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### Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth

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# Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth

William P. Quigley\*

*I am convinced that if we are to get on the right side of the world revolution, we as a nation must undergo a radical revolution of values. We must rapidly begin the shift from a “thing-oriented” society to a “person-oriented” society. When machines and computers, profit motives and property rights are considered more important than people, the giant triplets of racism, materialism, and militarism are incapable of being conquered. A true revolution of values will soon cause us to question the fairness and justice of many of our past and present policies.*

—Martin Luther King, Jr.<sup>1</sup>

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I would like to thank Karen Tokarz and Peter Joy for their hospitality and for being great role models for me and many, many others about how lawyers can live lives of justice.

Finally, I thank the people who have allowed me to do legal work by their side. They continue to teach me about justice and the need to participate wholeheartedly in the ongoing radical revolution of values.

1. Martin Luther King, Jr., *Time to Break Silence*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 231, 240–41 (James M. Washington ed., Harper Collins pbk. ed. 1991) (1986).

## TABLE OF CONTENTS

INTRODUCTION.....	102
I. POVERTY, WEALTH, THE WORKING POOR, RACISM, MATERIALISM, AND MILITARISM.....	104
A. <i>Social Justice Quiz</i> .....	105
B. <i>Growing Economic Inequality in the U.S.</i> .....	108
C. <i>World Economic Injustice</i> .....	110
II. LAW NEEDS REVOLUTIONARY CHANGE .....	112
A. <i>The Traditional Role of Lawyers in Supporting the Status         Quo</i> .....	113
B. <i>Radical Change is Possible</i> .....	115
1. Taking Human Rights Seriously .....	117
2. Human Rights Trump Privilege and Property Rights ....	123
3. Re-defining Property.....	127
4. Democratizing Corporations .....	131
5. Demilitarizing and Reversing the Arms Race.....	138
6. Other Areas .....	142
III. BECOMING A REVOLUTIONARY LAWYER .....	147
A. <i>Solidarity</i> .....	149
B. <i>Seek Out and Treasure Hope, Joy and Love</i> .....	150
C. <i>Overcome Fear</i> .....	153
D. <i>Continually Engage in Critical Re-education</i> .....	155
E. <i>Community and Family Support</i> .....	156
F. <i>The Preferential Option for the Poor and Powerless</i> .....	158
G. <i>Do Not Accept Reality—Particularly for the Future</i> .....	160
H. <i>Create and Maintain an Interior Life</i> .....	162
I. <i>Sustainable Living</i> .....	164
J. <i>Victory or Failure—Be Humble and Ready to Start Over...</i>	165
SIGNS OF HOPE AND CONCLUSION.....	166

## INTRODUCTION

There are more than enough lawyers in this world defending the way things are. Plenty of lawyers protect and guide people and institutions engaged in the injustices of our social, economic and political systems, which are steeped in racism, militarism and

materialism. They are plentiful and well-compensated. We need no more of them.

Poverty, wealth, racism, materialism and militarism cannot be changed by aiming at small revisions or modest reforms. If we are going to transform our world, we need lawyers willing to work with others to dismantle and radically restructure our current legally protected systems. We need revolutionaries. Martin Luther King, Jr.'s, call for a radical revolution of values can be the basis for revolutionary lawyering.

Lawyers can be revolutionaries. Martin Luther King called each of us to join together to undergo a radical revolution of values and to conquer racism, materialism, and militarism.<sup>2</sup> He did not say his call extended to everyone except lawyers. He also did not call us to merely reform racism, materialism and militarism. Revolutionaries are called not just to test the limits of the current legal system or to reform the current law, but also to join in the destruction of unjust structures and systems and to tear them up by their roots. We are called to replace them with new systems based on fairness and justice.<sup>3</sup>

It is true that lawyers are rarely revolutionaries. In fact, the idea may seem like an oxymoron (like corporate ethics), but some people are, and others can be, revolutionary lawyers. Our profession is, at the core of its practice, the primary profession world-wide that protects and defends the machines, computers, profit motives and property rights so rightly condemned by Dr. King.<sup>4</sup> We use our training, wealth, and position in society to facilitate commerce without conscience, to accumulate wealth without responsibility, and to serve the needs of corporations over and above the rights and needs of people. Yet still, some lawyers can be revolutionaries.

Part I of this Article highlights some of the most glaring details about poverty, wealth and the working poor and provides some facts about racism, materialism and militarism, both nationally and internationally. The briefest look at who is rich and who is poor, and the reasons behind such status, demonstrates the continued accuracy

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2. *Id.*

3. *Id.*

4. *Id.*

of Dr. King's prophetic description of why a radical revolution of values is needed, now even more than when he first spoke these words. Part II of this Article discusses some areas of the law that need radical change, law that needs to be torn up by its roots and replaced. Part III reflects on how lawyers who want to be revolutionaries can do so. The Article concludes with signs of hope and a charge to lawyers to consider joining the radical revolution of Dr. King.

I. POVERTY, WEALTH, THE WORKING POOR, RACISM,  
MATERIALISM, AND MILITARISM

*Hope has two beautiful daughters: anger and courage; anger at the way things are, and courage to change them.*

—Augustine of Hippo<sup>5</sup>

One of my friends, who has gone to federal prison twice for protesting U.S. training of military human rights abusers, is also a counselor for incest survivors. She told me that in her experience, there are only three ways to deal with evil. The first is to fight evil with evil. The second is to say that there is nothing I can do and turn away. The third is to look at evil head-on and try to meet it with love.<sup>6</sup>

In order to address poverty, wealth and the working poor, we must first look at these phenomena head-on, even if it angers us. We must face the way things actually are in our nation and in our world. Then we must have the courage to change them.

This section begins with a Social Justice Quiz to reveal some facts about poverty, wealth and the working poor in light of racism, materialism and militarism. The answers to these questions are in the footnotes.

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5. David Krieger, *Rising to the Challenge of Peace*, WAGING PEACE, Nov. 25, 2003, [http://www.wagingpeace.org/articles/2003/11/25\\_krieger\\_challenge-peace.htm](http://www.wagingpeace.org/articles/2003/11/25_krieger_challenge-peace.htm).

6. Interview with Judy Bierbaum, School of Americas Watch, Columbus, Ga. (Jan. 22, 2004).

### A. Social Justice Quiz

1. In 1968, the minimum wage was \$1.60 per hour.<sup>7</sup> How much would the minimum wage be today if it had kept pace with inflation?<sup>8</sup>

2. In 1965, CEOs of major companies made twenty-four times more money than the average worker.<sup>9</sup> In 2003, CEOs earned how much more than the average worker?<sup>10</sup>

3. The nation has 3066 counties.<sup>11</sup> In how many of them can someone who works full-time and earns the federal minimum wage afford to pay rent and utilities on a one-bedroom apartment?<sup>12</sup>

4. How much must the typical U.S. worker earn per hour to rent a two-bedroom apartment if that worker dedicates thirty percent of his income, as suggested, to rent and utilities?<sup>13</sup>

5. How many people in the United States earn poverty-level wages of less than \$8.19 per hour?<sup>14</sup>

6. To what are the combined populations of Alabama, Arkansas, Iowa, Kansas, Kentucky, Maine, Minnesota, Mississippi, Nebraska, North Dakota, Oregon, South Dakota and Tennessee equivalent?<sup>15</sup>

7. What do you get when you add to the last figure the populations of Delaware, Hawaii, Montana, New Hampshire, New Mexico, Rhode Island, Vermont, West Virginia and Wyoming?<sup>16</sup>

8. “In 2001, the average financial wealth for black households was

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7. Paul K. Sonn, *Citywide Minimum Wage Laws: A New Policy Tool for Local Governments*, ECON. POL’Y BRIEF (Brennan Ctr. for Justice, New York, N.Y.), June 2005, at 6 n.2, available at <http://www.brennancenter.org/programs/downloads/minimumwage-policy-brief.pdf>.

8. *Id.* at 1.

9. ECON. POLICY INST., STATE OF WORKING AMERICA 2004/2005: WAGES 2, available at [http://www.epinet.org/books/swa2004/news/swafacts\\_wages.pdf](http://www.epinet.org/books/swa2004/news/swafacts_wages.pdf).

10. *Id.*

11. *Study Finds Housing Costs Outpace Incomes of the Working Poor*, N.Y. TIMES, Dec. 25, 2004, at A21.

12. In only four of the nation’s 3066 counties can someone who works full-time and earns the federal minimum wage afford to pay rent and utilities on a one-bedroom apartment. *Id.*

13. The typical U.S. worker must earn \$15.37 per hour in order to dedicate thirty percent of their income to housing costs. *Id.*

14. More than thirty million workers in 1999. WILLIAM P. QUIGLEY, ENDING POVERTY AS WE KNOW IT: GUARANTEEING A RIGHT TO A JOB AT A LIVING WAGE 24 (2003).

15. The number of people in the United States living below the official poverty line. *Id.* at 23–24.

16. The total number of people below 125% of the official poverty line—the combined populations of twenty-two states. *Id.*

only about 12% of the average for white households.”<sup>17</sup> What was the median financial wealth for blacks?<sup>18</sup>

9. In the entire twenty-eight year history of the Berlin Wall, 287 people perished trying to cross it. In the ten years since the Clinton administration implemented the current U.S. border strategy with Mexico, how many people have died trying to cross?<sup>19</sup>

10. Where does the U.S. rank worldwide in the imprisonment of its citizens?<sup>20</sup>

11. In 2004, what was the direct reported U.S. military budget?<sup>21</sup>

12. In 2004, the U.S. military budget was how many times larger than the Chinese military budget, the second largest spender?<sup>22</sup>

13. How many times larger is the U.S. military budget than the combined spending of the “rogue states” of Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria?<sup>23</sup> The U.S. military budget is larger than how many of the next largest countries’ budgets combined?<sup>24</sup>

14. The difference in income per capita between the richest nation and the poorest nation in 1750 was about five to one. What is it today?<sup>25</sup>

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17. ECON. POLICY INST., STATE OF WORKING AMERICA 2004/2005: MINORITIES 2, available at [http://www.epinet.org/books/swa2004/news/swafacts\\_minorities.pdf](http://www.epinet.org/books/swa2004/news/swafacts_minorities.pdf).

18. \$1100, less than three percent of the corresponding figure for whites. *Id.*

19. Almost ten times as many—more than 2500 people—have died trying to cross. Marc Cooper, *On the Border of Hypocrisy*, L.A. WEEKLY, Dec. 5, 2003, available at <http://www.commondreams.org/scriptfiles/views03/1204-10.htm>.

20. First. In 2004, the United States imprisoned over 700 persons per 100,000. Russia was second with 534. SENTENCING PROJECT, FACTS ABOUT PRISONS AND PRISONERS (2005), available at [www.sentencingproject.org/pdfs/1035.pdf](http://www.sentencingproject.org/pdfs/1035.pdf).

21. In 2004, the direct reported U.S. military budget was over \$399 billion, or \$12,000 per second. See Anup Shah, High Military Expenditure in Some Places, <http://www.globalissues.org/geopolitics/armstrade/spending.asp> (last visited Feb. 5, 2006).

22. Eight times larger. *Id.*

23. The U.S. military budget was more than thirty times as large as the combined spending of these seven “rogue states.” *Id.* Even if you add China and Russia’s military spending to that of the seven potential enemies, all nine nations together spent \$134.2 billion, thirty-four percent of the U.S. military budget. *Id.*

24. The U.S. military budget is more than the combined spending of the next twenty-three nations. *Id.*

25. Today, the difference between the richest nation, Switzerland, and the poorest nation, Mozambique, is about 400 to 1. DAVID S. LANDES, THE WEALTH AND POVERTY OF NATIONS: WHY SOME ARE SO RICH AND SOME SO POOR, at xx (1st ed. 1998).

15. Of the 6.2 billion people in the world today, how many live on less than \$1 per day?<sup>26</sup> How many live on less than \$2 per day?<sup>27</sup> The richest 1% in the world receive as much income as what percentage of the poorest?<sup>28</sup>

16. The U.S. Congress under President Bush has been more generous in helping poor countries than under President Clinton.<sup>29</sup> In 2003, the United States increased official development assistance to poor countries by one-fifth.<sup>30</sup> Where does the U.S. contribution rank among the top twenty-two countries in proportion to our economy?<sup>31</sup>

17. Americans on average give how much per day in government assistance to poor countries?<sup>32</sup>

18. Americans on average spend how much on soft drinks each day?<sup>33</sup>

\* \* \* \*

These eighteen questions and their answers illustrate that poverty, racism, materialism and militarism have flourished, while working people, human rights, and human dignity have been downsized. There are an unlimited number of additional facts showing that despite incredible world-wide wealth, there are millions of working poor people in deep poverty in this country, and billions more throughout the world.

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26. Of the 6.2 billion people in the world today, 1.2 billion live on less than \$1 per day. UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2002: DEEPENING DEMOCRACY IN A FRAGMENTED WORLD 17 (Stephanie Flanders & Bruce Ross-Larson eds., 2002), available at <http://hdr.undp.org/reports/global/2002/en/pdf/front.pdf>.

27. 2.8 billion people live on less than \$2 per day. *Id.*

28. The richest 1% in the world receives as much income as the poorest 57% combined. *Id.* at 19.

29. Nicholas D. Kristof, Op-Ed., *Land of Penny Pinchers*, N.Y. TIMES, Jan. 1, 2005, at A23.

30. *Id.*

31. Last. *Id.*

32. Americans, on average, give fifteen cents per day in government aid to poor countries. *Id.*

33. Sixty cents. *Id.*



*B. Growing Economic Inequality in the U.S.*

Growing economic inequality in the U.S. is not some socialist-spun critique. Work and poverty walk hand-in-hand.<sup>34</sup> According to a recent twenty-seven city survey of hunger and homelessness by the U.S. Conference of Mayors, thirty-four percent of the adults requesting emergency food assistance were employed.<sup>35</sup> Even bastions of unrestrained capitalism such as the *Wall Street Journal* and *The Economist* note the growing income gap in the United States.

The *Wall Street Journal* recently published a series on the lack of social mobility in the United States.<sup>36</sup> It reported:

Escalators of social mobility haven't compensated for the growing distance between economic cellar and penthouse; America has become more unequal in the past 35 years, but it's no more common for people to rise from poverty to prosperity or to fall from wealth to the middle class. Researchers find less intergenerational mobility in the U.S. than academics believed a couple of decades ago. And available evidence suggests that an American's economic fate is more closely tied to his or her parents than a continental European's.<sup>37</sup>

*The Economist* agreed:

There is little doubt that the American social ladder is getting higher. In 1980–2002 the share of total income earned by the top 0.1% of earners more than doubled. But there is also

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34. See generally STEPHANIE LUCE, *FIGHTING FOR A LIVING WAGE* (2004); QUIGLEY, *supra* note 14; JEROLD L. WALTMAN, *THE CASE FOR THE LIVING WAGE* (2004).

35. Press Release, U.S. Conference of Mayors, *Hunger, Homelessness Still on the Rise in Major U.S. Cities 2* (Dec. 14, 2004), available at [http://usmayors.org/uscm/news/press\\_releases/documents/hunger\\_121404.pdf](http://usmayors.org/uscm/news/press_releases/documents/hunger_121404.pdf).

"The president and other political leaders should be focused on rewarding work with living wages, not accepting that 34 percent of adults needing food are employed." Claire McKeever, *Am Working and Hungry*, SOJOURNERS, June 2005, at 10 (quoting Yonce Shelton, public policy director for Call to Renewal in Washington, D.C.).

36. Bob Davis, *Lagging Behind the Wealthy, Many Use Debt to Catch Up*, WALL ST. J., May 17, 2005; Robert Frank, *Rich vs. Richer: In Palm Beach, The Old Money Isn't Having a Ball*, WALL ST. J., May 20, 2005; David Wessell, *As Rich-Poor Gap Widens in the U.S., Class Mobility Stalls*, WALL ST. J., May 13, 2005; David Wessell, *How Parents, Genes and Success Intersect*, WALL ST. J., May 26, 2005.

37. See Wessell, *How Parents, Genes and Success Intersect*, *supra* note 36.

growing evidence that the ladder is getting stickier: that intergenerational mobility is no longer increasing, as it did during the long post-war boom, and may well be decreasing.<sup>38</sup>

The *New York Times* began this analysis with a series on class in the United States.<sup>39</sup> Bob Hebert summarized “The Mobility Myth”:

Consider, for example, two separate eras in the lifetime of the baby-boom generation. For every additional dollar earned by the bottom 90 percent of the population between 1950 and 1970, those in the top 0.01 percent earned an additional \$162. That gap has since skyrocketed. For every additional dollar earned by the bottom 90 percent between 1990 and 2002 . . . each taxpayer in that top bracket brought in an extra \$18,000.

It’s like chasing a speedboat with a rowboat. Put the myth of the American Dream aside. The bottom line is that it’s becoming increasingly difficult for working Americans to move up in class. The rich are freezing nearly everybody else in place, and sprinting off with the nation’s bounty.<sup>40</sup>

Likewise, the enduring effects and practices of racism are part of the institutional structure of this country and of many parts of the world. In this country:

If you lined up all African-American families by the amount of assets they owned minus their debts and then looked at the family in the middle, that median family in 2001 had a net worth of \$10,700 (excluding the value of automobiles). Line up all whites, and *that* median family had a net worth of \$106,400, almost 10 times more. Less than half of African-American families own their own home, while three out of four white families do. Latinos are even less wealthy: the

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38. *Minding About the Gap*, ECONOMIST, June 15, 2005.

39. Anthony DePalma, *15 Years on the Bottom Rung*, N.Y. TIMES, May 26, 2005; Timothy Egan, *No Degree, and No Way Back to the Middle*, N.Y. TIMES, May 24, 2005; Bob Hebert, *The Mobility Myth*, N.Y. TIMES, June 6, 2005; David Leonhardt, *The College Dropout Boom*, N.Y. TIMES, May 24, 2005; Tamar Lewin, *A Marriage of Equals*, N.Y. TIMES, May 19, 2005; Janny Scott & David Leonhardt, *Class in America: Shadowy Lines that Still Divide*, N.Y. TIMES, May 15, 2005.

40. Hebert, *supra* note 39.

median Latino family in 2001 had only \$3000 in assets, and less than half own their own homes.<sup>41</sup>

No one seriously contests the disparities among whites, African-Americans and Latinos in the United States. While some suggest that these disparities are behind us, it is difficult to take those arguments as anything other than evidence of continuing racism.

The racial wealth gap is not only real, but it is also understandable and predictable when one considers decades of government policies that directly, openly, and systematically discriminated against people on the basis of race. Native Americans, Latinos, African-Americans and Asians were consciously excluded by both law and practice from many government wealth-building opportunities.<sup>42</sup> Similar gaps exist in employment, with more than one in ten African-Americans unemployed—more than twice the rate for whites.<sup>43</sup> Moreover, there is evidence that this racial employment gap is increasing.<sup>44</sup> Racism, militarism and materialism are flourishing in the U.S.

