

# REBELLIOUS HEROES

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*This article invites readers to consider the role our childhood heroes and ideas of heroism play in shaping the lawyers we become. It interprets Gerald López's *Rebellious Lawyering* as a rejection of reigning views of heroism that society inculcates and law school reinforces. The article differentiates López's vision of lawyering from the client-centered approach, clarifying how lawyering can be client-centered, but not rebellious. The article responds to three main criticisms of the book—that it too harshly judges “regnant” lawyers, sets too high a standard for rebellious lawyers, and paints too rosy a picture of clients and communities. These critiques, the article argues, fail to appreciate that López aims to depict a model of practice toward which to aspire, one he recognizes none of us will consistently reach, but nonetheless hopes to entice some of us to pursue, as we work to remake our world.*

## I. CHILDHOOD HEROES

Have you ever stopped to think about your childhood heroes or sheroes and how they've shaped the person you've become? At first blush, mine may appear an idiosyncratic product of an unusual upbringing—or perhaps they may share important traits with yours.

I was born in Boston at the outset of the 1960s. After a short return with my parents to their native Italy, I grew up in New York City. More precisely, in Manhattan: briefly on the Upper East Side, mainly in Greenwich Village, later in a loft in SoHo. I attended a small, private, thoroughly conservative, all-boys school on the Upper East Side through ninth grade and then a large, public, predominantly Asian American, math-and-science “magnet” high school.

My parents were not typical Italian immigrants. My father was a hematologist and professor at NYU and Columbia, my mother a big-firm architect and later a professor and dean at City College of New York. In the same era depicted by *Mad Men*,<sup>1</sup> none of my classmates'

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<sup>1</sup> *Mad Men* was a period drama series that ran on the AMC cable television network depicting characters connected with a fictional Madison Avenue advertising agency from

moms worked outside the home, but many employed domestic staff to cook, clean, and watch their kids. Unlike my classmates' crew-cut dads, mine wore his hair in a ponytail, called himself a Marxist, took me to marches against the Vietnam War long before they became popular, and insisted we were and should always remain *Italian*, not American or Italian-American. He regularly excoriated the banality of U.S. culture (with chewing gum, popcorn, and peanut butter dispositive) and the ruthlessness of its military interventions and corporate capitalism.

Growing up, I heard stories of his father, a pharmacist and Italian Socialist Party member, who was routinely thrown in jail for a few days whenever Mussolini visited my family's hometown of Naples. My parents, children during World War II, told vivid stories of the war, especially the period when Germany occupied Italy. Their tales often recounted how the Nazis, when they weren't killing suspected partisans, sought to capture able-bodied Italian men to conscript into the German war effort. The stories celebrated occasions in which my relatives saved their men's lives by using their understanding of German soldiers' mentalities and practices to outsmart them or sheer bravery to slow their progress.

In one story, my paternal grandfather was in his pharmacy with his colleagues. Suddenly, they saw a platoon of German soldiers in *Kübelwagens* pull into the street. Almost instantaneously, my grandfather realized, correctly, that the only chance he and his friends had of surviving was to immediately close the pharmacy, walk right past the soldiers, and disperse to safety. They could and did because, as he surmised, the Germans would first organize themselves into formation and review their orders before rounding up Italian men.

In another story, my mom's twelve-year-old sister was in the central courtyard of their building when a German soldier entered. Knowing her father needed a warning and time to get into his hiding place in their apartment, she began immediately exclaiming at the top of her lungs "Heil Hitler! Welcome Mr. German Soldier! So good to see you, Mr. German Soldier!" Skipping over quickly to beat the soldier to the staircase leading from the courtyard up to their apartment, she continued talking loudly and slowly backpedaled up the stairs to delay his ascent—even as he drew his pistol and put it against her temple. By the time the soldier shoved her aside and barged into the apartment, my grandfather had safely hidden.

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1960 through 1970. For a discussion of its vivid depiction of White, male, heterosexual behavior, consciousness, and privilege, see William M. O'Barr, *Mad Men: Gender, Race, Ethnicity, Sexuality, and Class*, 11 *ADVERTISING & SOC. REV.* (2011), available at <https://muse.jhu.edu/article/407305> (last visited Sept. 1, 2016).

These stories became formative myths for me, conveying a set of deeper truths: Organized evil exists in the world. It must be bravely resisted or it will crush you and your loved ones. Success often requires outsmarting, or refusing to cower before, a seemingly all-powerful adversary.

