISCOVERY* (1986) (for a current example of the basic information processing paradigm); ALLEN NEWELL & HERBERT A. SIMON, *HUMAN PROBLEM SOLVING*, (1972) (the original explication of the paradigm).

59. It is worth noting that influence has flowed in both directions. Thomas Kuhn's paradigmatic “paradigm shift” was an important notion in the early formulation of cognitive science. See generally THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d. ed. 1962).

60. Bas C. Van Fraassen, *The Pragmatic Theory of Explanation*, in *THEORIES OF EXPLANATION* 136, 153 (Joseph C. Pitt ed., 1988).

61. LARRY LAUDAN, *PROGRESS AND ITS PROBLEMS: TOWARD A THEORY OF SCIENTIFIC GROWTH* 13 (1977).

62. *Id.* at 14.

lawyering. The “cognitive sociology of science” Larry Laudan began<sup>63</sup> is worth considering as a model, not because of any substantive “physics envy,” but rather because academic science has been relatively successful as a socially constructed enterprise. Real problems get solved, knowledge accumulates, collaboration—among both academic colleagues and practitioners—is common, and things get done. It might also offer a reasonably neutral and unthreatening way of examining how we engage in the practice of making theory.

## VII. RECONSTRUCTING POVERTY LAW THEORY

In an article that was important in legitimizing the postmodern turn in legal scholarship in poverty law circles, Anthony Alfieri spoke of “reconstructing” poverty law practice.<sup>64</sup> Reconstruction was necessitated by a deconstructivist analysis revealing:

[A] sociolegal world of lawyer/client discourse—voices, narratives, stories—that is contested. In this world, lawyer knowledge is partial; lawyer interpretation is contingent upon multiple categories of age, class, disability, ethnicity, gender, race, and sexual orientation; and lawyer/client relations are configured by a dominant-subordinate hierarchy of exclusion. Accordingly, the practices of lawyering—interviewing, counseling, negotiation, litigation—appear not as the neutral conventions of a skilled craft, but rather as unstable interpersonal and institutional contexts for the play of lawyer power and client resistance.<sup>65</sup>

On careful examination, it turned out that the problem facing the poor was not only poverty, but also poverty lawyers. By subjecting the lawyer-client nexus to intense critical scrutiny, this strain of scholarship has sparked (at least in the legal academy) a new level of interest in poverty law and lawyering for and with subordinated people, particularly on questions of roles, voice, and power.<sup>66</sup>

---

63. Perhaps the best known continuation of work in the direction Laudan began is that of Ronald N. Giere, in *EXPLAINING SCIENCE: A COGNITIVE APPROACH* (1988); see generally *COGNITIVE MODELS OF SCIENCE* (Ronald N. Giere ed., 1992).

64. Alfieri, *supra* note 27. Professor Alfieri’s “reconstruction” metaphor extends both to the reconstruction by poverty lawyers of “the lawyer’s narrative meanings and images of the client’s world,” and of the “reconstruction of poverty law advocacy” itself. *Id.* at 2134, 2147.

65. The quotation is from a later work, Anthony V. Alfieri, *Stances*, 77 *CORNELL L. REV.* 1233, 1233-34 (1992).

66. One can observe the diffusion of these discussions in legal academic discourse through a kind of crude bibliometric exercise. Two of the most frequently cited articles in this region of legal scholarship are Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing Mrs. G.*, *supra* note 27, and Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, *supra* note 27. Professor White’s article has been cited in 59 articles available on LEXIS (LEXIS, Lawrev Library, Allrev File, as of October 21, 1994). Professor Alfieri’s article has been cited by a roughly equivalent number (61) through



While this examination proceeded, a largely different group within the law schools began reexamining poverty law practice, particularly from the perspective of law school clinics. Participants in the Interuniversity Poverty Law Consortium (the "Consortium") funded by the Ford Foundation have carried out much of this work.<sup>67</sup> Their effort has been focused more on experimentation and informal dialog than on producing more formal scholarship. Thus far the Consortium has produced reflective, descriptive pieces about efforts in particular law school settings,<sup>68</sup> some of which may lay the foundation for more ambitious scholarship in the future.