### C. World Economic Injustice

There is enough food to feed everyone in the world.<sup>45</sup> Yet the United Nations announced that the number of hungry people in the world is increasing.<sup>46</sup> There are approximately 798 million people

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41. Meizhu Lui, DOUBLY DIVIDED: THE RACIAL WEALTH GAP 42 (2004), <http://www.racialwealthdivide.org/documents/doublydivided.pdf>.

42. Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989); James A. Kushner, *Apartheid in America*, 22 HOW. L.J. 547 (1979); Martha Mahoney, *Law and Racial Geography: Public Housing and the Economy in New Orleans*, 42 STAN. L. REV. 1251 (1990); John A. Powell, *Opportunity-Based Housing*, 12 A.B.A. J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 188 (2003); Florence Wagman Roisman, *Sustainable Development in Suburbs and Their Cities: The Environmental and Financial Imperatives of Racial, Ethnic, and Economic Inclusion*, 3 WIDENER L. SYMP. J. 87 (1998); Les Payne, *FDNY Puts out No Welcome Mat for Blacks*, NEWSDAY, Jan. 27, 2002, at B6.

43. Dena Libner, *Unequal Recovery: Unemployment Rates Show African Americans Losing Ground While Whites Regain Their Footing*, DOLLARS & SENSE, May–June 2005, at 31, available at <http://www.allbusiness.com/periodicals/article/496969-1.html>.

44. *Id.* at 30–31.

45. The Food and Agricultural Organization (FAO) of the United Nations noted in a 1998 report that “[i]f the available food was distributed according to need, it would be sufficient to feed everyone in the world.” See FAO, *Map Shows the Food Supply Gap Between Rich and Poor Countries*, <http://www.fao.org/NEWS/1998/981204-e.htm> (last visited Feb. 12, 2006).

46. Robert F. Drinan, *Report Shows World Hunger Increasing*, NAT’L CATHOLIC REP.,

world-wide who are chronically hungry—one out of every seven persons, and more people than the total population of Latin America and sub-Saharan Africa combined.<sup>47</sup> Other reports predict that the number of hungry people is even higher.<sup>48</sup>

Over eleven million children under the age of five die each year from preventable diseases like diarrhea, respiratory illnesses, measles and malaria.<sup>49</sup> In 2000, it was estimated that sixty percent of those deaths were associated with undernutrition.<sup>50</sup> Indeed, diarrhea is a major killer of young children, and the risk of death from this infectious disease is nine times higher for children who are significantly underweight;<sup>51</sup> in the 1990s it killed more children than the total people lost to armed conflict since the Second World War.<sup>52</sup> In sub-Saharan Africa alone, 4.8 million children under the age of five die each year—nine children per minute.<sup>53</sup>

Over 14,000 children die each day from malnutrition and hunger in a world that has enough food? And another 17,000 children die each day from diseases that are preventable? Over 30,000 children each day needlessly die of poverty and unjustly distributed resources.<sup>54</sup> There is food available in the countries where poor people are starving, but it is not freely distributed. In Niger, for example, the U.N. World Food Programme explains that “interfering with the free market could disrupt Niger’s development out of poverty.”<sup>55</sup>

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Apr. 2, 2004, at 17.

47. *Id.*

48. *Hunger Costs Millions of Lives and Billions of Dollars—FAO Hunger Report*, FAO NEWSROOM, Dec. 8, 2004, <http://www.fao.org/newsroom/en/news/2004/51809/index.html> (estimating that there are 852 million hungry people world-wide).

49. FAO, *THE STATE OF FOOD INSECURITY IN THE WORLD: 2002*, at 6, *available at* <http://www.fao.org/docrep/005/y7352e/y7352e00.htm>.

50. *Id.* at 7.

51. *Id.* at 6.

52. UNITED NATIONS DEV. PROGRAMME, *HUMAN DEVELOPMENT REPORT 2003*, at 9, *available at* [http://hdr.undp.org/reports/global/2003/pdf/hdr03\\_frontmatter.pdf](http://hdr.undp.org/reports/global/2003/pdf/hdr03_frontmatter.pdf).

53. UNITED NATIONS DEV. PROGRAMME, *SUB-SAHARAN AFRICA—THE HUMAN COSTS OF THE 2015 “BUSINESS-AS-USUAL” SCENARIO 1 (2005)*, *available at* [http://hdr.undp.org/docs/events/Berlin/Background\\_paper.pdf](http://hdr.undp.org/docs/events/Berlin/Background_paper.pdf).

54. *See supra* notes 45–52 and accompanying text.

55. Jeevan Vasagar, *Plenty of Food—Yet the Poor Are Starving*, *GUARDIAN* (London), Aug. 1, 2005, at 1.

While there may be conflicting evidence on whether the world is growing more or less unequal as a whole, there is little argument that the distance between those at the very top and those at the very bottom continues to grow dramatically.<sup>56</sup> “The top one-tenth of U.S. Citizens now receive a total income equal to that of the poorest 2.2 billion people in the rest of the world.”<sup>57</sup>

To repair this inequality, a radical revolution is needed. Laws that create and support these unjust systems are one of the places to start.

## II. LAW NEEDS REVOLUTIONARY CHANGE

There is a large and tragic divide between what is legal and what is just. This part of the Article will discuss some areas of the law that need radical change—old law that needs to be torn up by its roots and replaced with new law. It is important, but ultimately insufficient, to insist only on the right of every person to a job and living wages as a means of addressing poverty, wealth and the working poor.<sup>58</sup> The root causes that support and underpin the current unjust systems must instead be identified and dismantled.

It is impossible to build a better house unless one plans to change the foundation. There is not space here to catalogue all the areas of the law that need radical change, but I will briefly analyze several in which change such as that called for by Dr. King can address root causes of poverty, wealth and the working poor.<sup>59</sup> Before looking at

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56. *Rich and Poor in the Global Economy: Interview with Bob Sutcliffe*, DOLLARS & SENSE, Mar.–Apr. 2005, at 13.

57. *Id.* Sutcliffe explains the differing indications of inequality:

Over the last 25 years, you find that the bottom half of world earners seems to have gained something in relation to the top half (so, in this sense, there is less inequality), but the bottom 10% have lost seriously in comparison with the top 10% (thus, more inequality), and the bottom 1% have lost enormously in relation to the top 1% (much more inequality). None of these measures is a single true measure of inequality; they are all part of a complex structure of inequalities, some of which can lessen as part of the same overall process in which others increase.

*Id.*

58. QUIGLEY, *supra* note 14, at 100–36.

59. *See* King, Jr., *supra* note 1. Obviously, these categories could be more extensively analyzed than they are in this Article. However, they are worth mentioning, even briefly, in order to provoke further discussion and action.

these areas of the law in critical and creative ways, we must start by opening and freeing our minds.<sup>60</sup>

*A. The Traditional Role of Lawyers in Supporting the Status Quo*

Freeing our minds requires us to face the role that lawyers really play in our world. As Louis Brandeis said in 1905: “Instead of holding a position of independence between the wealthy and the people . . . able lawyers have . . . neglected their obligation to use their powers for the protection of the people.”<sup>61</sup>

Lawyers have lost their way.<sup>62</sup> We only rarely suggest that our profession is one of justice, because we know it is one of law. We no longer worry whether people admire us, as long as they fear us. Some wanted to be lawyers to help change the world and believed in our country and in our system, but are now lost.

Our profession now follows the cruel definition of justice outlined by Thrasymachus in Plato’s *The Republic*.<sup>63</sup> This sweeping discussion of justice is framed as a dialogue between Socrates and a number of thinkers. One of the most cited passages from *The Republic* is the speech by Thrasymachus.<sup>64</sup> This young man articulates a definition of justice that Plato and Socrates dispute, but

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60. I recently saw a message about this spray-painted on a railroad car: “You can’t escape from prison if you cannot see the bars.” One activist told me that “those who want a revolution must realize that those who do not want change have very effectively set up camps of the status quo in our imaginations, so that we cannot even think change is possible.” Conversation with Karl Meyer, 2002.

61. Louis D. Brandeis, *The Opportunity in the Law*, 39 AM. L. REV. 555, 559 (1905).

62. See generally ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993) (arguing that the emptiness of the legal profession has lost the ideal of the lawyer-statesman, replaced by the soulless reality of the large urban law firm business); SOL M. LINOWITZ & MARTIN MAYER, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994) (asserting that lawyering as a profession has been abandoned and is now a well-paid business that pays lip service, if that, to the ideals of the past); DEBORAH L. RHODE, *IN THE INTEREST OF JUSTICE* (2000) (arguing that the pursuit of money, power and prestige at the expense of the public good removes the legal profession from its connection with justice and meaning); JEAN STEFANCIC & RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS* (2005) (arguing that the internalized formalism of legal education and relentless pursuit of billable hours beyond real creative and critical analysis of justice ruins the lives of lawyers).

63. PLATO, *THE REPUBLIC* 77–78 (Henry Desmond Pritchard Lee trans., 2d rev. ed. Penguin Books 1974).

64. *Id.*

the speech outlines what has become the current perspective on justice. Thrasymachus, while arguing with Socrates about what justice really is, says:

I say that justice or right is simply what is in the interest of the stronger party . . . . Each type of government enacts laws that are in its own interest, a democracy democratic laws, a tyranny tyrannical ones and so on; and in enacting these laws they make it quite plain that what is “right” for their subjects is what is in the interest of themselves, the rulers, and if anyone deviates from this he is punished as a lawbreaker and “wrongdoer.” That is what I mean when I say that “right” is the same thing in all states, namely the interest of the established government; and government is the strongest element in each state, and so if we argue correctly we see that “right” is always the same, the interest of the stronger party.<sup>65</sup>

The majority of the legal profession has chosen to adopt Thrasymachus’ definition as its workplan for law and justice. The profession works for the interests of the strongest, the richest, and the most powerful. In assisting the rich and powerful, lawyers are but well-fed Doberman Pinschers, protecting the grand homes and institutions of those in control.<sup>66</sup> However, lawyers do not merely protect the powerful; they also enable them.

Lawyers can be and often are destructive of real justice.<sup>67</sup> Lawyers draft justifications for torture.<sup>68</sup> Lawyers draft defenses for tobacco and other toxic poisoning.<sup>69</sup> Lawyers help protect corporations as they engage in fraud and deceit. Will history impose on today’s lawyers the same criticisms that it imposed on the lawyers of slave-

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65. *Id.*

66. I had a disappointing conversation with a bright young American student in Haiti who was deeply interested in human rights. He wondered whether he could do more as a lawyer or a doctor. He decided to go into medicine because, he said, “What can lawyers really do? Doctors can at least help people directly in a concrete way. Lawyers . . . what can they actually do?”

67. See DAVID CAY JOHNSTON, *PERFECTLY LEGAL: THE COVERT CAMPAIGN TO RIG OUR TAX SYSTEM TO BENEFIT THE SUPER RICH—AND CHEAT EVERYBODY ELSE* (2003).

68. Julie Angell, *Ethics, Torture, and Marginal Memoranda at the DOJ Office of Legal Counsel*, 18 *GEO. J. LEGAL ETHICS* 557, 557–59 (2005).

69. Richard A. Daynard, *Lawyer Management of Systems of Evil: The Case of the Tobacco Industry*, 5 *ROGER WILLIAMS U. L. REV.* 117 (1999).

owners? How will it judge lawyers for the employers of child laborers, or the lawyers for big corporate trusts? What about the lawyers of Nazi Germany? What about the lawyers who prosecuted Susan B. Anthony, Martin Luther King, Jr., Gandhi, or Nelson Mandela? The lawyers who justify the expansion of nuclear weapons? The lawyers who assist in implementing the death penalty? What about the lawyers who defended segregation? Or redlining? Or who lobby against increases in the minimum wage or health insurance?<sup>70</sup>

Those who proclaim their neutrality despite their work for the powerful must realize that neutrality is no excuse. As Archbishop Desmond Tutu explained: “When the elephant has his foot on the tail of the mouse, and you say you are neutral, the mouse will not appreciate your neutrality.”<sup>71</sup> Professors Shaffer and Rodes have likewise observed that “[i]f we set out to deal evenhandedly between rich and poor, we will inevitably end up favoring the rich. If we set out to do no more than justice requires, we will end up doing less.”<sup>72</sup>

Current professional responsibility courses do not address justice or fundamental inequality and the lawyer’s role in fashioning and maintaining that inequality. Instead, the courses are rather like learning the rules in a driver license manual in order to pass the test.<sup>73</sup>

Older lawyers are jaded and many young lawyers are just plain lost. We must undergo, as Dr. King suggested, a radical revolution of our values. For those who want to engage in another type of lawyering, radical change is possible.

### *B. Radical Change is Possible*

We have been taught to believe that radical change is impossible, or at least very, very dangerous. People exploring the possibility for

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70. For a discussion of lawyers’ roles in some of these areas, see Symposium, *Lawyer Collaboration with Systems of Evil*, 5 ROGER WILLIAMS U. L. REV. 19 (1999).

71. WILLIAM SLOANE COFFIN, *A PASSION FOR THE POSSIBLE: A MESSAGE TO U.S. CHURCHES* 36 (1st ed. 1993).

72. Thomas L. Shaffer & Robert E. Rodes, Jr., *A Christian Theology for Roman Catholic Law Schools*, 14 U. DAYTON L. REV. 5, 17 (1988).

73. Thomas L. Shaffer, *The Private Practice of Law as the Practice of Social Justice: Hoffman, Field and Brandeis* (unpublished manuscript, on file with author).



serious change must constantly contend with false messages: “This is the best we can do;” “We live in the most generous and best nation in the history of the world;” “Unrestrained capitalism is the ultimate and only way of solving all our problems;” “Our problems are too big for anyone to handle;” “Go slowly;” “Just look out for number one;” “Do not be a radical;” “Do not be a revolutionary;” and most importantly, “Be afraid, be *very* afraid, of terrorists, illegal immigrants, black men, pushy women, of people who are trying to take advantage of us, of international cooperation, of accountability, and most of all, of big change.”

Professor Robert E. Rodes, Jr., elegantly describes the message that radical change in law is dangerous and bad as “a pervasive set of assumptions introduced into the law by false consciousness. These are the assumptions that stand in the way of imposing accountability on the ruling class and making effective use of law for human ends.”<sup>74</sup>

Rodes explains four sets of defective assumptions in support of the status quo: (1) the values behind current law are the most important ones for the law to implement; (2) the legal system is basically good and the cost of change will outweigh any benefits; (3) nothing can really be done for those who are left out of current legal arrangements—their situation is an unfortunate but inevitable consequence of this “basically beneficent system;” (4) the political power of those who are left out of this system must be limited or they are likely to upset it, because they cannot understand how good the system really is, how inevitable their suffering is, or how fruitless and counterproductive change will be.<sup>75</sup>

Despite these significant obstacles to radical change in law, history shows that all good ideas for revolutionary change are at first shocking, then resisted, then understood, then enacted, and then described as inevitable. Indeed, as Gandhi said: “First they ignore you, then they ridicule you, then they fight you, then you win.”<sup>76</sup>

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74. ROBERT E. RODES, JR., *PILGRIM LAW* 108 (1998).

75. *Id.*

76. Quote DB, Mahatma Gandhi, <http://www.quotedb.com/quotes/2776> (last visited Feb. 12, 2006).

Cautioned by Gandhi, let us now turn to several areas of the law that need radical change.<sup>77</sup>

### 1. Taking Human Rights Seriously

Taking human rights seriously starts with the simple, yet revolutionary, statement that every single person in the world has inherent and equal dignity and is an equal member of the human family.

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . .

. . . .

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

. . . .

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.<sup>78</sup>

This is the foundation of the United Nations' Universal Declaration of Human Rights.<sup>79</sup> Moreover, the principles expressed above form

77. Every one of these areas of law is immersed in issues of race, gender, class and sexual identity. These areas are toxins which permeate every institution and person in our society. They are injustices in themselves and they also increase the effects of other kinds of injustices. Unlike a bunch of weeds, they cannot just be pulled out, for they are now in the very earth itself. Challenging these must be a part of every effort to radically restructure our lives. They are a part of every issue we face and a part of how we face ourselves.

78. Universal Declaration of Human Rights, G.A. Res. 217A, at pmbl. & art. 1, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

79. *Id.*

Article 3. Everyone has the right to life, liberty and security of person.

. . . .

the foundation of most world religions.<sup>80</sup> However, our world and our country do not take human rights nearly seriously enough.<sup>81</sup>

The United States acknowledges, to some degree, those procedural and political rights that are incorporated in our Constitution, but repeatedly refuses to take seriously other social, cultural, economic and political human rights.<sup>82</sup> U.S. Supreme Court Justice Ruth Bader Ginsburg acknowledged that “since the United Nations’ 1948 adoption of the Universal Declaration of Human Rights, the U.S. Supreme Court has mentioned that basic international Declaration a spare six times—and only twice in a majority decision.”<sup>83</sup> However, the U.S. Supreme Court has taken increasing notice of international human rights and practices in

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law.

....

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

....

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

*Id.*

80. See ROBERT TRAER, FAITH IN HUMAN RIGHTS: SUPPORT IN RELIGIOUS TRADITIONS FOR A GLOBAL STRUGGLE (1991). Traer cites many examples of religious support for basic human rights, including liberal Protestants, *id.* at 19; Roman Catholics, *id.* at 33; conservative Protestants, *id.* at 49; Jews, *id.* at 99; Muslims, *id.* at 111; and Hindus and Buddhists, *id.* at 129.

81. For examples, see JEANNE M. WOODS & HOPE LEWIS, HUMAN RIGHTS AND THE GLOBAL MARKETPLACE 3–40 (2005).

82. “The United States has been also been characterized as a scofflaw for its refusal to abide by those international documents and U.N. resolutions related to human rights to which it has previously agreed.” Deborah M. Weissman, *The Human Rights Dilemma: Rethinking the Humanitarian Project*, 35 COLUM. HUM. RTS. L. REV. 259, 313 (2004).

83. Ruth Bader Ginsburg, *Looking Beyond Our Borders: The Value of a Comparative Perspective in Constitutional Adjudication*, 40 IDAHO L. REV. 1, 8 (2003) (citing *Knight v. Florida*, 528 U.S. 990, 996 (1999) (Breyer, J., dissenting); *Dandridge v. Williams*, 397 U.S. 471, 521 n.14 (1970) (Marshall, J., dissenting); *Zemel v. Rusk*, 381 U.S. 1, 4, 15 n.13 (1965); *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 161 n.16 (1963); *Int’l Ass’n of Machinists v. Street*, 367 U.S. 740, 776 (1961) (Douglas, J., concurring); *Am. Fed’n of Labor v. Am. Sash & Door Co.*, 335 U.S. 538, 550 n.5 (1949) (Frankfurter, J., concurring)).

deciding recent cases, and many members of the Supreme Court have written and spoken about the need to look to international law in interpreting U.S. law.<sup>84</sup>

In a 2005 case outlawing the imposition of the death penalty upon juveniles, Justice Kennedy observed “the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty.”<sup>85</sup> Writing for the Court in *Lawrence v. Texas*, Justice Kennedy made a point of citing a 1981 decision of the European Court of Human Rights, now authoritative

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84. Justice Ginsburg advocated in 2003 for courts to look beyond our borders at international law treaties and the experiences of other nations. *See* Ginsburg, *supra* note 83.

Justice Breyer has also advocated for a greater focus on international law in the U.S. courts. *See* Justice Stephen Breyer, Address at the American Society of International Law 97th Annual Meeting: The Supreme Court and the New International Law (Apr. 4, 2003) (transcript available at [http://www.humanrightsfirst.org/us\\_law/inthecourts/Supreme\\_Court\\_New\\_Interl\\_Law\\_Just\\_Breyer.pdf](http://www.humanrightsfirst.org/us_law/inthecourts/Supreme_Court_New_Interl_Law_Just_Breyer.pdf)).

Justice Rehnquist wrote:

For nearly a century and a half, courts in the United States exercising the power of judicial review [for constitutionality] had no precedents to look to save their own, because our courts alone exercised this sort of authority. When many new constitutional courts were created after the Second World War, these courts naturally looked to decisions of the Supreme Court of the United States, among other sources, for developing their own law. But now that constitutional law is solidly grounded in so many countries, it is time that the United States courts begin looking to the decisions of other constitutional courts to aid in their own deliberative process.

William H. Rehnquist, *Constitutional Courts—Comparative Remarks*, in *GERMANY AND ITS BASIC LAW: PAST, PRESENT, AND FUTURE—A GERMAN-AMERICAN SYMPOSIUM* 411, 412 (Paul Kirchhof & Donald P. Kommers eds., 1993); *see also* *Washington v. Glucksberg*, 521 U.S. 702, 710 n.8, 718 n.16 (1997) (Rehnquist, C.J.) (referring to a decision of the Supreme Court of Canada that upheld a ban on assisted suicide, and observing that “in almost every western democracy[,] it is a crime to assist a suicide”).

In a 2003 speech at the Southern Center for International Studies, Justice O’Connor discussed the concept of “transjudicialism,” and advocated a more robust use of international law by American courts. *See* Justice Sandra Day O’Connor, Remarks at the Southern Center for International Studies (Oct. 28, 2003) (transcript available at [http://www.humanrightsfirst.org/us\\_law/inthecourts/SOUTHERN\\_CENTER\\_INTERNATIONAL\\_STUDIES\\_Justice\\_O%27Connor.pdf](http://www.humanrightsfirst.org/us_law/inthecourts/SOUTHERN_CENTER_INTERNATIONAL_STUDIES_Justice_O%27Connor.pdf)).

In another forum, Justice O’Connor said: “While ultimately we must bear responsibility for interpreting our own laws, there is much to learn from other distinguished jurists who have given thought to the same difficult issues that we face here.” Justice Sandra Day O’Connor, Keynote Address Before the 96th Annual Meeting of the American Society of International Law (Mar. 16, 2002), in *96 AM. SOC’Y INT’L L. PROC.* 348, 350 (2002).

85. *Roper v. Simmons*, 543 U.S. 551, 574–75 (2005). The majority opinion goes on at some length to review international human rights treaties and the practices of other countries. *Id.* at 575–78.

in forty-five countries, as part of its decision to protect consensual sex between people of the same gender.<sup>86</sup> In a 2003 case upholding academic affirmative action, Justice Ginsburg, in a concurrence joined by Justice Breyer, pointed out the importance of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994.<sup>87</sup> Justice Ginsburg also noted the importance of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, which the United States has not ratified.<sup>88</sup> In a 2002 decision invalidating the death penalty for mentally disabled offenders, Justice Stevens noted that “within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved.”<sup>89</sup> The Supreme Court’s acknowledgment of international human rights is a step in the right direction, but more is needed.

To radically change our world, we must start by taking human rights much more seriously.<sup>90</sup> We must respect the promise of all human rights—personal, civil, political, social, economic and cultural—in our laws. These promises are an overlooked part of U.S. history.<sup>91</sup> Perhaps one of the reasons that few people in power seem to take human rights seriously is because these rights have

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86. *Lawrence v. Texas*, 539 U.S. 558, 573 (2003) (citing *Dudgeon v United Kingdom*, 45 Eur. Ct. H.R. 52 (1981)).

87. *Grutter v. Bollinger*, 539 U.S. 306, 344 (2003) (Ginsburg, J., concurring).

88. *Id.*

89. *Atkins v. Virginia*, 536 U.S. 304, 316–17 n.21 (2002). The *Atkins* court also noted the earlier decision of *Thompson v. Oklahoma*, in which the Court agreed that it was worthwhile to consider the views of “respected professional organizations, by other nations that share our Anglo-American heritage and by leading members of the Western European community.” *Id.* (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 830–31 n.31 (1988)).

90. See Alan Jenkins & Larry Cox, *Bringing Human Rights Home*, THE NATION, June 27, 2005, <http://www.thenation.com/doc/20050627/cox>.

91. See CASS R. SUNSTEIN, *THE SECOND BILL OF RIGHTS: FDR’S UNFINISHED REVOLUTION & WHY WE NEED IT MORE THAN EVER* (2004). Sunstein’s book addresses one of our nation’s best kept secrets—President Franklin D. Roosevelt’s proposed Second Bill of Rights. In January, 1944, Roosevelt asked the nation to include a new set of rights for all citizens that included a right to a job that earned a living wage, a right to decent housing, a right to adequate medical care, and a right to a good education. *Id.* at ix. This book is a very welcome addition to the dialogue about human rights. See also CHALLENGING U.S. HUMAN RIGHTS VIOLATIONS SINCE 9/11 (Ann Fagan Ginger ed., 2005).

implications.<sup>92</sup> Certainly, being equal members of the same family has implications.

I was with a group of people recently, and one person told me that her sister had won the lottery—nearly twenty million dollars. But the sister refused to share any of her winnings with her family members. Everyone in the group was horrified and ashamed. How could this be? The first people you share with are your sisters and brothers!

Well, some in our world have won a different kind of lottery, and also refuse to share with their sisters and brothers. Most who have won this lottery—based in large part on where they were born, the color of their skin, their gender, their parent's income, and their opportunity for education—do not even think they “won,” but instead think they “earned” their prize!<sup>93</sup> Anyone who believes they earned their own fortune by hard work should consider what they would have achieved had they been borne in Sri Lanka or Haiti.<sup>94</sup>

Each person counts as much as everyone else. This is a radical thought with even more radical consequences. If everyone is inherently equal, they do not have to earn their equality, but are entitled to equality in the same way as everyone else simply by the fact that they are human. If everyone is equal and we are all members of the same human family, what does it mean that some are so well off, while tens of thousands of others die in poverty each day? What

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92. See *infra* Part II.B.2.

93. Listen to Bill Gates, Sr.:

Individual effort is indispensable to wealth building. But success is not entirely the result of individual brains and effort. Success is a product of having been born in this country, a place where education and research are subsidized, where there is an orderly market, where the private sector reaps enormous benefits from public investment. For someone to assert that he or she has grown wealthy in America without the benefit of substantial public investment is pure hubris.

WILLIAM H. GATES, SR. & CHUCK COLLINS, *WEALTH AND OUR COMMONWEALTH* 122 (2002).

94. Newsflash to those who think they earned their place in this world through individual hard work. The working poor of the world work harder than anyone else. Many of the working poor in the United States work several jobs to make ends meet. One out of every four workers earns less than poverty level wages, even under the artificially low U.S. poverty guidelines. See QUIGLEY, *supra* note 14, at 77.

Worldwide, many of the working poor start each day not knowing where their food will come from for the next day—they work very, very hard to survive. They live each day in the ultimate survivor reality. Recall that of the 6.2 billion people in the world today, one of every five people, a total of 1.2 billion, live on less than \$1 per day. See HUMAN DEVELOPMENT REPORT 2002, *supra* note 26, at 5.

does it mean to take human rights seriously in a world in which over 30,000 children die each day of hunger and preventable diseases, while the average U.S. citizen contributes just pennies a day through taxes for world poverty relief—less than they spend on soft drinks each day?<sup>95</sup>

Part of taking human rights seriously is taking the idea of common good seriously.<sup>96</sup> Human rights include not only the right to human dignity and equality, but also a full range of economic, social, civil and political rights.<sup>97</sup> We must insist that the Universal Declaration of Human Rights be recognized and implemented as a starting point for

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95. See Kristof, *supra* note 29.

96. See Universal Declaration of Human Rights, *supra* note 78.

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

*Id.*; see also Pope John XXIII, *Pacem in Terris* ¶ 60-61, reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 141 (David J. O'Brien & Thomas A. Shannon eds., 1992).

It is agreed that in our time the common good is chiefly guaranteed when personal rights and duties are maintained. The chief concern of civil authorities must therefore be to ensure that these rights are acknowledged, respected, coordinated with other rights, defended and promoted, so that in this way each one may more easily carry out his duties. For "to safeguard the inviolable rights of the human person, and to facilitate the fulfillment of his duties, should be the chief duty of every public authority."

This means that, if any government does not acknowledge the rights of man or violates them, it not only fails in its duty, but its orders completely lack juridical force.

*Id.* (internal citations omitted).

97. For an excellent overview, see WOODS & LEWIS, *supra* note 81.

The 1981 *African Charter on Human and Peoples' Rights* explicitly recognizes the need for these rights to be inter-related:

[I]t is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights....

Org. of African Unity [OAU], *African (Banjul) Charter on Human and Peoples' Rights*, at 2, OAU Doc. CAB/LEG/67/3rev.5 (June 27, 1981).

the rights of all persons.<sup>98</sup> These rights must be implemented in the social and international order.<sup>99</sup>

Taking human rights seriously expands the idea of solidarity beyond national borders, and the quest for respect, justice and human dignity beyond individual laws. Many revolutionaries, including Malcolm X, have promoted this idea.<sup>100</sup> In its essence, taking human rights seriously means putting people at the center of all policy decisions and treating every single person with the dignity and respect they deserve. Taking human rights seriously means a fundamental change in the approach to law in the world and in this country. It is a step that must be taken if we are to work towards justice and the revolution of values.

## 2. Human Rights Trump Privilege and Property Rights

*(1) The needs of the poor take priority over the wants of the rich; (2) The freedom of the dominated takes priority over the liberty of the powerful; (3) The participation of marginalized groups takes priority over the preservation of an order which excludes them.*

—David Hollenbach<sup>101</sup>

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98. These rights include: adequate food; jobs; living wages; healthcare; shelter; and free quality education, including higher education. See Universal Declaration of Human Rights, *supra* note 78, arts. 22–26.

99. “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” *Id.* art. 28.

100.

Malcolm X continually warned Black America that we should expand our horizons beyond civil rights. Civil rights, he emphasized, set our struggle for freedom solely within the context of the United States. Human rights, on the other hand, situated our struggle internationally, and alongside the struggles against colonialism and foreign domination that were taking place in Africa, Asia, the Caribbean and Latin America.

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Malcolm helped us to better understand that our problem was not a law or set of laws.

Bill Fletcher, Jr., *Malcolm at 80*, TRANSAFRICA FORUM NEWSLETTER (TransAfrica Forum, Wash. D.C.), May 19, 2005, available at <http://www.transafricaforum.org/Malcolmat80.html>.

101. DAVID HOLLENBACH, CLAIMS IN CONFLICT: RETRIEVING AND RENEWING THE



If the basic human rights of all are not met, as they cannot be when one in five people in the world lives on less than one dollar per day,<sup>102</sup> then true human rights policy cannot honor the privileges of those who have profited by current laws and institutions. True human rights policy must anticipate the inevitable conflict between rights. When there are conflicts, they must be resolved by a hierarchy of values. Current arrangements privilege many, but, in the revolution of values, must yield.<sup>103</sup>

In a new justice-based value system, people must be valued more than property. Human rights must be valued more than property rights. Minimum standards of living must be valued more than the privileges that come from being well-off. Basic freedom for all must be valued more than the privileged liberty of accumulated political, social and economic power. Finally, the goal of increasing the political, social, and economic power of those who are left out of current arrangements must be valued more than the preservation of the existing order that created and maintains unjust privileges.<sup>104</sup>

This principle of prioritizing human rights creates conflict because it essentially turns current practice upside down. It looks at the world from the perspective of the working poor, the powerless, and the left-out, and makes a conscious decision to make radical changes to that world. No current rules, laws, or institutions are more important than justice and equality. Prioritizing human rights will free advocates from being bound by the privileges conferred by an unjust system. However, undoing unjust privilege to reorder the world will not occur without serious conflict and resistance from those who benefit from current inequities.<sup>105</sup>

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CATHOLIC HUMAN RIGHTS TRADITION 204 (1979).

102. Of the 6.2 billion people in the world today, one of every five people on earth, a total of 1.2 billion, live on less than \$1 per day. HUMAN DEVELOPMENT REPORT 2002, *supra* note 26, at 5; *cf.* Universal Declaration of Human Rights, *supra* note 78.

103. Current arrangements are more similar to what Dr. King described: "When machines and computers, profit motives and property rights are considered more important than people, the giant triplets of racism, materialism, and militarism are incapable of being conquered." King, Jr., *supra* note 1.

104. HOLLENBACH, *supra* note 101, at 203–07.

105. *Id.* at 204–05 ("Conflict between the needs of some and the wants of others, both within nations and across national boundaries, is one of the predominant characteristics of contemporary society. An adequate human rights policy cannot avoid this conflict if it is to be responsive to the actual situation.").

To imagine a world in which each and every individual is treated with respect and dignity, receives equal protection, enjoys freedom, and is accorded social justice is to threaten virtually any tradition or practice based on privilege and hierarchy, birth or wealth, exclusivity, and prejudice. The reason is not difficult to explain, for as one experienced observer notes succinctly: “The struggle for human rights has always been and always will be a struggle against authority.” Visions of human rights, by their nature, defy the legitimacy and threaten the existence of all forms of political, economic, social, or cultural despotism, tyranny, dictatorship, oligarchy, or authoritarian control . . . . They are thus capable of presenting a potent focus and a resounding rallying cry for those who want change.<sup>106</sup>

Visions of human rights have always presented a profound threat to special privilege. They still do. From the perspective of those at the top (those who thrive under current laws and policies), there does not seem to be much need for radical reform. Indeed, radical reform may even appear unjust to those who stand to lose their comforting privileges. However, when examined from the underside, the need for dramatic change is evident.

A radical revolution of values prizes the perspective of those at the margins. Why? Because it is in listening to and standing with the victims of injustice that the need for critical thinking and action becomes clear. Liberation theology calls this the “preferential option for the poor.”<sup>107</sup> Those without property, wealth, food, and basic

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106. PAUL GORDON LAUREN, *THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS* 283 (2d ed. 2003).

107. RODES, JR., *supra* note 74, at 96. Other scholars discuss how this preferential option must be aimed at structural changes:

[T]he fact that there are poor in North America and in other parts of the world is not an accident. It is the explicit outcome, the necessary result, of the way we have structured society politically, economically, and culturally. Inequitable concentration of wealth, income and power lead [sic] to tax laws, employment policies, welfare programs, housing plans and other policies and structures which directly and adversely affect the poor. Therefore the option for the poor will never be satisfied with responses only of charity. There must also be a commitment to justice, to structural change.

human rights are the members of our human family who show us the injustices of our world and the directions needed for the revolution.<sup>108</sup>

Radical change requires more than traditional reforms that try to solve problems without upsetting current power relationships. It is not possible to bring about justice without radical change, and radical change is not possible without reducing the power, influence and comfort of those who have more than their fair share of the world's resources.

It is essential to apply these principles with an international perspective.<sup>109</sup> We are citizens of the world, and we must protect our global common good in order to survive. Our sisters and brothers are not just those in our families, our communities, or our nations—they are across the world. A strategy that does not acknowledge our interconnectedness and interdependence can never be the basis for true change.

Thus, human rights necessary for survival must trump property rights. Likewise, human rights to basic needs and participation must trump the privileges accumulated by those who benefit from an unjust system. This will upset those at the top who enjoy these privileges, but this is a predictable result in a world that needs revolutionary change.

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PETER J. HENRIOT, *OPTING FOR THE POOR: THE CHALLENGE FOR THE TWENTY-FIRST CENTURY* (2004).

108. The Jewish and Christian scriptures demand constant attention to the needs of the poor, the widow, the orphan, the refugee, and the worker. While these teachings have frequently been ignored by the practices of organized religion, the principles remain vigorous.

The most searing criticism by the prophets of Israel was reserved for people and institutions that failed to listen to the cries of the poor and who built up their own comfort and power at the expense of the common good. *See* ABRAHAM J. HESCHEL, *THE PROPHETS* 5 (1962). "Prophecy is the voice that God has lent to silent agony, a voice to the plundered poor, to the profaned riches of the world." *Id.*; *see also* CLODOVIS BOFF & GEORGE V. PIXLEY, *THE BIBLE, THE CHURCH, AND THE POOR* (Paul Burns trans., 1989).

109. *See* Fletcher, Jr., *supra* note 100 (discussing the importance of Malcolm X and the need for a global connection to struggling people).

### 3. Re-defining Property

*We must lay hold of the fact that economic laws are not made by nature. They are made by human beings.*

—President Franklin Delano Roosevelt<sup>110</sup>

*Support of private ownership does not mean that anyone has the right to unlimited accumulation of wealth. “Private property does not constitute for anyone an absolute or unconditional right. No one is justified in keeping for his exclusive use what he does not need, when others lack necessities.”<sup>111</sup>*

*Any reason worthy of the name must therefore come to the conclusion that all economic structures, institutions, and actions must be reconstructed according to the logic of the survival of all.<sup>112</sup>*

In looking at poverty, wealth, and the working poor, we must look at wealth, as well as poverty, in a radical new way. As such, the right to property must be re-defined. Property rights must always be subordinate to justice and peoples’ rights to basic survival. This is an explicit part of the revolution of values that Dr. King sought.<sup>113</sup>

Undeniably, there is value in private property. Owning your own home is generally understood as a right that is in the interest of society and of the common good. But what about the situation in which people with property rights have excessive amounts of resources, while billions of others live on a dollar per day?<sup>114</sup> What

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110. President Franklin Delano Roosevelt, Nomination Address Before the Democratic National Convention ¶ 54 (July 2, 1932), *available at* <http://newdeal.feri.org/speeches/1932b.htm>.