Thus, scholars have produced, in the past few years, two streams (or, perhaps, a stream and a rivulet) of research and discussion, sometimes separate and sometimes flowing together. Articles in the critical, postmodern stance adopted by Professor Alfieri, represent one of these streams.<sup>69</sup> The efforts of practicing poverty lawyers in law school clinics to make some sense of their practice, in part with the insights and language supplied by the more traditional scholars, represent the other.<sup>70</sup> Together, this work is sometimes referred to as "the new poverty law scholarship."<sup>71</sup> Although it often makes the same points as some very

---

the same date. One can also develop a very rough sense of the relative increase in attention the subject of poverty lawyering has received from academics in recent years. In the four years prior to January 1, 1990, there were 79 articles in the same collection on LEXIS that contained references to poverty law, compared to 273 articles in the four years after January 1, 1990. While these are, admittedly, quite imprecise measures, they offer some evidence of the point.

67. *Interuniversity Poverty Law Consortium*, 42 WASH. U. J. URB. & CONTEMP. L. 57 (1992).

68. Among these are the "case studies" produced out of the Interuniversity Poverty Law Consortium, collected at 42 WASH. U. J. OF URB. & CONTEMP. LAW. 57-247 (1989), as well as more extensive pieces like Lucie White, *Representing the "Real Deal,"* 45 U. MIAMI L. REV. 271 (1990-91).

69. Professor Alfieri has more recently described his project as developing a "method of internal critique forged out of the contemporary movements of critical theory within the legal academy." Alfieri, *Impoverished Practices*, 81 GEO. L.J. 2567, 2568 (1993) (citing his earlier works, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-88); *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769 (1992); *Speaking Out of Turn: The Story of Josephine V.*, 4 GEO. J. LEGAL ETHICS 619 (1991). See also, Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994) (reviewing Gerald P. López, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1993)).

70. The sampling of law review articles referenced *supra* note 66 is illustrative, though these scholars are "traditional" in the special senses of (1) having created their own tradition within recent legal academic discourse and (2) in applying the insights and methods of traditions within other disciplines, particularly literary criticism.

71. *E.g.*, William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099 (1994) (illustrating the current sense of this term, and helping to identify the ways in which this scholarship is, indeed, new).

old poverty law scholarship,<sup>72</sup> it is "new" in energy, form, standpoint, and intellectual parentage.

As currently constituted, however, the "new poverty law scholarship" suffers from flaws that prevent it from being of much practical consequence for poverty law practice. The critical postmodern scholarship too narrowly focuses on the individual lawyer/client microworld. It disclaims any ambition to look for structure or explanation above the level of local narrative.<sup>73</sup> Its limits are largely a product of its method: only narrative matters, and any single narrative supplies all the information we need. Never has so much theory rested on so little practice. The total factual content of all of this scholarship consists of perhaps a dozen remembered episodes about individual clients in the former practices of the respective authors.<sup>74</sup>

If this critical postmodern scholarship consists of theory virtually devoid of evidence, the new scholarship produced by clinicians is largely evidence devoid of theory. Notably, the clinical scholarship also consists of narratives. These stories, however, are not about individuals but concern larger episodes and efforts in individual law school clinics or similar settings.<sup>75</sup> Generally, the goal is to tell "what happened" in a

---

72. See generally, e.g., Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049 (1970) (discussing the difference in relating to poor individuals).

73. On the question of ambition, see Joel F. Handler, *Postmodernism, Protest, and the New Social Movements*, 26 LAW & SOC'Y REV. 697, 698-99 (1992) and the critical commentary it generated in the same volume. Handler argues that postmodern scholars have a view of microliberation captured in the Ethiopian proverb, "When the great lord passes, the wise peasant bows deeply and silently farts." *Id.* at 727. Handler argues that "[p]rogressive forces need trumpets, not farts." *Id.* My own view is that we could put this controversy behind us by agreeing on tubas.