111. Pastoral Letter from U.S. Catholic Bishops on Catholic Social Teaching and the U.S. Economy: Economic Justice for All, ¶ 115, 35 (1986), <http://www.osjspm.org/cst/eja.htm> (internal citations omitted).

112. ULRICH DUCHROW & FRANZ J. HINKELAMMERT, PROPERTY FOR PEOPLE, NOT FOR PROFIT: ALTERNATIVES TO THE GLOBAL TYRANNY OF CAPITAL 159 (Elaine Griffiths et al. trans., 2004).

113. *See* King, Jr., *supra* note 1.

114. For a great place to start the discussion on re-imagining property, see Joseph William

about the previously mentioned fact that “[t]he top one-tenth of U.S. Citizens now receive a total income equal to that of the poorest 2.2 billion people in the rest of the world”?<sup>115</sup> It is apparent that a few hold a large and inordinate share of the world’s resources, while others have a grossly inadequate share. If private property is a valued common good, should not everyone have access to it?

It is at this point, where massive scarcity and excess co-exist, that the human rights of justice and equality are openly violated. If it is true that no current rules, laws, arrangements or institutions are more important than justice and equality, then it is time to change the rules; it is time to re-define property rights.

In *The Second Treatise of Civil Government*, John Locke described the right to private property in a manner that clearly limits that right to those situations in which the conversion of common property to private property does not harm the common good, and in which it leaves sufficient amounts in common for others.<sup>116</sup> Others have argued that making common property private is only legitimate when it actually provides a positive benefit to the common good.<sup>117</sup> Likewise, some have stated that private property operates under a “social mortgage,” meaning that the right to private property is

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Singer, *Property*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 240, 240–58 (David Käirys ed., 3d ed. 1998).

115. See *Rich and Poor in the Global Economy*, *supra* note 56, at 13.

116. JOHN LOCKE, *THE SECOND TREATISE OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERANCE* 15 (J.W. Gough ed., Blackwell Oxford 1946) (1690).

Sec. 27. Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.

*Id.*

117. See Jeffrey Riedinger, *Property Rights and Democracy: Philosophical and Economic Considerations*, 22 *CAP. U. L. REV.* 893, 895–909 (1993).

subject to the more fundamental principle that the goods of the world are meant for all persons.<sup>118</sup>

Earlier thinkers, like Ambrose and Augustine in the 300s, took a sharper view of the obligation to return private property to the common good. Ambrose stated:

Not from your own do you bestow upon the poor man, but you make return from what is his. For what has been given as common for the use of all, you appropriate to yourself alone. The earth belongs to all, not to the rich; but fewer are they who do not use what belongs to all than those who do. Therefore, you are paying a debt, you are not bestowing what is not due.<sup>119</sup>

Augustine was even more pointed: “Take what suffices; other things, superfluous things, are the necessities of others. The superfluous things of the wealthy are the necessities of the poor. When superfluous things are possessed, others’ property is possessed.”<sup>120</sup>

Thus, private property should be a protected right to the extent that it provides to a person and their family the right to live in basic human decency and to pursue their rightful place consistent with the common good. However, when a person or entity claims property in excess of what is necessary for basic human survival, and when there are people who need these same basic elements, then it is time to re-define the laws of property to share the earth’s resources in a manner more consistent with justice, equality and the shared human dignity of all. If there are people in desperate need while others enjoy excess,

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118.

It is necessary to state once more the characteristic principle of Christian social doctrine: the goods of this world are *originally meant for all*. The right to private property is *valid and necessary*, but it does not nullify the validity of this principle. Private property, in fact, is under a “social mortgage,” which means that it has an intrinsically social function, based upon and justified precisely by the principle of the universal destination of goods.

Pope John Paul II, *On Social Concern* ¶ 42, reprinted in CATHOLIC SOCIAL THOUGHT, *supra* note 96, at 393, 426.

119. CHARLES AVILA, OWNERSHIP: EARLY CHRISTIAN TEACHING 66 (1983).

120. *Id.* at 113.

then justice dictates that the excess is no longer their private property. To the extent that people possess what is not theirs, it is theft.

Such a re-definition of property is a basic ideal of the push for a just living wage, both world-wide and in this country. Does a person, corporation, or business have a right to take home a profit if they have not paid their taxes? Do they have a right to take home a profit if they have not paid their creditors? If the answer is no, then why should they be allowed to take home a profit if they do not pay a living wage to their workers? Paying a just wage is a fundamental element of any business that employs people. If a business cannot pay a just and living wage to its employees, why does the community need that business? As one Republican U.S. Senator, who was a great friend of business, argued, the right to a living wage is more important than the right to operate a business.<sup>121</sup>

Thus, at the point of excess, private property ceases to be a right, and the social mortgage can be exercised by proper authority to provide for the basic unmet needs of others. At this point, excess individual wealth actually belongs to the poor. If excessive wealth can be the solution to life-threatening poverty, then it should be.

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121. During a debate in the 1930s about enacting a minimum wage, Senator William E. Borah of Idaho had the following exchange with other Senators:

MR. BORAH. "I look upon a minimum wage such as will afford a decent living as a part of a sound national policy. I would abolish a wage scale below a decent standard living just as I would abolish slavery. If it disturbed business, it would be the price we must pay for good citizens . . . . I take the position that a man who employs another must pay him sufficient to enable the one employed to live."

MR. PEPPER. "What if he cannot afford to pay it?"

MR. BORAH. "If he cannot afford to pay it, then he should close up the business. No business has a right to coin the very lifeblood of workmen into dollars and cents.

. . . .

I insist that American industry can pay its employees enough to enable them to live."

MR. ELLENDER. "Without exception?"

MR. BORAH. "Yes; without exception. If it cannot do so, let it close up . . . . I am opposed to peon labor, whether it is employed by one man or another. I start with the proposition that the right to live is higher than the right to own a business."

81 CONG. REC. 7775, 7795-96 (1937).

Re-thinking property should also consider the push for privatization—making formerly public assets and services private. There is considerable movement towards privatizing formerly public works and institutions, such as water, health, sanitation, education, roads, and security. This movement will inevitably privilege those with economic resources to the disadvantage of those without.

Privatization must be radically questioned, with the burden of persuasion on those who seek it.<sup>122</sup> Privatization must be challenged, particularly when it seeks to privatize essential services and resources.<sup>123</sup> Even advocates of privatization are reluctant to take such action without considerable public planning, participation and accountability.<sup>124</sup> Indeed, privatization must be accompanied by public participation and transparent decision-making. Moreover, there must be clear, prompt, and acceptable methods of reversing privatization efforts without damaging community resources in cases in which it is not in the common good. Re-defining property rights is another step towards justice.

#### 4. Democratizing Corporations

*Democratizing economics is no more unlikely a task than democratizing government—in a sense it's only finishing the task. It won't happen overnight, but it's a good bet it will happen. Major system-wide change is possible. It happened when the monarchy fell, and it can happen again. The lesson of history is clear: democracy always wins in the end.*

—Marjorie Kelly<sup>125</sup>

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122. See DUCHROW & HINKELAMMERT, *supra* note 112 (“The currently fashionable ideology of privatization must be questioned radically.”).

123. A great story about the successful efforts to resist privatization can be found in OSCAR OLIVERA & TOM LEWIS, COCHABAMBA!: WATER WAR IN BOLIVIA (2004).

124. JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 54–59 (1st ed. 2002).

125. Robert Hinkley, *Toppling the Corporate Aristocracy*, COMMON DREAMS NEWSLETTER (Common Dreams, Portland, Me.), Apr. 19, 2002, ¶ 34, <http://www.commondreams.org/views02/0419-09.htm> (interviewing Marjorie Kelly).



*The leading lawyers of the United States have been engaged mainly in supporting the claims of the corporations; often in endeavoring to evade or nullify the extremely crude laws by which legislators sought to regulate the power or curb the excesses of corporations.*

—Louis Brandeis<sup>126</sup>

To address the root causes of wealth and poverty, we must look at democratizing the main form of world economic power: the corporation. If we expect to bring about justice in our world, corporations cannot be allowed to focus exclusively on “machines and computers, profit motives and property rights” any more than people can.<sup>127</sup> Law and lawyers have played a fundamental role in the growing problem of the corporation, and there must be a radical change in both.

It is essential that corporations be brought under democratic control and regulated for the purposes of the community and justice. In order to do so, fundamental changes must be made. Revolutionary thought must be directed toward re-asserting democratic control over all elements of corporations, eliminating corporate personhood, and phasing out socially unnecessary corporations.

It is time to recall the words of Justice Marshall, who wrote that a corporation “is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence.”<sup>128</sup> It is time to reassert the democratic control of people over corporations.

Massive corporate layoffs, environmental disasters, financial fraud and collapse are common topics in the news.<sup>129</sup> In three polls

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126. Brandeis, *supra* note 61, at 560.

127. King, Jr., *supra* note 1.

128. *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819).

129. See, e.g., *Corporate Execs in Season*, PITTSBURGH TRIB. REV., July 21, 2005, available at [http://pittsburghlive.com/x/tribune-review/s\\_355533.html](http://pittsburghlive.com/x/tribune-review/s_355533.html) (noting over 400 cases of criminal fraud being pursued against corporate executives); Rex Nutting, *Layoffs Surge to 17-Month High*, MARKETWATCH, July 6, 2005, at 1, available at <http://www.marketwatch.com/News/Story/Story.aspx?guid=%7B5E273562%2D1479%2D43BB%2DAA67%2DF00966B7B>

taken between 1996 and 2000, *Business Week* magazine found that between 71% and 82% of those polled agreed with the statement that “business has gained too much power over too many aspects of [American] lives.”<sup>130</sup>

Most of the analysis of the essential problems of corporations has not occurred in legal circles, but there are many “extra legal critiques.”<sup>131</sup> Lawyers need to listen and take leads from these critiques, and ultimately help translate them into change.

There have always been corporate critics in the legal community, and work on these issues continues.<sup>132</sup> There is a growing group of progressive corporate legal scholars who are trying to find ways to make fundamental changes in corporate law and governance to eliminate corporate political activities, limit corporate personhood, change the responsibilities of directors, reform limited liability and treat all large corporations as quasi-public entities subject to increased social control.<sup>133</sup>

There are also a number of recent books documenting extensive corporate problems and calling for significant change in the status and regulation of corporations.<sup>134</sup> These books suggest a range of

F96%7D&sideid=google (noting that over 110,000 people were laid off by automotive and retail corporations in June, 2005, a dramatic increase).

130. Aaron Bernstein, *Too Much Corporate Power?*, BUS. WK. ONLINE, Sept. 11, 2000, [http://www.businessweek.com/2000/00\\_37/b3698001.htm](http://www.businessweek.com/2000/00_37/b3698001.htm).

131. Kellye Y. Testy, *Capitalism and Freedom—For Whom?: Feminist Legal Theory and Progressive Corporate Law*, 67 LAW & CONTEMP. PROBS. 87, 88–89 (2004).

The leading think tank for dramatic change in corporations is the Program on Corporations, Law and Democracy. For information on this group, see <http://www.poclad.org/index.cfm> (last visited Feb. 12, 2006).

132. See, e.g., C.A. Harwell Wells, *The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-First Century*, 51 U. KAN. L. REV. 77 (2002).

133. Testy, *supra* note 131, at 88, 105–08; see also Douglas M. Branson, *Corporate Social Responsibility Redux*, 76 TUL. L. REV. 1207, 1212–16 (2002); Ronnie Cohen, *Feminist Thought and Corporate Law*, 2 AM. U. J. GENDER & L. 1 (1994); Thomas Linzey, *Killing Goliath: Defending Our Sovereignty and Environmental Sustainability Through Corporate Charter Revocation in Pennsylvania and Delaware*, 6 DICK. J. ENVTL. L. & POL’Y 31 (1997); Lawrence E. Mitchell & Theresa A. Gabaldon, *If I Only Had a Heart: Or, How Can We Identify a Corporate Morality*, 76 TUL. L. REV. 1645 (2002); Kellye Y. Testy, *Linking Progressive Corporate Law with Progressive Social Movements*, 76 TUL. L. REV. 1227 (2002).

134. JOEL BAKAN, *THE CORPORATION: THE PATHOLOGICAL PURSUIT OF PROFIT AND POWER* (2004); DAN BUTTS, *HOW CORPORATIONS HURT US ALL: SAVING OUR RIGHTS, DEMOCRACY, INSTITUTIONS, AND OUR FUTURE* (2003); *DEFYING CORPORATIONS, DEFINING DEMOCRACY* (Dean Ritz ed., 2001); CHARLES DERBER, *REGIME CHANGE BEGINS AT HOME: FREEING AMERICA FROM CORPORATE RULE* (2004); GEORGE DRAFFAN, *THE ELITE*

reforms to make large corporations more ethical and accountable to society, including:

- A Constitutional amendment declaring that corporations are not natural persons and are not entitled to constitutional rights;
- Granting states the power to revoke corporate charters based on immoral conduct negatively impacting the community (e.g., mass layoffs, pollution, plant relocation);
- Requiring corporations to allow employees to vote on parity with shareholders and to serve on the board of directors;
- Requiring corporations to make environmental and social disclosures in addition to their financial disclosures;
- Allowing directors to focus on the long-term health of the corporation by granting five-year terms for directors and by issuing annual earnings reports (instead of quarterly);
- *Requiring* (rather than merely *permitting*) directors to take account of so-called *stakeholders* in addition to *stockholders*; and
- Amending the accounting rules and/or tax codes to reflect the contributions of workers as an “asset” and to provide incentives for socially responsible corporations.<sup>135</sup>

The efforts to rein in and reform corporations are very important and should be supported. However, even more fundamental change is needed to address the roles of corporate participation and leadership in creating and maintaining global injustice. Corporate personhood

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CONSENSUS: WHEN CORPORATIONS WIELD THE CONSTITUTION (2003); WILLIAM GREIDER, ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM (1997); THOM HARTMANN, UNEQUAL PROTECTION: THE RISE OF CORPORATE DOMINANCE AND THE THEFT OF HUMAN RIGHTS (2002); MARJORIE KELLY, THE DIVINE RIGHT OF CAPITAL: DETHRONING THE CORPORATE ARISTOCRACY 147–49 (2001); DAVID C. KORTEN, THE POST-CORPORATE WORLD: LIFE AFTER CAPITALISM (1999); LAWRENCE E. MITCHELL, CORPORATE IRRESPONSIBILITY: AMERICA’S NEWEST EXPORT 97 (2001).

135. Douglas Litowitz, *Are Corporations Evil?*, 58 U. MIAMI L. REV. 811, 821–22 (2004).

itself must be eliminated.<sup>136</sup> Unfortunately, current law grants corporations constitutional rights that make it exceedingly difficult for democracy to rein them in—rights that the corporations have exercised strenuously.<sup>137</sup>

The historical basis for corporate constitutional rights is weak. The Fourteenth Amendment was passed in 1868 to ensure that all citizens of the United States, particularly people of color, had full rights. Nothing was ever said about granting constitutional rights to corporations. But in 1886, the Supreme Court, in *Santa Clara County v. Southern Pacific Railroad*,<sup>138</sup> granted corporations legal personhood under an unprecedented interpretation of the Fourteenth Amendment.<sup>139</sup> Ten years later, the Supreme Court, in *Plessy v. Ferguson*, approved “separate but equal” racial segregation.<sup>140</sup> Thus, the Supreme Court interpreted the Fourteenth Amendment, explicitly passed to assist former slaves, to give full rights to corporations, while denying these rights to the exact people who were intended to receive its protection. The irony was that “[i]n less than 30 years, African Americans had effectively lost their legal personhood rights while corporations had acquired them.”<sup>141</sup>

Inspiration for reversing corporate personhood can be found in a powerful dissent by Justice Hugo Black in *Connecticut General Life Insurance Company v. Johnson*.<sup>142</sup> Justice Black pointed out that the protections of the Fourteenth Amendment, which was established to protect black citizens, instead had been used mostly to protect corporations. “[O]f the cases in this Court in which the Fourteenth

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136. For much more on this topic, see William Quigley, *Catholic Social Thought and the Amortality of Large Corporations: Time to Abolish Corporate Personhood*, 5 LOY. J. PUB. INT. L. 109 (2004).

137. See Richard L. Grossman, *Wrestling Governing Authority from the Corporate Class*, 1 SEATTLE J. SOC. JUST. 147 (2002); Robert L. Kerr, *Subordinating the Economic to the Political: The Evolution of the Corporate Speech Doctrine*, 10 COMM. L. & POL’Y 63 (2005).

138. 118 U.S. 394 (1886).

139. Writing about the case sixty years later, Justice William O. Douglas stated: “There was no history, logic or reason given to support that view.” See Richard Grossman & Frank T. Adams, *Taking Care of Business*, in DEFYING CORPORATIONS, DEFINING DEMOCRACY, *supra* note 134, at 59, 68 (internal citations omitted).

140. 163 U.S. 537, 550–52 (1896).

141. Molly Morgan & Jan Edwards, *Abolish Corporate Personhood*, 59 GUILD PRAC. 209, 211 (2002).

142. 303 U.S. 77, 83–90 (Black, J., dissenting).

Amendment was applied during the first fifty years after its adoption, less than one-half of one per cent invoked it in protection of the negro race, and more than fifty per cent asked that its benefits be extended to corporations.”<sup>143</sup>

Organizations such as the National Lawyers Guild, the Green Party, the Women’s International League for Peace and Freedom, and Reclaim Democracy have initiated campaigns to abolish corporate personhood.<sup>144</sup> Lawyers must join those efforts and help reduce constitutional rights of artificial business entities, while creating more opportunities for the human rights of people.<sup>145</sup>

A final suggestion to reverse corporate dominance and democratize corporations is to literally cut them down to size—to dramatically cut back on large corporations. A major problem in asserting democratic control over corporations is their massive size. Major transnational corporations financially dwarf the countries in which they operate, and are effectively unaccountable to the people they impact. For example, *Fortune* magazine’s Global 500 rankings for 2005 lists Wal-Mart as the world’s biggest corporation with revenues of over \$287 billion, making it larger than the economies of more than 133 countries.<sup>146</sup> Even the 100th largest corporation, Time Warner, with revenues of over \$42 billion, is larger than the economies of eighty-nine countries.<sup>147</sup> People in these large institutions often do not see themselves as having any social accountability.<sup>148</sup> Given the size disparities between corporations and many countries, much less between corporations and local

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143. *Id.* at 90.

144. See QUIGLEY, *supra* note 14, at 128–29.

145. See Kimberly French, *Taking on the System*, UU WORLD, May–June 2003, available at <http://www.uuworld.org/2003/03/feature1d.html>; Tom Stites, *How Corporations Became ‘Persons’*, UU WORLD, May–June 2003, available at <http://www.uuworld.org/2003/03/feature1a.html>; David Wolman & Heather Wax, *Fighting City Hall*, UU WORLD, May–June 2003, available at <http://www.uuworld.org/2003/03/feature1b.html>.

146. *The 2005 Global 500*, FORTUNE, available at <http://money.cnn.com/magazines/fortune/fortune500/>; Nationmaster.com, Map & Graph: Countries by Economy, [http://www.nationmaster.com/graph-T/eco\\_gdp\\_ppp&int=-1](http://www.nationmaster.com/graph-T/eco_gdp_ppp&int=-1) (last visited Feb. 21, 2006) (providing a listing of the gross domestic product of each of the world’s countries, compiled from a CIA databook).

147. See *The 2005 Global 500*, *supra* note 146.

148. See Litowitz, *supra* note 135, at 832–41. Litowitz summarizes the positions of both critics and proponents of corporations, but suggests that each side overlooks the ethical problems of people desperate for work in large institutions.

communities, how can there be a realistic expectation that individuals can hold corporations accountable?

The problem of democratizing large corporations is one that can be addressed by progressively eliminating the largest ones that society determines it does not need.<sup>149</sup> There is a historical basis for citizens to re-assert control over growing and powerful business interests by breaking them into smaller entities that can be regulated by the people.<sup>150</sup> The key question is the public good, and we should determine the ways in which large corporations contribute to or harm the public good. Some large corporations might actually be in society's interest, while others certainly are not. There is no reason that a progressive, phased-in cap on corporate size cannot be implemented,<sup>151</sup> with the burden on large corporations to persuade the public to which they are theoretically responsible that they should not be broken into smaller units with more accountability, transparency, and democratic control.

These are not prescriptions for a transition to a state-run market, but rather a plan to exert democratic control over economic systems that impact the daily lives of people and contribute in a powerful way

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149.

I have one idea that is more radical, but still simple: A phased-in size cap for corporations. The cap would limit the revenues, assets and number of employees of any one corporation, and be lowered each year; and no individual or group of individuals would be allowed to beneficially own or control more than *one* corporation. The complexities of beneficial ownership and control have already been worked out in most Western nations' tax codes. The use of multiple corporations serves no social or business purpose other than to evade taxes, obscure the true ownership of "anonymous" corporations and evade legal responsibility and liability for corporate wrongdoing. Spinning off businesses from those that exceed the size cap would not be hard to do, and would democratize corporations and make them more manageable and resilient, and redistribute wealth equitably and painlessly. I truly believe that most of the emergent evils of corporations are more a function of their sheer staggering size than their profit motivation.

How to Save the World, Undermining Corporatism: Some Old and New Ideas, <http://blogs.salon.com/0002007/categories/politicsEconomics/2004/07/08.html> (July 8, 2004, 13:56).

150. Marjorie E. Kornhauser, *Corporate Regulation and the Origins of the Corporate Income Tax*, 66 IND. L.J. 53 (1990).

151. See How to Save the World, *supra* note 149.

to the current challenges of poverty and wealth.<sup>152</sup> Will corporations and their lawyers resist efforts to democratize? Of course they will. Is that any reason not to do it? Of course not. It is time to re-assert democratic control over corporations.

### 5. Demilitarizing and Reversing the Arms Race

*Every gun that is made, every warship launched, every rocket fired signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and are not clothed. This world in arms is not spending money alone. It is spending the sweat of its laborers, the genius of its scientists, the hopes of its children . . . . This is not a way of life at all, in any true sense. Under the cloud of threatening war, it is humanity hanging from a cross of iron.*

—Dwight D. Eisenhower<sup>153</sup>

The United States has achieved unprecedented world military domination and clearly intends to maintain it.<sup>154</sup> The United States remains the only nation to have used nuclear weapons on civilian populations—actions that certainly would be considered war crimes

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152. For other ideas about progressive challenges to economics as usual, see ROBIN HAHNEL, *ECONOMIC JUSTICE AND DEMOCRACY: FROM COMPETITION TO COOPERATION* (2005).

153. Dwight D. Eisenhower, Address Before the American Society of Newspaper Editors: The Chance for Peace (Apr. 16, 1953), available at <http://www.quotedb.com/speeches/chance-for-peace>.

154. THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 1 (2002), available at <http://www.whitehouse.gov/nsc/nss.html> [hereinafter NATIONAL SECURITY STRATEGY]; see also THOMAS DONNELLY, THE PROJECT FOR THE NEW AMERICAN CENTURY, *REBUILDING AMERICA'S DEFENSES: STRATEGY, FORCES AND RESOURCES FOR A NEW CENTURY* (2000), available at <http://www.newamericancentury.org/RebuildingAmericasDefenses.pdf>.

The U.S. is the world's only superpower, combining pre-eminent military power, global technological leadership, and the world's largest economy . . . . At present the United States faces no global rival. America's grand strategy should aim to preserve and extend this advantageous position as far into the future as possible . . . . Preserving the desirable strategic situation in which the United States now finds itself requires a globally preeminent military capability both today and in the future.

*Id.* at i.

had the United States lost that war.<sup>155</sup> As Martin Luther King, Jr., pointed out, militarism is one of the evils that must be addressed to bring about a world based on justice.<sup>156</sup>

U.S. military dominance has come about at an unimaginable financial, physical, and moral cost to the well-being of the world and of the nation itself. Obviously, the costs include draining resources away from opportunities to address poverty. In addition to the waste of resources, there remains a justice question—under what theory of human rights, justice or dignity can the United States stake its claim to world military dominance and unilateral military and nuclear action? Under what theory of human dignity and justice does the United States justify huge stockpiles of nuclear weapons and the right to use them again? The law and lawyers are often involved in justifying and assisting our world military dominance. Justice must work to radically undermine and root out the current legal practices that allow the leaders of one nation a unilateral right to invade and destroy the people of another by preemptive conventional or nuclear actions. Otherwise, there can be no realistic expectation that human dignity will be respected, or that the inequalities that result in poverty will be fundamentally addressed at any time.

The United States' global military dominance is breathtaking.<sup>157</sup> Military spending in the United States, totaling over \$450 billion, represents 47% of all the money spent on militaries in the entire world.<sup>158</sup> This is more than the combined military budgets of the United Kingdom, France, Japan, China, Germany, Italy, Russia, Saudi Arabia, South Korea, India, Israel, Canada, Turkey and Australia—the next fifteen countries combined.<sup>159</sup> The United States recently criticized China for increasing its military budget, while

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155. Marcella David, *Grotius Repudiated: The American Objections to the International Criminal Court and the Commitment to International Law*, 20 MICH. J. INT'L L. 337, 348–49 (1999).

156. See King, Jr., *supra* note 1.

157. ANDREW J. BACEVICH, *THE NEW AMERICAN MILITARISM: HOW AMERICANS ARE SEDUCED BY WAR* (2005). Bacevich, a West Point graduate and Vietnam veteran, describes a country that is moving beyond a militarized society into a society where civilians assume a permanent military outlook on the world. *Id.* at 1–3.

158. Stockholm Int'l Peace Inst., *The 15 Major Spenders in 2004*, [http://www.sipri.org/contents/milap/milex/mex\\_major\\_spenders.pdf](http://www.sipri.org/contents/milap/milex/mex_major_spenders.pdf) (last visited Feb. 21, 2006).

159. *Id.*



maintaining one of its own that is seven to eighteen times larger.<sup>160</sup> The U.S. military budget is more than thirty times as large as the combined spending of the seven “rogue states” (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria).<sup>161</sup>

The United States maintains a world-wide military presence.<sup>162</sup> The U.S. Department of Defense admits to having 725 military bases in thirty-eight countries outside of the United States,<sup>163</sup> in addition to the 969 military bases within the United States.<sup>164</sup> The United States trains about 100,000 foreign soldiers each year,<sup>165</sup> and is by far the biggest seller of weapons—in only four years, from 1997 to 2001, we exported over \$44 billion worth of arms.<sup>166</sup> Since World War II, the United States has launched over fifty military and CIA interventions in nations around the world, not counting the latest invasion of Iraq.<sup>167</sup>

Nuclear weapons provide several specific challenges: staggering costs, current perils, and the fundamental question of their legitimacy. The cost to the United States of building and maintaining nuclear weapons has been documented at more than \$5.5 trillion from 1940 to 1996.<sup>168</sup> What is \$5.5 trillion? The amount spent on nuclear weapons alone “exceeds the combined total over the same period of federal spending on education, training, employment, and social services; on agriculture; on natural resources and the environment; on general science and space research; on community and regional

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160. *China's Armed Forces: Casus Belli*, ECONOMIST, June 11, 2005, at 1–2, available at 2005 WL 9244442.

161. The U.S. military budget is greater than the combined spending of the next thirteen nations. *See supra* note 21.

162. *See* CHALMERS JOHNSON, *THE SORROWS OF EMPIRE: MILITARY, SECRECY, AND THE END OF THE REPUBLIC* 154 (1st ed. 2004). In September, 2001, the United States deployed 254,788 military personnel in 153 countries. *Id.*

163. *Id.* (quoting the Department of Defense report titled *Worldwide Manpower Distribution by Geographical Area*).

164. Tony Judt, *The New World Order*, N.Y. REV. BOOKS, July 14, 2005, at 5.

165. JOHNSON, *supra* note 162, at 132.

166. *Id.* at 133.

167. WILLIAM BLUM, *KILLING HOPE: U.S. MILITARY AND CIA INTERVENTIONS SINCE WORLD WAR II* (2d ed. 2004).

168. *See* Stephen I. Schwartz, *Check, Please!*, BULL. ATOMIC SCIENTISTS, Sept.–Oct. 1998, at 34–35, available at [http://www.thebulletin.org/article.php?art\\_ofn=so98schwartz\\_025](http://www.thebulletin.org/article.php?art_ofn=so98schwartz_025).

development, including disaster relief; on law enforcement; and on energy production and regulation.”<sup>169</sup>

The United States is the only nation to have used nuclear weapons on civilians, certainly a crime against humanity.<sup>170</sup> Tens of thousands were killed in these nuclear strikes.<sup>171</sup> In Hiroshima, it is estimated that 45,000 died the first day and 19,000 more died within four months; in Nagasaki, an estimated 22,000 people died the first day and approximately 17,000 others died within four months.<sup>172</sup> The use or potential use of nuclear weapons is generally considered to be illegal. The International Court of Justice (ICJ) issued an opinion on July 8, 1996, stating that “[t]he threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.”<sup>173</sup> The court went on to conclude unanimously that “[t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”<sup>174</sup>

Yet, the United States continues to stockpile and maintain at readiness thousands of nuclear weapons. The United States retains

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169. *Id.*

170. David, *supra* note 155, at 348–49.

171. Jefferson D. Reynolds, *Collateral Damage on the 21st Century Battlefield*, 56 A.F. L. REV. 1, 14–15 (2005).

172. URANIUM INFORMATION CENTRE, NUCLEAR ISSUES BRIEFING PAPER NO. 29, HIROSHIMA, NAGASAKI, AND SUBSEQUENT WEAPONS TESTING 2 (2004), available at <http://www.uic.com.au/nip29.htm>.

For photos documenting some of the devastation of Hiroshima and Nagasaki, see A Photo-Essay on the Bombing of Hiroshima and Nagasaki (unpublished manuscript), [http://www.english.uiuc.edu/maps/poets/g\\_l/levine/bombing.htm](http://www.english.uiuc.edu/maps/poets/g_l/levine/bombing.htm) (last visited Feb. 21, 2006).

173. Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. 226, ¶ 105(2)E [hereinafter I.C.J. Advisory Opinion]. This part of the opinion was decided by a vote of seven to seven and went on to say:

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake.

*Id.*; see also FRANCIS A. BOYLE, THE CRIMINALITY OF NUCLEAR DETERRENCE (2002); JOHN BURROUGHS, THE (IL)LEGALITY OF THREAT OR USE OF NUCLEAR WEAPONS 21–22 (1997); NUCLEAR WEAPONS ARE ILLEGAL: THE HISTORIC OPINION OF THE WORLD COURT AND HOW IT WILL BE ENFORCED (Ann Fagan Ginger ed., 1998).

174. I.C.J. Advisory Opinion, *supra* note 173, ¶ 105(2)F.

over 10,000 nuclear weapons, over 5000 of which are currently operational.<sup>175</sup> The annual cost of maintaining the nuclear weapons program was estimated in 1998 at \$35 billion.<sup>176</sup>

The United States makes explicit its willingness to take preemptive military action when it thinks that it or “[its] allies and friends” are faced with danger.<sup>177</sup> The invasion of Iraq shows the willingness of the United States to take action based on the flimsiest of frauds in order to exercise military power for political means.<sup>178</sup> Under what concept of human dignity and justice can the United States claim the right to be the world’s biggest military power for now and the future?

Radical change is needed. Laws that justify the creation, presence and deployment of nuclear weapons must be discarded. Laws that justify and support spending on military dominance must likewise be destroyed. Lawyers must work with others to reverse the direction of these policies, or else there may be nothing left for anyone to defend. We must demilitarize and reverse the arms race in order to redirect resources to people, instead of to perpetual, preemptive, and possibly world-ending wars.

## 6. Other Areas

There are many other areas of law that need revolutionary change. These areas, including immigration policy, prison reform, education, and reparations, are noted briefly here.

First, justice demands that we scrap current immigration laws and most proposed reforms, and recognize that no person is illegal. It is a strange version of justice that gives nearly global freedom of

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175. Robert S. Norris & Hans M. Kristensen, *U.S. Nuclear Forces, 2005*, BULL. ATOMIC SCIENTISTS, Jan.–Feb. 2005, at 73–75, available at [http://www.thebulletin.org/article\\_nn.php?art\\_ofn=jf06norris](http://www.thebulletin.org/article_nn.php?art_ofn=jf06norris).

176. Brookings Inst., 50 Facts About U.S. Nuclear Weapons, Fact 50, <http://www.brook.edu/FP/PROJECTS/NUCW/COST/50.HTM> (last visited Feb. 21, 2006).

177. NATIONAL SECURITY STRATEGY, *supra* note 154, at 14.

178. Robert M. Lawrence, *The Preventive/Preemptive War Doctrine Cannot Justify the Iraq War*, 33 DENV. J. INT’L L. & POL’Y 16 (2004).

movement to money and companies, but refuses it to people.<sup>179</sup> Current globalization is based on the free movement of capital and goods. Wal-Mart, Toyota, GM, Citibank, and other corporations are allowed to set up shop anywhere and move freely between countries with ease.<sup>180</sup> People, however, are not nearly as free to migrate.<sup>181</sup> National borders should be secondary to the pursuit of human rights. Artificial boundaries between nations cannot be considered legal or just reasons for excluding people from pursuing the conditions necessary for human dignity.<sup>182</sup> This is yet another area in which non-

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The major forces behind the drive for increased globalization are the transnational corporations whose logic requires the free movement of capital, goods and skilled peoples across borders. This free movement succeeds best when national sovereignty is replaced by the “supra-sovereignty” of international agencies like the WTO, the IMF and NAFTA. The rules imposed by these international organizations are designed to give priority to the needs of capital.

*A CD Focus on Sovereignty in Canada*, CANADIAN DIMENSION, July 1, 2002, available at 2002 WL 7241846.

180. *Id.*

181. DUCHROW & HINKELAMMERT, *supra* note 112, at 146.

182. I ask my students: “What justice-based reason gives children born five miles north of the Rio Grande unlimited economic and educational possibility, while children born five miles south have geographically and legally imposed limits on their human potential?”

The myth that the United States welcomes all comers conflicts with actual practice. This myth is based on real proclamations of principle, such as that of George Washington, who stated that “[t]he bosom of America is open to receive not only the Opulent and respectable Stranger, but the oppressed and persecuted of all Nations And Religions.” RESPECTFULLY QUOTED: A DICTIONARY OF QUOTATIONS 169 (Suzy Platt ed., 1989), available at <http://www.bartleby.com/73/884.html>. And who can forget the welcome of the Statue of Liberty: “Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me. I lift my lamp beside the golden door!” *Id.* at <http://www.bartleby.com/66/39/35139.html> (quoting Emma Lazarus).

Yet the practice is quite different. Bill Ong Hing writes:

There have always been two Americas. Both begin with the understanding that America is a land of immigrants. One America has embraced the notion of welcoming newcomers from different parts of the world . . . . The other America has remained largely mired in a Eurocentric (originally *western* Eurocentric) vision of America that idealized the *true* American as white, Anglo-Saxon, English-speaking and Christian.

BILL ONG HING, *DEFINING AMERICA THROUGH IMMIGRATION POLICY* 5 (2004). For a historical perspective on immigration, see Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 COLUM. L. REV. 1833, 1846–59 (1993); see also SEYLA BENHABIB, *THE RIGHTS OF OTHERS: ALIENS, RESIDENTS AND CITIZENS* (2004) (advocating for porous, but not absolutely open, national boundaries that would allow refugees and asylum seekers).

lawyers have taken leadership action.<sup>183</sup> How can anyone be illegal if we are all, according to the Universal Declaration of Human Rights, sisters and brothers?<sup>184</sup> No one is illegal and the law must be fundamentally changed to reflect this principle.<sup>185</sup>

Second, the prison system in the United States is shameful and must be abolished,<sup>186</sup> not just reformed, but abolished.<sup>187</sup> People serious about justice must insist on radical change and demand a process of reparation and reconciliation based on the human rights of all, rather than based on retribution and vengeance.<sup>188</sup> Our prison

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183. "No Human is Illegal" was the theme of the 2003 Immigrant Workers Freedom Ride. There are many groups trying to dismantle immigration policies that discriminate based on race, gender and politics. See No One Is Illegal, <http://noii.trick.ca/HomePage> (last visited Feb. 21, 2006); No One Is Illegal-Toronto, <http://sanspapier.revolt.org/> (last visited Feb. 21, 2006); see also No Border, Welcome!, <http://www.noborder.org> (last visited May 14, 2006).

184. Universal Declaration of Human Rights, *supra* note 78, at art. 1.

185. Virginie Guiraudon, Book Review, *No One Is Illegal: Asylum and Immigration Control Past and Present*, 17 J. REFUGEE STUD. 142 (2004); see also Anthony Gregory, *In Defense of Open Immigration*, FREEDOM DAILY, Oct. 2004, available at <http://www.fff.org/freedom/fd0410e.asp>.

186. See *supra* note 20 (noting that the United States ranks first worldwide in the imprisonment of its citizens, with over 700 persons per 100,000 in prison).

What can the United States learn from the following nations that put so few people in prison? Japan—45 per 100,000; Australia—110; Canada—105; Finland—50; France—80; Italy 95; Ireland—80; Sweden—65; and Iceland—30. PETER WAGNER & BRIGETTE SARABI, *THE PRISON INDEX: TAKING THE PULSE OF THE CRIME CONTROL INDUSTRY* 40–41 (2003).