74. For a sampling of articles framed around individual client stories, see White, *supra* note 27 (case of Mrs. G.); Alfieri, *supra* note 27 (case of Mrs. Celeste); Cunningham, *supra* note 27 (case of M. Dujon Johnson); Naomi R. Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and Practice*, 77 CORNELL L. REV. 1398 (1992) (case of "Ms. Sims," an amalgam of several clients); Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43 HASTINGS L.J. 971 (1992) (case of "Mrs. Smith"); Alfieri, *Impoverished Practices*, *supra* note 69 (case of Bertie Johnson). Of course, the the single exemplars in these scholarly articles are also used as vehicles for explicating nonempirical claims.

75. See, e.g., the case studies from the Interuniversity Poverty Law Consortium collected in 42 WASH. U.J. OF URB. & CONTEMP. L. (1992): Jeffrey S. Lehman & Rochelle E. Lento, *Law School Support for Community-Based Economic Development in Low Income Urban Neighborhoods*, *Id.* at 65 (reporting on the Legal Assistance for Urban Communities Program at the University of Michigan Law School); Gary L. Blasi, *The "Homeless Seminar" at UCLA*, *Id.* at 85 (discussing the joint seminar of academics and advocates at the UCLA School of Law); Deborah H. Bell, *The Law Clinic as a Regional Center: Looking for Solutions to Rural Southern Housing Problems*, *Id.* at 101 (discussing the housing law clinic at the University of Mississippi School of Law); Barabara L. Bedzek, *"Legal Theory and Practice" Development at the University of Maryland: One Teacher's Experience in Programmatic Context*, *Id.* at 127 (discussing the program at the University of Maryland); Susan Bryant & Maria Arias, *A Battered Women's Rights Clinic: Designing a Clinical Program Which Encourages a Problem-Solving*

project or enterprise. These accounts often do not have a “moral of the story” or suggest how the trajectories of similar enterprises in other settings have been similar or different, and why. Because it is hard to detect from within any single effort the influence of local context and contingencies, this scholarship has not yet progressed to analyses that transcend local experience. Neither has anyone undertaken comparative studies, although the raw material is being accumulated. Therefore, neither current in the “new poverty law scholarship” has had much noticeable consequence beyond law schools and journals. To be fair, it is not clear that all the participating scholars ever intended that it should, nor is it clear that there is a waiting, receptive audience of practitioners (assuming for the moment that they are within the intended audience). If it is to have consequences beyond the academy, “the new poverty law scholarship” would itself require “reconstruction.” I have no blueprint for this remodeling. I can only suggest some elements that a reconstructed poverty law scholarship might include:

A. *Addressing Many Voices and Standpoints, Including Those of Practicing Advocates*

Much of the postmodern scholarship has adopted a stance critical of virtually all poverty law practice, implicitly (and ironically) claiming a position that is objective and superior to this practice. From this lofty viewpoint, “[p]overty lawyers have been described as oppressors, as domineering, as unreflective, as poor lawyers, or as unfeeling bureaucrats.”<sup>76</sup> The critical gaze rarely falls on the mirror: it is about the practice of *others*. This may explain a bit of why this scholarship has had little impact beyond law schools. Being people of ordinary character, practitioners naturally resist critical messages as substantively and emotionally threatening as those contained in the critical scholarship, especially those that attack professional identities.<sup>77</sup> Resistance stiffens further when practitioners perceive the critical messages as floating

---

*Vision of Lawyering that Empowers Clients and Community*, *Id.* at 207 (discussing the Battered Women’s Rights Clinic at CUNY Law School at Queens College); Joseph B. Tulman, *The Best Defense is a Good Offense: Incorporating Special Education Law into Delinquency Representation in the Juvenile Law Clinic*, *Id.* at 223 (discussing the advocacy project at the District of Columbia School of Law).

76. Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 949 (1992) (footnotes omitted).

77. There may be a few people who do not mind being seen as domineering, unreflective, unfeeling oppressors (see Paul Tremblay’s characterization of scholarly caricatures, *id.*), but not many of these people are legal services lawyers. The self-identity of legal services lawyers — whether accurate or not — is more likely to be truly one of *service* to clients, entailing some personal, financial, and other sacrifices, compared to either lawyers in private practice or those who teach in law schools.

down from the serene heights of law schools in voices that seem haughty, hostile, distant, and distinctly uninterested in dialogue.<sup>78</sup> It is an odd epistemology that effectively treats the words of one person in a situation as essential ("client narrative"), but regards as worthless the narrative of another person in another part of the same situation ("poverty lawyer narrative"?). Postmodern scholars often adopt an imperious, monologic stance toward practicing lawyers that mirrors the stance they accuse those lawyers of adopting toward subordinated people. Thus, Lucie White suggests that Professor Alfieri adopts an "imperial, imperative style of doing theory" that risks "repeating within our own theories the very 'interpretive violence' that our theories seek to move us beyond."<sup>79</sup> In general, this critical scholarship sometimes devalues and silences the voices and experiences of the human beings who are trying to function as progressive lawyers quite as thoroughly as those lawyers sometimes devalue and silence the voices of their clients. It ought to be possible for postmodern scholars to avoid the monologic stance they criticize in others.

B. *Addressing Problems Beyond the Microworlds of  
Lawyer/Client Interaction*

At the moment, even if scholars and practitioners did engage in a sustained, open dialogue, much in the postmodern scholarship would probably not be relevant to the entire range of difficult issues that confront progressive lawyers. If lawyers concededly suffer from professional myopia, critical law professors seem to suffer from tunnel vision. The subjects that draw sustained critical efforts rarely extend beyond the microfeatures of individual relationships between lawyers and subordinated people. The implicit suggestion is that the main problem faced by poor and subordinated people is not unemployment, illness, hunger, homelessness, degradation, or racist oppression, but rather the "interpretive violence" done to their narratives by poverty lawyers. This seems to me a rather astonishing locus of emphasis. I believe (but claim no certainty) that the unfiltered and inviolate voices of the poor might be heard to agree.

Even if we completely transformed, in the postmodern vision, every interpersonal relationship between lawyer and client, it is difficult

---

78. One crude measure of the monologic quality of scholarship about poverty law is that of all the law review articles on LEXIS, there are 288 references to articles in the central journal and record of poverty law practice, *Clearinghouse Review*, as compared to 660 in the *Utah Law Review* and 460 in the *Oklahoma Law Review*, 590 in the *Kansas Law Review*, and 2815 in the *UCLA Law Review*.

79. Lucie White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853, 856 (1992) (describing Alfieri, *supra* note 27).

to see how institutional racism, real (as opposed to metaphoric) violence, hunger, homelessness, and the other incidents of subordination would thereby somehow quietly disappear. Liberation of client from lawyer, or both from their objectifying roles, is a limited liberation indeed. Some of the new scholars are aware of the dangers of focusing on interpersonal realities to the exclusion of the institutional and other aspects of human life.<sup>80</sup> However, thus far, the postmodern scholarship seems limited by its methods and focus on individual, local narrative. This view not only misses the forest for the trees but seems captivated by the accidental and contingent history of single leaves. One need not wait for any Grand Metanarrative to attend to the structures and forces that explain the distribution and persistence of individual tragic tales. One can also attend to the larger stories of collective resistance and community building, successes and disasters alike. Quite a lot exists in the space and time scale between the momentary insight or microrevolution and some global social transformation. Communities, organizations, movements, and lawsuits also have stories to tell, if someone will listen.