187. Again, non-lawyers are taking the lead in this area. Look particularly at the group Critical Resistance, <http://www.criticalresistance.org> (last visited Feb. 21, 2006); see also ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003); *THE CASE FOR PENAL ABOLITION* (W. Gordon West & Ruth Morris eds., 2000).

A good source on prison reform is MICHAEL JACOBSON, *DOWNSIZING PRISONS: HOW TO REDUCE CRIME AND END MASS INCARCERATION* (2005). Jacobson's story is interesting in part because he ran much of the New York City penal system for years. For a good summary of the different approaches to prison, reform and abolition, see Vanessa Huang, *Two Million Imprisoned=Too Many*, ALTERNET, Aug. 4, 2005, <http://www.alternet.org/story/23889/>.

188. DAVIS, *supra* note 187, at 107. Interestingly, the U.S. Catholic Bishops agree with Professor Davis. While not calling for absolute abolition, the U.S. Catholic bishops clearly indicated the need for a transformation of the current system in a 2000 statement. U.S. CONFERENCE OF CATHOLIC BISHOPS, *RESPONSIBILITY, REHABILITATION, AND RESTORATION: A CATHOLIC PERSPECTIVE ON CRIME AND CRIMINAL JUSTICE* (2000), available at <http://www.usccb.org/sdwp/criminal.htm>. As a result of this analysis, the Catholic bishops concluded that the criminal justice system must change from a punitive and retributive one to one that emphasizes restorative justice and insists that punishment have a constructive and rehabilitative purpose. *Id.* at 13–19.

For more on Catholic social thought and offenders, see William P. Quigley, *Prison Work, Wages, and Catholic Social Thought*, 44 SANTA CLARA L. REV. 1159, 1167–75 (2004); see also Alvin J. Bronstein & Jenni Gainsborough, *Using International Human Rights Laws and*

system is the end result of a profoundly dysfunctional, racist, and anti-poor process almost satirically termed the criminal justice system.<sup>189</sup> Society certainly can and should protect itself from the people who endanger it, but prisons are not the answer.<sup>190</sup> Forcibly detaining people in inhumane conditions does not further the common good. Moreover, the system ensnares far more than just the criminally dangerous. “Jails and prisons have become, in effect, the country’s front-line mental health providers.”<sup>191</sup> If we created a decent mental health care system, ten to twenty percent of the current jail and prison population could be released.<sup>192</sup> If currently illegal drugs were decriminalized, twenty-five percent of people in jail could be released.<sup>193</sup> The American prison system demands radical change.

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*Standards for U.S. Prison Reform*, 24 PACE L. REV. 811 (2004).

189. TARA HERIVEL & PAUL WRIGHT, *PRISON NATION: THE WAREHOUSING OF AMERICA’S POOR* (2003) (demonstrating clear connections between poverty and prisons, race and prisons, and private profit and prisons).

For an excellent short examination of some of the major flaws in the criminal law system, see David Cole, *Two Systems of Criminal Justice*, in *THE POLITICS OF LAW*, *supra* note 114, at 41; see also KATHERINE BECKETT & THEODORE SASSON, *THE POLITICS OF INJUSTICE: CRIME AND PUNISHMENT IN AMERICA* (2000); JOHN IRWIN & JAMES AUSTIN, *IT’S ABOUT TIME: AMERICA’S IMPRISONMENT BINGE* (1994).

190. The discussion about alternatives to prison must start with the premise that there is not a single solution. Prison is used now as the final answer to crime and social protection, but many other options are available. Imagining and working toward a world without prisons means addressing underlying causes of crime, as well as coming up with creative responses to failure. The abolition movement is not looking for a magic prison substitute, such as placing everyone under house arrest or electronic monitoring, but a true radical transformation which will address the dignities of the victim and of society, as well as the dignity of the offender, in a just way. See DAVIS, *supra* note 187, at 105–15.

The movement to abolish prisons seeks to progressively replace them and the rest of the present criminal justice system with various models of restorative justice. See *THE CASE FOR PENAL ABOLITION*, *supra* note 187, at sec. IV; see also Jim Holt, *Decarcerate?*, N.Y. TIMES MAG., Aug. 15, 2004, at 20–21.

191. HUMAN RIGHTS WATCH, *ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS* 16 (2003), available at <http://www.hrw.org/reports/2003/usa1003/>.

192. “Somewhere between two and three hundred thousand men and women in U.S. prisons suffer from mental disorders, including such serious illnesses as schizophrenia, bipolar disorder, and major depression.” *Id.* at 1.

193. About 25% of the two million people who are behind bars are there for drug offenses—not violent or other offenses indirectly connected to criminalized drugs, but drug offenses themselves. Walter Cronkite, *Prisons Needlessly Overpopulated with Drug Offenders*, CENTRE DAILY TIMES, Aug. 6, 2004, available at <http://www.mapinc.org/tlcnews/v04/n1118/a03.htm?155>; see also Bureau of Justice Statistics, *Prison Statistics: Summary Findings*, <http://www.ojp.usdoj.gov/bjs/prisons.htm> (last visited Feb. 21, 2006). “Between 1995 and 2001, the increasing number of violent offenders accounted for 63% of the total growth of the

Tragically, the U.S. and many other countries have failed to provide an adequate education to the people who need it most.<sup>194</sup> Worse, many have grown discouraged and have lost the impetus to imagine and work for radical change.<sup>195</sup> The right to adequate education must be dramatically re-imagined and re-invigorated, both in the United States and globally.<sup>196</sup> Given the new demands of work, this right must include a right to free higher public education.<sup>197</sup>

Finally, victimized peoples and nations deserve reparations to counterbalance the continuing effects of injustice.<sup>198</sup> Theologian Walter Brueggeman states that the definition of justice is to “sort out what belongs to whom, and to return it to them.”<sup>199</sup> Reparations should be made to people who have been subjected to injustices by governments or corporations.<sup>200</sup> Reparations should also be made

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State prison population; 15% of the total growth was attributable to the increasing number of drug offenders.” *Id.*

194. In the United States, the failure to provide an adequate education to those who most need it is the result of many factors, including the historical legacies of racial discrimination in housing, transportation and employment; systematic withdrawal of public support during integration; and the prevalence of low-wage work.

195. Witness the unfortunate movement toward using high-stakes tests as an indicator of individual educational progress and achievement. See William P. Quigley, *Due Process Rights of Grade School Students Subjected to High-Stakes Testing*, 10 B.U. PUB. INT. L.J. 284 (2001).

196. Eric Berger, *The Right to Education Under the South African Constitution*, 103 COLUM. L. REV. 614 (2003); Sumi Cho, *From Massive Resistance, to Passive Resistance, to Righteous Resistance: Understanding the Culture Wars from Brown to Grutter*, 7 U. PA. J. CONST. L. 809 (2005); James A. Gross, *A Human Rights Perspective on U.S. Education: Only Some Children Matter*, 50 CATH. U. L. REV. 919 (2001); C. Raj Kumar, *International Human Rights Perspectives on the Fundamental Right to Education—Integration of Human Rights and Human Development in the Indian Constitution*, 12 TUL. J. INT’L & COMP. L. 237 (2004).

197. Mark Dudzic & Adolph Reed Jr., *Free Higher Ed!*, NATION, Feb. 23, 2004, available at 2004 WLNR 17889313.

Make every public institution of higher education free for all who meet the admissions standards. No means testing, no service or work requirements, no minimum or maximum ages. Just make it free for all. Free higher education is a simple idea that has a profound resonance with the shared values of the American people. Recent polls have shown that more than 80 percent agree that a college diploma is essential to success. Seventy percent think higher education is being priced beyond the income of the average family.

*Id.*

198. Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 381–83 (1987).

199. WALTER BRUEGGEMANN ET AL., TO ACT JUSTLY, LOVE TENDERLY, WALK HUMBL Y: AN AGENDA FOR MINISTERS 5 (1997).

200. A variety of groups are deserving beneficiaries of reparations. For material on

internationally where appropriate.<sup>201</sup> Reparations often address core issues of racism—social structures that perpetuate the advantages compiled over hundreds of years of privilege.<sup>202</sup>

These areas of law are but a few of those that support current systems of racism, militarism and materialism, and that must be radically changed. While nearly every area of the law is in need of radical change, lawyers must become revolutionaries for that change to occur.

### III. BECOMING A REVOLUTIONARY LAWYER

*It is not enough merely to call for freedom, democracy, and human rights. There has to be a determination to persevere in the struggle, to make sacrifices in the name of enduring truths, to resist the corrupting influences of desire, ill will, ignorance, and fear. Saints, it has been said, are the sinners who go on trying . . . It is his capacity for self-improvement and self-redemption that which most distinguishes man from the mere brute. At the root of human responsibility is the concept of*

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indigenous Australians, see Michael Legg, *Indigenous Australians and International Law: Racial Discrimination, Genocide and Reparations*, 20 BERKELEY J. INT'L L. 387 (2002).

For information on African-Americans, see Jeremy Levitt, *Black African Reparations*, 25 S.U. L. REV. 1 (1997); Kyle D. Logue, *Reparations as Redistribution*, 84 B.U. L. REV. 1319 (2004); Alfreda Robinson, *Corporate Social Responsibility and African American Reparations*, 55 RUTGERS L. REV. 309 (2003); Edith Y. Wu, *Reparations to African-Americans*, 3 CONN. PUB. INT. L.J. 403 (2004).

For reparations material on Mexican-Americans, see Jon Michael Haynes, *What is It About Saying We're Sorry? New Federal Legislation and the Forgotten Promises of the Treaty of Guadalupe Hidalgo*, 3 SCHOLAR 231 (2001).

For material on reparations for Japanese-Americans and Holocaust survivors, see Alfred L. Brophy, *Some Conceptual and Legal Problems in Reparations for Slavery*, 58 N.Y.U. ANN. SURV. AM. L. 497, 499–500 (2003).

On reparations and Haitian-Americans, see Malissia Lennox, Note, *Refugees, Racism, and Reparations: A Critique of the United States' Haitian Immigration Policy*, 45 STAN. L. REV. 687 (1993).

201. See Libby Adler & Peer Zumbansen, *The Forgetfulness of Noblesse: A Critique of the German Foundation Law Compensating Slave and Forced Laborers of the Third Reich*, 39 HARV. J. ON LEGIS. 1 (2002); Peter G. Fischer, *The Victims' Trust Fund of the International Criminal Court—Formation of a Functional Reparations Scheme*, 17 EMORY INT'L L. REV. 187, 192–204 (2003).

202. See Christian Sundquist, *Critical Praxis, Spirit Healing, and Community Activism: Preserving a Subversive Dialogue on Reparations*, 58 N.Y.U. ANN. SURV. AM. L. 659 (2003).



*perfection, the urge to achieve it, the intelligence to find a path towards it, and the will to follow that path . . . It is man's vision of a world fit for rational, civilized humanity which leads him to dare and to suffer to build societies free from want and fear.*

—Aung San Suu Kyi<sup>203</sup>

The world does not need more lawyers that support the status quo. We need revolutionaries.<sup>204</sup> Over the years, I have listened to hundreds, maybe thousands, of people who are actively working to make radical changes in the world. From those conversations, I have distilled a few principles regarding what I term “reflective activism,” and I will share these here.

It is my observation that some people interested in radical change are not activists, but hyper-activists. Hyper-activists want radical change now, and will work like crazy to achieve it. When it does not come immediately, or within two or three years, they become burned out and give up. Those that practice reflective activism remain committed and active agents of social change over the long haul. Revolutionaries must be committed to the long haul, and what follows are my thoughts about how best to do that.

These are not specific instructions, or a cookbook for radical action, but rather reflections on remaining committed to radical change. Revolutionary change is not the sprint of a specific campaign, but a marathon of life work. What is needed is not a map of where to go, because the destination continually changes, but rather a compass that will help orient us toward the goals we seek in our journey. These principles can help orient us toward a lifetime of acting as revolutionaries, and help us deal with the joys and defeats that are inevitable in such a journey.

Becoming a revolutionary lawyer first involves “un-learning” most of what we were taught in law school and what we have learned

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203. LAUREN, *supra* note 106.

204. Many lawyers have been called revolutionaries, including Mahatma Gandhi, Nelson Mandela, many signers of the Declaration of Independence, and Thurgood Marshall. *But see* RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF LEGAL IMAGINATION* (1994).

in the practice of law. We must change teachers and skills, but, most of all, we must change our minds and hearts. We must be humble and admit what we do not know. We must learn from our “clients” and be willing to be uncomfortable.

### A. *Solidarity*

If there is a first principle of radical change, it is the principle of solidarity.<sup>205</sup> Radical change only comes about by working *with* people; it is never the result of working *for* people.<sup>206</sup> Liberation is never something that people do *for* others, but something that people achieve *with* others. This is best summed up by the quote: “If you have come to help me, you are wasting your time. . . . But if you have come because your liberation is bound up with mine, then let us work together.”<sup>207</sup>

Working in solidarity means that we must constantly challenge racism, paternalism, patriarchy, homophobia, classism, nationalism and all of the other violent divisions hard-wired into our selves and our systems. Those systems of division were set up and are maintained to keep us from being in solidarity with others struggling for justice.<sup>208</sup> We must make common cause with others to identify and overcome those divisions. Solidarity also means no borders; globalized liberation is the goal.<sup>209</sup>

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Solidarity requires that one enter into the situation of those with whom one is solidary [sic]; it is a radical posture. If what characterizes the oppressed is their subordination to the consciousness of the master, as Hegel affirms, true solidarity with the oppressed means fighting at their side to transform the objective reality which has made them these “beings for another.”

PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 34 (Myra Bergman Ramos trans., 1970).

206. “Political action on the side of the oppressed must be pedagogical action in the authentic sense of the word, and, therefore, action *with* the oppressed.” *Id.* at 53.

207. University of the Poor, Welcome Letter, <http://www.universityofthepoor.org/schools/social/welcome.html> (last visited Feb. 21, 2006) (quoting Lilla Watson, an aboriginal artist and social worker).

208. BETSY LEONAR-WRIGHT, CLASS MATTERS: CROSS-CLASS ALLIANCE BUILDING FOR MIDDLE-CLASS ACTIVISTS (2005) (addressing class, race, gender, sexual orientation and other divisions in the effort to bring about radical change).

209. JEREMY BRECHER ET AL., GLOBALIZATION FROM BELOW: THE POWER OF SOLIDARITY (2000); GLOBALIZE LIBERATION: HOW TO UPROOT THE SYSTEM AND BUILD A BETTER WORLD (David Solnit ed., 2004).

People should never expect to achieve revolutionary change alone, but only by organizing with others to confront injustice and to create new ways of living.<sup>210</sup> Solidarity also means that unless each of us realizes that we directly and personally benefit from actions for change, we will not have enough reason to keep working for justice.<sup>211</sup> Moreover, solidarity also returns us to the first principle of the 1948 *Universal Declaration of Human Rights*, that all people are sisters and brothers and have an inherent right to human rights and dignity.<sup>212</sup> This simple statement has truly revolutionary implications. Solidarity is our first principle.

*B. Seek out and Treasure Hope, Joy and Love*

*The dominant tendencies of our day are unregulated global capitalism, racial balkanization, social breakdown, and individual depression. Hope enacts the stance of the participant who actively struggles against the evidence in order to change the deadly tides of wealth inequality, group xenophobia, and personal despair. Only a new wave of vision, courage and hope can keep us sane—and preserve the decency and dignity requisite to revitalize our organizational energy for the work to be done. To live is to wrestle with despair yet never allow despair to have the last word.*

—Cornel West<sup>213</sup>

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210. William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizers*, 21 OHIO N.U. L. REV. 455, 456 (1994) (“Community organizing is the essential element of empowering organizational advocacy.”); see also KIMBERLY A. BOBO ET AL., *ORGANIZING FOR SOCIAL CHANGE* (3d ed. 2001); DEREK DENCKLA & MATTHEW DILLER, *COMMUNITY LAWYERING: THEORY AND PRACTICE* (2000); BILL MOYER, *DOING DEMOCRACY: THE MAP MODEL FOR ORGANIZING SOCIAL MOVEMENTS* (2001); RANDY SHAW, *Lawyers: Allies or Obstacles to Social Change?*, in *THE ACTIVIST’S HANDBOOK: A PRIMER* 185, 185–211 (updated ed. 2001).

211. “It is only the oppressed who, by freeing themselves, can free their oppressors.” FREIRE, *supra* note 205, at 42.

212. See *Universal Declaration of Human Rights*, *supra* note 78. “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation for freedom, justice and peace in the world . . .” *Id.* at pmbl.

213. Cornel West, *Prisoners of Hope*, in *THE IMPOSSIBLE WILL TAKE A LITTLE WHILE: A CITIZEN’S GUIDE TO HOPE IN A TIME OF FEAR* 293, 296–97 (Paul Rogat Loeb ed., 2004).

No one can sustain the long haul of a life dedicated to revolutionary change without hope, joy and love. If your life and work do not involve generous doses of real hope, joy and love, then you must make radical changes before you can join with others in changing our world.

Some may think that a high priority on love is inconsistent with revolutionary change, but they are mistaken. Love is one of the most radical forces for change.<sup>214</sup> I am talking here about real love, not Hallmark-card love—love that energizes people to undertake actions that otherwise seem impossible; love that is willing to sacrifice for others; love that can triumph over the most challenging obstacles; love that accepts our mistakes and those of others and goes forward anyway.<sup>215</sup>

Joy is also fundamental. Justice work cannot be only rock-breaking toil. There is wonderful joy in the shared struggles for peace and justice. There is joy in solidarity. And, in truth, there is much joy

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214. The revolutionary Che Guavara stated:

Let me say, with the risk of appearing ridiculous, that the true revolutionary is guided by strong feelings of love. It is impossible to think of an authentic revolutionary without this quality . . . One must have a large dose of humanity, a large dose of a sense of justice and truth, to avoid falling into extremes, into cold intellectualism, into isolation from the masses. Every day we must struggle so that this love of living humanity is transformed into concrete facts, into acts that will serve as an example.

ERNESTO CHE GUEVARA, *MAN AND SOCIALISM IN CUBA* 43 (1967).

215. One of my favorite quotes about love is taken from Dostoevsky and was a favorite of Dorothy Day's, a radical Catholic who helped start the Catholic Worker Movement. The quote is:

Love in action is a harsh and dreadful thing compared with love in dreams. Love in dreams is greedy for immediate action, rapidly performed and in the sight of all. Men will even give their lives if only the ordeal does not last long but is soon over, with all looking on and applauding as though on the stage. But active love is labor and fortitude, and for some people too, perhaps, a complete science. But I predict that just when you see with horror that in spite of all your efforts you are getting farther from your goal instead of nearer to it—at that very moment I predict that you will reach it and behold clearly the miraculous power of the Lord who has been all the time loving and mysteriously guiding you.

FYODOR DOSTOEVSKY, *THE BROTHERS KARAMAZOV* 49–50 (Constance Garnett trans., Ralph Matlaw ed., W.W. Norton & Co. 1976) (1879).

in the shared companionship and humor that are essential parts of every campaign for radical change.<sup>216</sup>

Hope is likewise essential. So many people are unable to join actions challenging injustice because they are paralyzed by a sense of futility and despair—exactly what the powerful want. Hope offers opportunity. But hope, as noted above, is not the same as optimism. Hope is the conviction that if people created the injustices imposed on us, then the dreams of our sisters and brothers and of ourselves can be realized if and when enough people join together to work for change. Hope recognizes that the history of justice is built on the work of others who we will never know, but who share in the unexpected advances toward justice.<sup>217</sup>

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216.

It is hard to sustain ourselves in difficult work if the only reward is the possibility that somewhere down the line our work may have some positive effect, though we may be long dead. That's a lot to ask of people. We all want more than that out of life. We want joy and love. At least every now and then, we want to have a good time, including a good time while engaged in our work. No political movement can sustain itself indefinitely without understanding that, not just because people need—and have a right—to be happy, but because if there is no joy in it, then movements are more likely to be dangerous. The joy—the celebration of being human and being alive in connection with others—is what fuels the drive for change.

People find joy in many different ways. As many people over the years have pointed out, one source of joy is in the struggle. I have spent a lot of time in the past few years doing political work, and some of that work isn't terribly fun. Collating photocopies for a meeting for a progressive political cause isn't any more fun than collating photocopies for a meeting for a corporate employer. But it is different in some ways: It puts you in contact with like-minded people. It sparks conversation. It creates space in which you can think and feel your way through difficult questions. It's a great place to laugh as you staple. It provides the context for connections that go beyond superficial acquaintanceships.

Robert Jensen, *Citizens of the Empire: Real Hope is Radical*, THINKING PEACE, <http://www.thinkingpeace.com/Lib/lib023.html>.

217. *Id.*

The hope comes not from some delusional state, but from what I would argue is a sensible assessment of the situation. Cynicism might be an appropriate reaction to injustice that can't be changed. Hope is an appropriate response to a task that, while difficult, is imaginable. And once I could understand the structural forces that produced injustice, I could imagine what a world without those forces—and hence without the injustice—might look like. And I could imagine what activities and actions and ideas it would take to get us there. And I could look around, look back into history and realize that many people have understood this and that I hadn't stumbled onto a new idea.

*Id.*

We cannot give what we do not have. If we want a world that is more loving, more joyful, and more hopeful, then we must first have those qualities in abundance in our own lives. If we do not have them, we must seek them out, find them, and integrate them into our lives. Justice-seekers are sometimes dismissed as fanatical, scary people, and, truthfully, some of us are like that some of the time. That is called burnout, and it is a part of most people's jobs. However, if you are dedicated to helping bring about revolutionary change and you are regularly burning out, you must make a change—either a change in what you are doing or a change in yourself.<sup>218</sup>

### *C. Overcome Fear*

There is a popular bumper sticker that says “No Fear.” For purposes of revolutionary change, that phrase is mistaken. There is plenty to be fearful of. Fear is a technique of control often used by those in power to scare people away from thinking about and acting for fundamental change.<sup>219</sup> Courage is not having no fear, but rather facing our fears, overcoming them, and taking action despite them.<sup>220</sup>

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218.

If you find yourself blowing up at people, getting irritated over the littlest problem, or not enjoying your work, you need to review your work habits. If you are working excessive hours, you will become less effective in the time you do work and will begin thinking of yourself as a martyr (and everyone will avoid you). The social change movement of the 2000s does not need more martyrs. It needs effective, well-balanced organizers who are building power by involving people in winning real victories.

BOBO, *supra* note 210, at 340–41.

219. See *Fascism*, THE COLUMBIA ENCYCLOPEDIA (6th ed. 2000), available at <http://www.bartleby.com/65/fa/fascism.html>.

The growth of democratic ideology and popular participation in politics in the nineteenth century was terrifying to some conservative elements in European society, and fascism grew out of the attempt to counter it by forming mass parties based largely on the middle classes and the petty bourgeoisie, exploiting their fear of political domination by the lower classes. Forerunners of fascism, such as Georges Boulanger in France and Adolf Stöcker and Karl Lueger in Germany and Austria, played on people's fears of revolution with its subsequent chaos, anarchy, and general insecurity in their efforts to gain political power. They appealed to nationalist sentiments and prejudices, exploited anti-Semitism, and portrayed themselves as champions of law, order, Christian morality, and the sanctity of private property.

*Id.*

220. “The brave man is not he who feels no fear, For that were stupid and irrational; But

A willingness to be uncomfortable is part of the challenge of being a revolutionary. I am uncomfortable when in new places, with new people, with challenging ideas and when called to new ways of living and acting. We must be willing to push the envelope and to go to new places, both personally and professionally.<sup>221</sup>

We must also prepare to be criticized.<sup>222</sup> If you take any action, much less challenge the status quo, many people will not like it. As Dom Helder Camara said: "When you speak about the poor, you are a holy person; if you speak about the root causes of poverty, you are a communist."<sup>223</sup> Those who profit from current arrangements will criticize and attack.<sup>224</sup> If you cannot take conflict and criticism, you cannot be in this struggle.<sup>225</sup> Moreover, it is important to actually

he, whose noble soul its fears subdues, And bravely dares the danger nature shrinks from." JOANNA BAILLIE, *Basil: A Tragedy*, in 1 THE COMPLETE POETICAL WORKS OF JOANNA BAILLIE 39 (1832), available at <http://www.bartleby.com/73/353.html>.

221. Marc Galanter, *A Vocation for Law? American Jewish Lawyers and Their Antecedents*, 26 *FORDHAM URB. L.J.* 1125, 1131 (1999). "As modern readers, we tend to respond to the prophets' elevated universal morality and admire their courage, while filtering out their group-centered and god-centered revivalism and retaining a 'thin residue of ethical monotheism, cultic criticism and social justice.'" *Id.*

222.

It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs and comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows the great enthusiasms, the great devotions; and spends himself in a worthy cause; who at best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat.

Theodore Roosevelt, *Speech Given at the Sorbonne, Paris, France: Citizenship in a Republic* (Apr. 23, 1910), reprinted in 13 THE WORKS OF THEODORE ROOSEVELT 510 (1926), available at <http://www.bartleby.com/73/10.html>.

223. This quote is attributed to Dom Helder Camara in FRED KAMMER, *DOING FAITHJUSTICE: AN INTRODUCTION TO CATHOLIC SOCIAL THOUGHT* 156 (1991). For background on Camara, see Beatriz Lecumberri, *Brazil's Helder Camara, Champion of Poor, Dies at 90*, *AGENCE FRANCE PRESSE*, Aug. 28, 1999.

224. Men in authority will always think that criticism of their policies is dangerous. They will always equate their policies with patriotism, and find criticism subversive. HENRY STEELE COMMAGER, *FREEDOM AND ORDER: A COMMENTARY ON THE AMERICAN POLITICAL SCENE* (1966).

225.

If there is no struggle there is no progress. Those who profess to favor freedom and yet deprecate agitation, are men who want crops without plowing up the ground, they want

listen to criticism, because some of it is accurate and can help adjust our actions to achieve our goals.

#### *D. Continually Engage in Critical Re-education*

To live a life of radical change, we must continually and critically re-educate ourselves. Conventional education is not about independent or critical thinking. Rather, it reinforces the idea that there is nothing anyone can do to change this best of all possible worlds.<sup>226</sup> Part of the challenge of revolutionary thought is revolutionary re-education.

Independent and critical thinking is our job.<sup>227</sup> If we fail to do our job, no one will educate us about alternatives to the status quo, and no one will insist that we learn about alternative views. For example, corporate mainstream media has little interest in telling the truth about justice or in showing justice-based alternatives.<sup>228</sup> If all we do

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rain without thunder and lightning. They want the ocean without the awful roar of its many waters. This struggle may be a moral one, or it may be a physical one, and it may be both moral and physical, but it must be a struggle. Power concedes nothing without a demand. It never did and it never will.

Frederick Douglass, Speech Delivered at Canandaigua, New York: West India Emancipation (Aug. 4, 1857), reprinted in 2 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS 437 (Philip S. Foner ed., 1950), available at <http://www.bartleby.com/73/443.html>.

226. See FREIRE, *supra* note 205. Paulo Freire spends quite a bit of time discussing the failings of conventional education. It is the “banking” concept of education, where “knowledge is a gift bestowed by those who consider themselves knowledgeable upon those whom they consider to know nothing. Projecting an absolute ignorance on others, a characteristic of the ideology of oppression, negates education and knowledge as processes of inquiry.” *Id.* at 58. Freire goes on to state that “[t]he more completely [the students] accept the passive role imposed on them, the more they tend simply to adapt to the world as it is.” *Id.* at 60.

227. See RETHINKING GLOBALIZATION: TEACHING FOR JUSTICE IN AN UNJUST WORLD (Bill Bigelow & Bob Peterson eds., 2002). The book is accessible and includes many thought-provoking stories, cartoons and examples. My favorite is a cartoon of a small fish being pursued by a medium fish who is being pursued by a large fish. The small fish says, “There is no justice in this world!” The medium size fish says, “Sometimes there is justice in this world.” And the big fish says, “The world is just!” *Id.* at 73.

228. For example, consider the lack of mainstream coverage of a memo contradicting the U.S. version of how the invasion of Iraq came to be. See David Michael Green, *Downing Street: A Dead-End in American Media*, IN THESE TIMES, July 13, 2005, <http://www.inthesetimes.com/site/main/article/2252>.

For other examples, see Eric Alterman, *Lying Liars & the Presidents Who Employ Them*, NATION, July 18, 2005, <http://www.thenation.com/doc/20050718/alterman>; John Nichols & Robert W. McChesney, *FCC: It Could Get Worse*, NATION, Feb. 21, 2005, <http://www.thenation.com/doc/20050221/nichols>.



is read or watch mainstream news, we are not likely to hear very much about justice. We will, however, hear a lot about driving cars, drinking beer and staying slim.<sup>229</sup>

The Internet provides many opportunities for re-education, but it is up to us to seek them out and critically analyze them.<sup>230</sup> There are also social justice films and documentaries that can help.<sup>231</sup> Biographies of revolutionaries are often a great inspiration and can assist in real education.<sup>232</sup> Likewise, we should discover the real histories of social justice and revolutionary movements—these can be both inspiring and comforting as we realize the humanity of the organizing efforts involved.<sup>233</sup> It is no excuse to say that we are too busy engaging in social justice or revolutionary activity, because re-education will help ensure that the activities we engage in are just.

### *E. Community and Family Support*

A radical friend of mine, Daniel Berrigan, was asked, “Who are your heroes?” He replied, “I don’t believe in heroes, I believe in community.”<sup>234</sup> There is no such thing as the solo revolutionary or

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229. Read JEAN KILBOURNE, *CAN’T BUY MY LOVE: HOW ADVERTISING CHANGES THE WAY WE THINK AND FEEL* (1st Touchstone ed. 1999). Then watch television and think about what mass media actually sells us—women as objects, corruption of relationships, addiction, and violence. There is nothing about radical change—unless it is the new “American Revolution,” brought to us by Chevrolet.

230. See, e.g., Alternative Media Watch, <http://www.zmag.org/altmediawatch.htm> (last visited Feb. 21, 2006).

231. For some suggestions, see BLUEPRINT FOR SOC. JUST., Apr.–May 2005, available at [http://www.loyno.edu/twomey/blueprint/vol\\_lviii/No-08\\_AprMay\\_2005.pdf](http://www.loyno.edu/twomey/blueprint/vol_lviii/No-08_AprMay_2005.pdf).

232. As one wise student advised me: “Listen to the elders of other movements.” See ROBERT SHETTERLY, *AMERICANS WHO TELL THE TRUTH* (1st ed. 2005) (discussing numerous and diverse U.S. citizens from whom we could profitably learn).

233. This author has enjoyed learning from: TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954–63* (1988); TAYLOR BRANCH, *PILLAR OF FIRE: AMERICA IN THE KING YEARS, 1963–65* (1998); ADAM HOCHSCHILD, *BURY THE CHAINS: PROPHETS AND REBELS IN THE FIGHT TO FREE AN EMPIRE’S SLAVES* (2005); PAUL GORDON LAUREN, *THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: VISIONS SEEN* (2d ed. 2003); NONVIOLENT SOCIAL MOVEMENTS: A GEOGRAPHICAL PERSPECTIVE (Stephen Zunes et al. eds., 1999); LINDA RABBen, *FIERCE LEGION OF FRIENDS: A HISTORY OF HUMAN RIGHTS CAMPAIGNS AND CAMPAIGNERS* (2002).

See also the analysis of the civil rights movement, the anti-nuclear energy movement, the gay and lesbian movement, and the globalization movement in MOYER, *supra* note 210.

234. Panel with Daniel Berrigan at Loyola University New Orleans Institute for Ministry (Jan. 17, 1998).

solo activist. Anyone trying to live this life must have a supportive community.<sup>235</sup> For many, this will be family; for others, it will be close friends. These communities often change over time, but to engage in a life working with others for radical change, we must constantly create and engage in communities.

Families, life partners and close friends are important for the long haul. If the person closest to you does not share your values, you are in deep trouble. If all of your friends only watch SportsCenter or recreationally shop, you are in trouble. You must expand your circle and add some new friends. True justice-seeking friends and families not only support us, but also pull us into justice work.

We can only swim against the stream for so long if we try to do it alone. Psychologists have proven that it is extremely difficult for a person alone to resist even clearly unreasonable commands of authority.<sup>236</sup> The presence of even one person who dissents from an incorrect majority view will greatly enhance the ability of others to stand up for what they believe is correct.<sup>237</sup> The ability of one lone person to dissent against the conventional wisdom and to work for justice is more than most of us can handle, but with allies, our abilities and our opportunities expand dramatically.

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235. “We all need personal support networks, families and close friends, who can share our joys and sorrows. Developing close relationships requires time . . . . Strong relationships provide organizers with a base of support for sustaining themselves for the long haul and assistance in developing self-confidence.” BOBO, *supra* note 210, at 341.

236. See Ric Simmons, *Not “Voluntary” But Still Reasonable: A New Paradigm for Understanding the Consent Searches Doctrine*, 80 IND. L.J. 773 (2005) (describing the Milgram experiments). Professor Stanley Milgram conducted a series of experiments in the 1960s in which he asked volunteers to administer increasingly strong electric shocks to people who failed to answer questions correctly. Though the subjects evidenced incredible pain, apparently even fatal shocks continued to be given by person after person who followed authority and did as ordered. *Id.* at 802–04.

237. See Kenneth B. Davis, Jr., *Structural Bias, Special Litigation Committees, and the Vagaries of Director Independence*, 90 IOWA L. REV. 1305, 1318 (2005).

When asked to compare the length of a series of lines, subjects were induced to give clearly incorrect responses after a number of other perceived subjects (actually confederates of the experimenter) had done the same. When, on the other hand, a second unwary subject was added to the experiment or one of the confederates was instructed to give the correct answer, the level of conformity declined significantly.

*Id.* (describing the Solomon Asch study).

*F. The Preferential Option for the Poor and Powerless*

*Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest person whom you have seen, and ask yourself if the next step you contemplate is going to be of any use to that person. Will that person gain anything by it? Will it restore that person to a control over his or her own life and destiny? In other words, will it lead to freedom for the hungry and spiritually starving millions? Then you will find your doubts and your self melting away.*

—Mahatma Gandhi<sup>238</sup>

Liberation theology has given the community seeking radical change a wonderful gift by emphasizing a principle called the “preferential option for the poor.”<sup>239</sup> This is not a new thought, as the above Gandhi quote and many biblical verses attest, but it is a new description of an important way of thinking and acting. Advocates of liberation theology define all poverty as oppression, and call for all who seek to change the world to adopt a “preferential option for the poor.”<sup>240</sup>

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238. Mohandes Gandhi (Aug. 1947), in MOHANDAS GANDHI: ESSENTIAL WRITINGS 190–91 (John Dear ed., 2002).

239. The “preferential option for the poor” has been described as a challenge “to create conditions for marginalized voices to be heard, to defend the defenseless, and to assess lifestyles, policies and social institutions in terms of their impact on the poor . . . to strengthen the whole community by assisting those who are most vulnerable.” Univ. of Notre Dame, Ctr. for Social Concerns, An Introduction to the Principles of Catholic Social Thought, <http://centerforsocialconcerns.nd.edu/mission/cst/cst4.shtml> (last visited Feb. 21, 2006).

240. “So first we need to have direct knowledge of the reality of oppression/liberation through objective engagement in solidarity with the poor. This pre-theological stage really means conversion of life, and this involves a ‘class conversion,’ in the sense of leading to effective solidarity with the oppressed and their liberation.” LEONARD BOFF & CLODOVIS BOFF, INTRODUCING LIBERATION THEOLOGY 23 (1987); see also Gerald West, *The Bible and the Poor: A New Way of Doing Theology*, in THE CAMBRIDGE COMPANION TO LIBERATION THEOLOGY 131 (Christopher Rowland ed., 1999).

In other words, theologies of liberation require that we not only make “an option for the poor,” but that we also accept the epistemological paradigm shift in which the poor and marginalized are seen as the primary dialogue partners of theology. Theology begins with the reality, experience, needs, interests, questions, and resources of the

This justice perspective demands that we turn our world view upside down and look at fairness from the point of view of those billions who live at the base of the mountain. From the top, things look natural and inevitable. From the bottom, however, who would not question the inequality? Looking from the bottom, we easily see the racism, militarism and excessive materialism of those who are perched comfortably at the top.

Since we in the United States live at the top of the mountain, we are not naturally in a position to understand the perspective of those at the bottom. Therefore, we must continually re-educate ourselves about justice and injustice. The conventional wisdom from the top is that “we are doing all we can,” “things are much better than they used to be,” and “don’t worry about it; someone else is working on this right now.” True re-education is our job. A preferential option for the poor insists that we vigorously challenge the current social, economic, military and religious arrangements that teach us these false truths.<sup>241</sup>

It is incumbent upon us to seek out the voices of the poor and listen to them. The media is not going to do that for us. The view of the United States from Haiti, Sri Lanka, South Africa, or China looks quite different than the view from Washington, D.C. Likewise, the view of the United States from the perspective of inner-city underemployed or unemployed workers and their families, or from those in prisons or domestic violence shelters, is quite different than views from other perspectives.