### C. *Seeking Evidence Beyond Individual Narratives*

Stories alone are not enough, even in understanding the microworlds of lawyer/client interaction. Cognitive science confirms the intuitions of the new scholarship: we understand the social world largely through stories and narrative.<sup>81</sup> The universality of this phenomenon accounts in part for the attractiveness and power of much of the scholarship: who can forget the stories of Mrs. G.<sup>82</sup> or Mrs. Simpson?<sup>83</sup> But a search of this scholarship for the evidence supporting its arguments reveals *only* a few stories about individuals. This is one of the few discourses in which so small a sample (N=1) is accepted as more than illustrative. Not all such scholarship is based on single micronarratives. Some studies look at the patterns in large numbers of small narratives.<sup>84</sup> These studies avoid extrapolating from a single story, but

---

80. E.g., White, *supra* note 57, at 1505.

81. See generally SCHANK & ABELSON, *supra* note 48; ROGER C. SCHANK, TELL ME A STORY (1990) (expressing same ideas in a more readable version).

82. See Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 21-32 (1990).

83. See Patricia Ewick & Susan S. Silbey, *Conformity, Contestation, and Resistance: An Account of Legal Consciousness*, 26 NEW ENG. L. REV. 731, 732-34 (1992).

84. See generally, William L. F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (1992) (based in part on 115 lawyer-client conferences and an equivalent number of interviews); Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992) (based on examination of 659 court files, 399 court hearing observations, and 106 "exit interviews" with tenants).

maintain the level of analysis.

One need not aspire to a comprehensive, mechanistic structuralism to understand that social and political life is not simply a random cacophony of individual narratives. The moving of a factory to Mexico, for example, may produce a thousand different stories from a thousand different standpoints, but they are neither random nor unrelated. To ignore what causes factories to close is also to inflict violence upon the narratives of those whose lives are thereby disrupted. People and communities, through organized efforts, sometimes resist the economic forces that close plants. Those efforts are stories, and items of evidence, as well. Structuralist theories may not capture all that exists, but ignoring structure risks missing nearly everything. Furthermore, the exclusive focus on microworlds may suppress information at the only levels at which any meaningful progress or change can be made or sustained.

D. *Engaging Practice, Confronting Practical Questions, and Solving Problems*

If scholarship supplies answers, what are the questions? Let me give an example. In my view, one of the very best examples of the new scholarship is Barbara Bezdek's carefully documented description of how the voices of poor, African-American women are silenced in the Baltimore housing court, and how "tenant rights" are rendered illusory in the grinding daily practice of one purported dispenser of due process.<sup>85</sup> Professor Bezdek does not base her case on the well-told tale of a single client nor is she content with illustrating the silencing of individual voices. Instead, she reaches broader conclusions: "Beneath the veneer of due process and the ordered resolution of disputes, Baltimore's rent court systematically excludes from the law's prescriptions litigants who are members of socially subordinated groups."<sup>86</sup> Professor Bezdek's article would provide powerful ammunition for any organized effort in Baltimore seeking to challenge the injustices she documents. That is a worthy result, and one that distinguishes this work from much clever—but useless—scholarship. So what is missing?

Professor Bezdek's article provides some compelling answers. But to what questions? She describes the underlying question as "Why are the tenants so silent?"<sup>87</sup> Clearly, her research provides some answers to that question and to the broader questions of just how the Baltimore rent court systematically deprives poor, African-American women of rights by shutting them up and shutting them out. Professor Bezdek's

---

85. Bezdek, *supra* note 84.

86. *Id.* at 534 (footnote omitted).