[A]n option for the poor is not primarily the choice of a less-affluent life-style by individuals or groups. It is a commitment to resist the structural injustice which marks our world. The person who makes such an option is undertaking to work to change the unjust economic, social and political structures which determine how power and resources are shared out in the world . . . . An “option for the poor” . . . means a series of

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poor and marginalized.

*Id.* For more on this topic, see HENRIOT, *supra* note 107.

241. William P. Quigley, *Seven Principles for Catholic Law Schools Serious About a Preferential Option for the Poor*, 1 U. ST. THOMAS L.J. 128, 129 (2003).

choices, personal or communal, made by individuals, by communities, or even by corporate entities . . . . It is the choice to disentangle themselves from serving the interests of those at the “top” of society and to begin instead to come into solidarity with those at or near the bottom.<sup>242</sup>

Turn the world upside down and look at it from the perspective of workers, the poor and the international community. The rich and powerful think the current system works fine most of the time. Billions of others do not agree. We must engage in solidarity with those others to participate in the radical transformation that our world needs.

*G. Do Not Accept Reality—Particularly for the Future*

*Somewhere deep inside us we seem to know that we are destined for something better than strife. Now and again we catch a glimpse of the better thing for which we are meant—for example, when we work together to counter the effects of natural disasters and the world is galvanized by a spirit of compassion and an amazing outpouring of generosity; when for a little while we are bound together by bonds of a caring humanity . . . . when we sign charters on the rights of children and of women; when we seek to ban the use of antipersonnel land mines; when we agree as one to outlaw torture and racism. Then we experience fleetingly that we are made for community, for family, that we are in a network of interdependence.*

—Desmond Tutu<sup>243</sup>

If you work for radical change, people will frequently tell you that the future is already determined, and there is nothing anyone can do about it. Do not believe them. In the past, slavery was widespread

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242. DONAL DORR, OPTION FOR THE POOR: A HUNDRED YEARS OF VATICAN SOCIAL TEACHING 3, 4 (rev. ed. 1992).

243. Desmond Tutu, *No Future Without Forgiveness*, in THE IMPOSSIBLE WILL TAKE A LITTLE WHILE, *supra* note 213, at 394–95.

and legal; women were prosecuted and jailed for voting; domestic violence was an acceptable part of relationships; child labor was legal; labor unions were outlawed; only white men with substantial property could vote; there was no minimum wage; and the disabled were told to stay at home and hide away, as were gays and lesbians.<sup>244</sup> Everyone who worked to bring about those changes was told repeatedly that it was useless to organize for justice, that the present was the best that could be done under the circumstances, and that the powerful would never allow change.

Refuse to accept the reality of those who think that our future is pre-determined by the powerful and will never change.<sup>245</sup> Certainly never accept our current reality as the inevitable future. Accept no limits. Never let anyone tell you what you can achieve or who you can become. Challenge injustice even if you do not know the solution. Do not accept false choices—demand a third way.<sup>246</sup> Our choice is not between living a life of justice and starving, or selling-out and prospering. Demand and create another livable option. Moreover, our choice is not between merely accepting the situation, or making superficial reforms. We can insist on a third way in order to create a just system. As Dorothy Day said: “Our problems stem from our acceptance of this filthy, rotten system.”<sup>247</sup> Do not accept it, transform it!

244. See *THE TREE OF LIBERTY: A DOCUMENTARY HISTORY OF REBELLION AND POLITICAL CRIME IN AMERICA* (Nicholas N. Kittrie & Eldon D. Wedlock, Jr., eds., 1986) (documenting the struggles for suffrage, freedom, and civil rights).

245. “The secret weapon of Jesus and Gandhi, of Martin Luther King and Nelson Mandela, of Shirin Ebadi and Wangari Maathai, and of all great human rights activists, is simply the willingness to suffer loss after loss, again and again, until you win!” Letter from Fr. Gerard Jean-Juste to U.S. Ambassador to Haiti (Nov. 9, 2004), available at <http://www.aristide.org/articles/LetterHaitianJail.htm>.

246. Jean Bertrand Aristide recalls asking a four-year-old girl named Florence if the pool in which she was going to swim for the first time was big or small. She answered, “It is beautiful.” Later, when asked which she preferred, cola or rum, she responded firmly, “I prefer juice.”

When I presented two options, big or small, she created a third one. When I asked which she preferred, rum or cola, again Florence created a third choice. Florence is a child responding in a spontaneous way. But we adults thinking rationally—can’t we do the same? When presented with only two options, we can create a third way.

JEAN-BERTRAND ARISTIDE, *EYES OF THE HEART: SEEKING A PATH FOR THE POOR IN THE AGE OF GLOBALIZATION* 19–20 (2000).

247. Jim Forest, *What I Learned About Justice from Dorothy Day*, *SALT OF THE EARTH*, 1996, available at <http://salt.claretianpubs.org/issues/DorothyDay/learned.html>.

### *H. Create and Maintain an Interior Life*

*Many people are aware of the world's suffering; their hearts are filled with compassion. They know what needs to be done, and they engage in political, social, and environmental work to try to change things. But after a period of intense involvement, they may become discouraged if they lack the strength needed to sustain a life of action. Real strength is not in power, money or weapons, but in deep, inner peace.*

—Thich Nhat Hanh<sup>248</sup>

*We cannot do anything for peace without ourselves being peace. If you cannot smile, you cannot help other people smile. If you are not peaceful, then you cannot contribute to the peace movement. We know that our situation is very dangerous. A nuclear war can happen at any moment. Practicing meditation is to practice awareness of what is going on. Therefore, if we are aware, if we know what is going on, we will be peace and make peace, so that the worst may not occur.*

—Thich Nhat Hanh<sup>249</sup>

*The insistence that the oppressed engage in reflection on their concrete situation is not a call to armchair revolution. On the contrary, reflection—true reflection—leads to action.*

—Paulo Freire<sup>250</sup>

Have you ever seen a gerbil running furiously on a wire wheel? That gerbil illustrates the difference between action and progress. There is a tendency in working for change to get wrapped up in being active, even hyper-active, without actually making any progress.

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248. THICH NHAT HANH, *PEACE IS EVERY STEP: THE PATH OF MINDFULNESS IN EVERYDAY LIFE* 99 (1991).

249. Thich Nhat Hanh, *Being Peace, in PEACE IS THE WAY: WRITINGS ON NONVIOLENCE FROM THE FELLOWSHIP OF RECONCILIATION* 153, 156–57 (Walter Wink ed., 2000).

250. See FREIRE, *supra* note 205, at 52.

One important way to recognize the difference between action and progress is to create and maintain an interior life of reflection. Some people call this meditation, while others call it reflection, prayer, or yoga. Whatever you call it, people who want to change the world must have this interior life. Nelson Mandela gave the following advice about reflection while in jail:

You may find that the cell is an ideal place to get to know yourself, to search realistically and regularly the process of your own mind and feelings. In judging our progress as individuals we tend to focus on external factors such as one's social position, influence and popularity, wealth and standard of education . . . but internal factors may be even more crucial in assessing one's development as a human being: honesty, sincerity, simplicity, humility, purity, generosity, absence of vanity, readiness to serve your fellow men—qualities within the reach of every soul—are the foundations of one's spiritual life . . . At least if nothing else, the cell gives you the opportunity to look daily into your entire conduct to overcome the bad and develop whatever is good in you. Regular meditation, say of about fifteen minutes a day before you turn in, can be very fruitful in this regard. You may find it difficult at first to pinpoint the negative factors in your life, but the tenth attempt may reap rich rewards. Never forget that a saint is a sinner who keeps on trying.<sup>251</sup>

We must create inner peace in order to engage in purposeful action. Without inner peace and a true sense of direction, we spend much of our time reacting to outside influences and day-to-day distractions, instead of trying to achieve justice and peace. Life is hectic enough, and not dedicated to radical change. If we are going to find and build peace, love and understanding in this world, we must be prepared. A healthy interior life is part of our preparation to live as fully as we can each and every day.

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251. NELSON MANDELA, *MANDELA: AN ILLUSTRATED AUTOBIOGRAPHY* (1st ed. 1996).



### *I. Sustainable Living*

*[H]umanity's consumption and waste production today exceed the Earth's capacity to create new resources and absorb waste . . . We are, as a result, liquidating certain natural capital to support current resource use, thereby reducing the Earth's capacity to support future life.*<sup>252</sup>

Sustainability is a revolutionary principle because it assumes that every person has a right to enough of the world's resources to survive, and that no person has a right to take more than his or her fair share. This is a profoundly un-American idea, and it challenges every person and institution in the United States.

The United States represents less than five percent of the population of the world.<sup>253</sup> According to the U.S. Geological Survey, the United States consumed approximately 39% of the world's oil production, 23% of the world's natural gas production, and 23% of the world's coal production in 1998.<sup>254</sup> Europe and Japan consume less than half as much energy per person as the United States.<sup>255</sup>

Does the rest of the world wake up each day and say, "Let's give the United States an extra large helping of energy today, tomorrow and every day?" No. The unequal global distribution of resources is a justice issue. We must acknowledge that the current wealth of the

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252. MATHIS WACKERNAGEL ET AL., REDEFINING PROGRESS, ECOLOGICAL FOOTPRINT OF NATIONS, NOVEMBER 2002 UPDATE, at 8 (2002), available at <http://www.rprogress.org/publications/ef1999.pdf>. The Worldwatch Institute reports:

Calculations show that the planet has available 1.9 hectares of biologically productive land per person to supply resources and absorb wastes—yet the average person on Earth already uses 2.3 hectares worth. These “ecological footprints” range from the 9.7 hectares claimed by the average American to the 0.47 hectares used by the average Mozambican.

Worldwatch Institute, The State of Consumption Today, <http://www.worldwatch.org/press/news/2004/02/04> (last visited Feb. 21, 2006).

253. THOMAS M. MCDEVITT & PATRICIA M. ROWE, U.S. CENSUS BUREAU, THE UNITED STATES IN INTERNATIONAL CONTEXT: 2000, at 1 (2002), available at <http://www.census.gov/prod/2002pubs/c2kbr01-11.pdf>.

254. U.S. Geological Survey, U.S. Energy and World Energy Production and Consumption Statistics, [http://energy.cr.usgs.gov/energy/stats\\_ctry/Stat1.html](http://energy.cr.usgs.gov/energy/stats_ctry/Stat1.html) (last visited Feb. 21, 2006).

255. Allen R. Myerson, U.S. *Splurging on Energy After Falling off Its Diet*, N.Y. TIMES WEB, Oct. 22, 1998, <http://www.colorado.edu/Economics/morey/4545/auto/offdiet.html>.

United States is built in part on structural injustices around the world. We must acknowledge that the United States takes precious non-renewable resources from others—either by direct force or by unequal bargaining power.

Recall that over one billion people in the world live on less than one dollar per day, and that over two billion people live on less than two dollars per day.<sup>256</sup> Consider these facts about U.S. standards of living: as of 2003, there were more private cars than licensed drivers, and gas-guzzling sport utility vehicles were among the best-selling vehicles; new houses were 38% larger in 2002 than in 1975, despite there being fewer people per household on average; an estimated 65% of U.S. adults are overweight or obese, leading to an annual loss of 300,000 lives and at least \$117 billion in health care costs in 1999; in 2002, 61% of U.S. credit card users carried a monthly balance, averaging \$12,000 at 16% interest, and amounting to approximately \$1900 per year in finance charges—more than the average per capita income of at least thirty-five countries in purchasing power parity.<sup>257</sup>

Sustainability is a direct challenge to consumerism and materialism. We cannot live lives of affluence without profiting from an unjust distribution of resources. We as individuals and as institutions must change dramatically for a just distribution of global resources. This requires a transformation of personal, community, national and international standards and practices. We must look seriously at our lifestyles and institutions and radically modify them. True justice must address the local, national and global inequalities of poverty and wealth. The absence of sustainable living is another glaring example of why we must continually work for change.

### *J. Victory or Failure—Be Humble and Ready to Start over*

Whether there is victory or failure (and the revolutionary will have plenty of both), we must learn from our experiences and be ever-ready to start over. When we fail, we must take time to heal our

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256. See HUMAN DEVELOPMENT REPORT 2002, *supra* note 26.

257. See Worldwatch Institute, *supra* note 252. There are many ways to calculate how sustainable our individual lifestyles are. One of the most graphic is the ecological footprint. See Earth Day Footprint Quiz, [http://www.earthday.org/footprint/index\\_reset.asp?pid=5007745635675848](http://www.earthday.org/footprint/index_reset.asp?pid=5007745635675848) (last visited Feb. 21, 2006).

wounds and learn from that experience. When we succeed, we must celebrate with the community and savor the victory, so that it can sustain us in the struggles ahead. Being open to new ideas means that we must cultivate humility.<sup>258</sup> And, if you are like me, you have plenty to be humble about.

Finally, we must care for ourselves as well as the world and our community on this journey toward radical change. As the Buddha said: “You can search throughout the entire universe for someone who is more deserving of your love and affection than you are yourself, and that person is not to be found anywhere. You yourself, as much as anybody in the entire universe, deserve your love and affection.”<sup>259</sup>

#### SIGNS OF HOPE AND CONCLUSION

*I am convinced that if we are to get on the right side of the world revolution, we as a nation must undergo a radical revolution of values. We must rapidly begin the shift from a “thing-oriented” society to a “person-oriented” society. When machines and computers, profit motives and property rights are considered more important than people, the giant triplets of racism, materialism, and militarism are incapable of being conquered. A true revolution of values will soon cause us to question the fairness and justice of many of our past and present policies.*

—Martin Luther King, Jr.<sup>260</sup>

This Article begins and ends with Dr. King’s speech titled *Time to Break Silence*. It is time for lawyers to break silence and admit the profound changes that are necessary to bring about justice in this country and in this world. It is time for lawyers to switch sides and

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258. Bill Quigley, *Ten Ideas for Social Justice Organizing After September 11*, BLUEPRINT FOR SOC. JUST., Nov. 2001, available at [http://www.loyno.edu/twomey/blueprint/vol\\_iv/No-03\\_Nov\\_2001.html](http://www.loyno.edu/twomey/blueprint/vol_iv/No-03_Nov_2001.html).

259. SHARON SALZBERG, *LOVINGKINDNESS: THE REVOLUTIONARY ART OF HAPPINESS* 25 (1st ed. 1995).

260. See King, Jr., *supra* note 1.

work for justice, instead of continuing to labor at the disposal of those who pay us well to defend the injustices of current systems and institutions.<sup>261</sup> Thankfully, there are signs of hope for the vision of Dr. Martin Luther King, Jr.

In the United States, a grassroots coalition of immigrant farm workers fighting for better wages recently won a huge upset victory over a transnational corporation. They did so by organizing community, college and church groups nationwide.<sup>262</sup> In fact, state and local authorities have passed over 130 living wage ordinances in order to diminish the gap between work and poverty.<sup>263</sup> Many other local and campus-based living wage campaigns have been initiated,<sup>264</sup> in addition to movements that seek to raise the integrity of work and working conditions.<sup>265</sup>

Respect in the United States for international human rights is beginning to grow, often led by local initiatives.<sup>266</sup> Major human

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261. I must admit that some of these suggestions for radical change could be wrong. One never knows about the vitality of ideas until they are tested in action, but I am very confident that the problems identified here are real and demand radical revolutionary changes. Others may well have better ideas—indeed, I hope so.

262. See Coalition of Immokalee Workers, <http://www.ciw-online.org/news.html> (last visited Feb. 21, 2006) (describing the coalition's boycott of Taco Bell).

263. For examples of living-wage victories, see Living Wage Resource Center, Living Wage Successes, <http://www.livingwagecampaign.org/index.php?id=1958> (last visited Feb. 21, 2006).

Florida recently voted overwhelmingly for a raise in its minimum wage and voted to index the raise to inflation, lifting the wages of over 850,000 workers. Tyler Hauck, *Florida's Low-Wage Workers Get a Pay Raise*, DOLLARS & SENSE, May–June 2005, at 7.

264. ACORN's Living Wage Resource Center lists many local and university-based campaigns. See Living Wage Resource Center, Living Wage Campaigns Underway, <http://www.livingwagecampaign.org/index.php?id=1960> (last visited Feb. 21, 2006).

265. PHILOSOPHICAL AND SPIRITUAL PERSPECTIVES ON DECENT WORK (Dominique Peccoud ed., 2004) (collecting hope-filled perspectives from religious traditions such as Confucianism, Hindu, Buddhist, Islam, Jewish, Catholic, and Protestant).

266. See U.S. Human Rights Network, [www.ushrnetwork.org](http://www.ushrnetwork.org) (last visited Feb. 21, 2006); Human Rights First, <http://www.humanrightsfirst.org/index.html> (last visited Feb. 21, 2006) (formerly Lawyers for Human Rights).

There have been many local efforts to adopt and enforce international human rights protections in various cities. Examples include Berkeley's efforts to prevent human rights violations since 9-11, El Paso's protection of immigrants, and San Francisco's protection of the rights of women. See Ann Fagan Ginger, *Report of 180 Types of U.S. Human Rights Violations Since 9/11*, TRUTHOUT, July 8, 2005, [http://www.truthout.org/docs\\_2005/070805P.shtml](http://www.truthout.org/docs_2005/070805P.shtml); Jenkins & Cox, *supra* note 90.

rights organizations have emphasized human rights violations in the United States, thereby helping to encourage dialogue on the issue.<sup>267</sup>

There are even signs of hope in law schools. Law schools have expanded clinical programs that directly introduce students to justice issues and often directly challenge assumptions.<sup>268</sup> New human rights programs (including clinical programs) teach the basics of human rights to the next generation of lawyers. Law schools realize the necessity of loan-forgiveness programs, which enable highly-indebted graduates to undertake social justice work.<sup>269</sup> This is how we will rediscover the essence of justice.

There are enough lawyers in this world defending the way things are. Plenty of lawyers protect unjust people and institutions in our social, economic and political systems. Plenty of lawyers work for structures that perpetuate and increase the racism, militarism and materialism in our world. These lawyers are plentiful and well-compensated. True structural and fundamental change will not come by aiming at small revisions or reforms. If we are going to transform our world, we need lawyers willing to work with others toward a radical revolution of our world. We need no more lawyers defending the status quo. We need revolutionaries.

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267. Amnesty International and Human Rights Watch have started taking a much more aggressive stance for human rights monitoring in the United States. See Amnesty International's Human Rights Concerns, <http://www.amnestyusa.org/countries/usa/index.do> (last visited Feb. 21, 2006); Human Rights Watch, <http://www.hrw.org/> (last visited Feb. 21, 2006).

268. Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37 (1995).

269. See, e.g., American Bar Association, Loan Repayment and Forgiveness Overview, <http://www.abanet.org/legalservices/lrap/home.html> (last visited Feb. 21, 2006).