87. *Id.* at 548.

research, however, does not fully address the question of *why* this is so, because it does not ask that question in the context of what might be *done* with the answer. Are all housing courts exactly like this one? If not, why not? What have poor tenants and/or poverty lawyers done when confronted with similar horrors elsewhere? What worked, what didn't work, and why? Housing courts have at times looked different, in some places with politically powerful tenant movements.<sup>88</sup> Who are these "well-meaning"<sup>89</sup> judges who staff the Baltimore Court? Where did they come from? How did they get there? Who keeps them there? What are their relations to landlords and the local business elite? Does it make a difference that the local Legal Aid has "not established a regular court-house presence?"<sup>90</sup> How are the dynamics of denial changed when the tenant can effectively countersue, putting the landlord at risk in the same proceeding?<sup>91</sup> The outrages Professor Bezdek describes so well are not inevitable in all their details. They are in part the product of politics and decisions by, among others, poverty lawyers and legal aid managers.

To repeat, Professor Bezdek's article is one of the best examples of the new poverty law scholarship because it is both true and useful, both for polemics about how bad things are in one place and for understanding similar institutions in other places. This is no small accomplishment. What is troubling is not the shortcomings of this article, but that the new poverty law scholarship would find it the suitable end of a project, rather than the beginning. A fully engaged, reconstructed poverty law scholarship would also address questions of what could or should be done about the problems it documents. In so doing, it would look not only to the hundreds of micronarratives of individual tenants, but also to the handful of larger narratives. What happened in other housing courts when poor people and advocates did this or tried that, and what seemed to be the conditions of success or failure?

---

88. For example, tenant organizations became a powerful political in Santa Monica, California in the 1980's. ALAN D. HESKIN, *TENANTS AND THE AMERICAN DREAM* (1983). The largest tenant organization, Santa Monicans for Renters' Rights, has had significant influence on the selection of judges who hear landlord-tenant disputes. See, Julio Moran, *Elections Municipal Court*, L.A. TIMES, May 27, 1990, at J3.

89. Bezdek, *supra* note 84, at 536. Sometimes "polite" is mistaken for "well-meaning."

90. *Id.* at 550 n.59. I know from experience that courts at least attend more to appearances in the presence of Legal Aid lawyers and court watchers. With Barbara Blanco, now of Loyola of Los Angeles Law School, I created and directed the Eviction Defense Center of the Legal Aid Foundation of Los Angeles. The Center represents more than 10,000 tenants in eviction proceedings each year and has at least one lawyer in the housing court virtually every day. Memorandum from the Western Center on Law and Poverty, Inc., Eviction Defense Clinic Survey (June 30, 1994) (on file with author).

91. I am told that this approach has produced good results in some places, like Jamaica Plain, Massachusetts.

E. *Not Giving Up Too Soon*

In the realm of theory-work, the limitations of method have produced a premature failure of ambition. The fully consistent postmodern turns from "theory" to:

[A] situated theoretical practice—to the slow learning that comes from multiple, partial perspectives, from uncertain readings by advocates of their own day to day work. In this view, the project of doing theory is itself "reconstructed" into a collective practice. Rather than a task reserved to scholars, theory becomes a habit of ongoing conversational reflection about how to describe the problems, make alliances, devise strategies, and thus move together toward a better world. Theory is the ongoing practice of reflection among the communities of poor people and their allies that are constituted by the work they come together to do. This kind of theoretical practice does not yield the static artifacts, the articles and books, that we have learned to equate with "theory." Rather, this kind of theoretical practice is enacted in those elusive moments of insight that mark good conversations, or in those tactical innovations that work. This kind of theoretical practice could be "written up," finally, only in a situated, reflective history of the practice itself.<sup>92</sup>

This is an appealing vision on many levels. It is respectful of practice and ordinary people. It accords with our fundamental view that there is no fundamental view. It is also a very limited vision, one of microtheory serving micropractices. It accepts only narrative, and quite limited and local narrative at that, among all the possible representations of knowledge. It offers no hint of how the occupants of these local microworlds might coalesce to contest the congealed power of institutions and organizations that maintain and defend subordination. The result seems almost *premodern*, and in the face of the very modern opposition, entirely defeatist. Local narratives yield only local knowledge. Further, given the requisite mode of collaboration and communication, *only* local narrative is possible.<sup>93</sup> One local struggle cannot inform the participants in another because the lessons of local experience cannot find expression, certainly not in any totalizing, universalized theory captured in "static artifacts," but ultimately not at all. In the face of forces of exploitation and oppression that are not only informed by coherent theories, but are "imperial and imperative" beyond the realm of mere metaphor, the "premodern" local collaborations have as

---

92. White, *supra* note 79, at 854-55 (1992) (footnotes omitted).

93. This seems the result, even though Professor White speaks of such things as "tactical innovations that work." *Id.* at 855. If restricted to collective reflection on *common* experience and denied a language of more generalized constructs, concepts, causal hypotheses—theory—then how can people in different places and times communicate and learn from each other?



much chance of overcoming subordination as did the peasant uprisings of the literal premodern era.

### VIII. CONCLUSION: A MODEST PROPOSAL

How might we preserve the contingent, dialogic qualities of "situated theoretic practice" without abandoning the effort to make useful "theory" in the practical service of helping people and fighting subordination? How might we arrive at a "reconstructed poverty law scholarship" that extends and unifies the two present currents?

Like theory, metatheory also needs a context. Some months ago a dozen or so people from around the country who have worked as advocates or lawyers for homeless people met in Washington for two days to talk about our past and future work and to formulate a "training" plan for legal services lawyers. The group had more than 200 person-years of experience, including not only some thousands of episodes of work with individuals each lasting a few weeks or months but also a few hundred episodes of work with groups of people, organizations, and institutions organizing or litigating efforts over a span of a few months or years, and perhaps a dozen episodes on the scale of a decade or more. Only a couple of people had direct experience with the issues of "camps" for homeless people, but everyone had experience that was indirectly relevant. Nearly everyone, for example, had been involved in advocacy against the local criminalization of homelessness. Together, these advocates began compiling their experiences and extracting common lessons.

The group did not engage in a lot of "theory-talk." Anyone who has worked on the same general problems over the space of many years, however, learns something about what has and has not worked, and has induced some implicit theories about the world in which she has practiced. That knowledge may not be represented in any explicit form, and certainly not in a "theory." Instead, it may come as implicit theories, prototypes of situations, models of how certain things work, scripts for how and when other things fall apart, and stories not yet understood. For example, one can learn from experience some of the unintended consequences of advocating for "the homeless," when the reality is much more complex than the stereotypes these words evoke: there are many very poor people who are without shelter some of the time, but who are also hungry, sick, and sometimes disabled by chemical addictions. One can learn the limits of fights for "rights" to shelter, rather than fights to impose obligations to provide housing. Of course, different people learn different things. The same approach that leads to real progress in New Jersey may be a prescription for disaster in Illinois. Every extracted lesson of experience is laden with conditions and con-

tingencies that are very difficult to see from within that experience. Moreover, the difficulty in talking about complex things, is exacerbated when there are no names for the things one wants to talk about. Finally, the collective experience is obviously limited. These are advocates and not poor people; their views are inevitably colored and distorted by that position and their own interest (much as the perspective of academics is inevitably colored and distorted by *their* social position and personal interest).

These limitations are not easy to overcome. Some seem nearly insurmountable. For example, "homeless people" have no elected representatives from whom poverty lawyers can easily take strategic direction.<sup>94</sup> Leaving aside more profound problems, few opportunities exist for practitioners to effectively share what they have come to understand from local practice, to compare notes and sort out the contingencies. Other forms of communication are similarly limited. Few practitioners have the luxury of time for systematic reflection, let alone for efforts at explicit theorizing or writing. Most of the academic writing is at a level so general or superficial as to be largely irrelevant. Further, it generally ignores the empirical evidence that constitutes the experiences of thousands of poor people and poverty lawyers. Practitioners do talk informally, but they seldom have enough time for anyone to understand sufficiently the details of other situations and histories to have a conversation of any depth. National meetings with a sustained focus, like the Washington meeting of homeless advocates, are quite rare and not always successful.

On occasion, as with the Washington meeting, one comes to see the value and the unrealized potential. By comparing experiences, drawing on both separate and common histories, and correcting for the idiosyncracies of individual places and times, a dozen people are much more astute than any one of them would be alone. Without doubt, because of who they collectively are, distortions and blind spots remain, but are fewer than in the local knowledge of any single advocate. For a time, the imperfectly combined knowledge of many people constitutes a superior, if evanescent, kind of intelligence. If it remained constituted in that form, the capacity for action, for making good decisions, and for solving problems, would be quite remarkable. Collaboration is evanescent, however, because people return to their separate, local practices—and

---

94. Advocates of the "servant of the people in dialog with the people" view of poverty lawyering have generally ignored this problem. One could wait a very long time for homeless mentally disabled people, or drug-exposed infants, to organize and assert their interests, in dialog with poverty lawyers or otherwise.

nearly all practice is ultimately local. They leave behind no record, no "artifacts" of the insights they achieve.

Not that any artifact could capture and sustain, or replace, all the intelligence and experience in such a gathering. But might not some of it be preserved and made accessible? In fact, might scholarship not serve in part as a functional substitute for these rare and limited conversations? Suppose a few poverty law scholars broadened their sense of narrative from the stories of individuals to the stories of groups, institutions, and collections of lawyers, and sought to explore with them the record and the sense they have made of their practice in working with poor people. Suppose those same scholars broadened the inquiry still further, to include the perspectives of poor people and others. The result might entail some explicit propositional "theory," naming the schemas that recur. More likely it would involve facilitating a common search for insights in many forms, such as stories, schemas, analogs, and mental models. The raw material for this work exists, not only in the experiences of clinicians and law school clinics in the Poverty Law Consortium, but also in the larger and richer world of legal services and other practice settings.<sup>95</sup> Suppose scholars added to these larger narratives what systematic social science can be gathered from opinion polls, content analysis, and the like.

This kind of scholarship might be guided by some preliminary identification of the problem, but we would not know what level of "theory" to expect: a way of modeling a bureaucracy; an insight into how the images evoked by advocacy alter the outcome of particular kinds of political contests; or a low-level generalization about forms of lawyer-client interaction that maximize a felt sense of collaboration. Sometimes, scholars might be engaged in practice with both lawyer/advocates and poor people. At other times, the role might be less involved and more facilitative. Scholars might also just observe, or unearth the past and decipher its order, and then communicate it back to others who can make some use of the understanding.

Undoubtedly, more conventional scholarship, in commentary on cases and commentary on the commentary of others, has some value. The social context in which most legal scholars work causes them to write mainly for other scholars, and to be as concerned with form and

---

95. In the U.S., there are about 600 full time teachers in law school clinics, compared to about 4,800 full time Legal Services poverty lawyers. Task Force on Law Schools and the Profession: Narrowing the Gap, *Legal Education and Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS BAR 53, 247. The world external to law school clinics is potentially much richer. In only a few law school clinical situations is it possible to conduct lengthy, complex litigation or significant community organizing and education efforts of the kinds one sees in actual poverty law practice.

appearance as with content. That people whose main work consists of talking and writing come to believe in the centrality of language, narrative, and interpretation is not surprising. Moreover, these modes of analysis are, in turn, at the core of the only postgraduate training most legal scholars have had. But to most people outside academia, however, particularly poor and subordinated people, the point of all this is likely lost. To most people, the point is not to produce clever insights, interpretations, constructions, and reconstructions. In the end, as one young scholar once put it, the point is not merely to interpret the world, but to change it.<sup>96</sup>

---

96. "The philosophers have only *interpreted* the world, in various ways; the point is to *change* it" was the eleventh of the "Theses on Feuerbach" written out by the young Marx, found years later among his papers by Engels. 1 KARL MARX & FREDERICH ENGELS, *THE GERMAN IDEOLOGY* 123 (C.J. Arthur ed., 1970).