Like all American kids of that era, my views were also shaped by television and popular culture. Perhaps it flowed from all the familial tales of Nazis, but I didn't find brute strength appealing. So even though he fought evil, Superman never grabbed my imagination; nor did Batman, Spiderman, or the Green Hornet. I did though have two TV cartoon heroes: Mighty Mouse (with his cry of "Here I come, to save the day!") and Underdog ("There is no need to fear—Underdog is here!").

At age six, I didn't recognize them as parodies and was oblivious to their retrograde gender politics. At about that age, when I heard and fell for "The Impossible Dream," the hit song from the musical, *Man of La Mancha*, I had no idea the main character (Don Quixote) was a comic figure, or that anyone could possibly doubt that fighting "unbeatable foe[s]" and righting "unrightable wrong[s]" was the code by which to live.<sup>2</sup> Saving the less fortunate, or those in danger, struck me as the only appropriate way for a hero to act.

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<sup>2</sup> Though I never saw the musical, between 1966 and 1970 the song, alternately titled "The Quest," played often on the radio, covered by Frank Sinatra, Jim Nabors, The Temptations, Andy Williams, Cher, and Roberta Flack. Its lyrics, written by Joe Darion, exclaim:

To dream the impossible dream,  
To fight the unbeatable foe,  
To bear with unbearable sorrow,  
To run where the brave dare not go.  
To right the unrightable wrong,  
To love pure and chaste from afar,  
To try when your arms are too weary,  
To reach the unreachable star.  
This is my quest,  
To follow that star—  
No matter how hopeless,  
No matter how far.  
To fight for the right  
Without question or pause,  
To be willing to march into hell for a  
Heavenly cause.  
And I know if I'll only be true to this  
Glorious quest  
That my heart will be peaceful and calm  
When I'm laid to my rest.  
And the world will be better for this,  
That one man scorned and covered with scars  
Still strove with his last ounce of courage[,]  
To reach the unreachable stars.

[http://www.wowzone.com/impossible\\_dream.htm](http://www.wowzone.com/impossible_dream.htm) (last visited Sept. 1, 2016).

In the late 1960s and early 1970s, before the Powell Memorandum's ideas were implemented<sup>3</sup> and the Reagan Revolution remade our political economy, the United States was a profoundly different society. Raised in that world, by age thirteen my heroes were a quartet of professed revolutionaries and a pair of athletes who fought and suffered for social justice. In order of my admiration, they were: Che Guevara, Fidel Castro, Jackie Robinson, Muhammad Ali, Malcolm X, and Huey Newton.

In my youthful eyes, these heroes were bold, courageous rebels who fearlessly acted on principle to defiantly confront and overturn an oppressive status quo. Each suffered greatly to usher in a new era. All were men of color, though Fidel and Che were racially privileged in Cuba and Latin America. Their tribulations—assassination attempts, surveillance, prosecution, death threats—entailed clashes with American racism and/or military-intelligence operations. All but Jackie were targeted by the U.S. government or state actors allied with it. Shaped by the ethos of the era and ubiquitous posters in Greenwich Village cafes and bookstores that romanticized revolutionaries, I saw these heroes as fighting injustice on behalf of oppressed masses to liberate them. What could be nobler or more exciting? They fought unbeatable foes and sought to right unrightable wrongs.

They fit Joseph Campbell's heroic "monomyth," the universal narrative core that he identified in all heroic tales.<sup>4</sup> They each embarked (at least metaphorically) on a perilous journey, encountered powerful challenges, and returned (or sought to return) triumphantly with a figurative "elixir" of freedom for their people, a "means for the regeneration of [their] society."<sup>5</sup>

My heroes were larger than life. I couldn't imagine emulating

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<sup>3</sup> See Lewis F. Powell Jr., Confidential Memorandum, Attack on the Free Enterprise System, to Eugene B. Sydnor Jr., Chairman of Education Committee, U.S. Chamber of Commerce, Aug. 23, 1971, available at <http://law2.wlu.edu/deptimages/Powell%20Archives/PowellMemorandumPrinted.pdf> (last visited Sept. 1). In the memo, written a few months before President Nixon appointed him to the U.S. Supreme Court, Powell urged major corporations and their supporters to invest substantial resources in a full-scale, long-term, multidimensional campaign to create and fund a plethora of pro-private-enterprise institutions (e.g., public interest law firms, think tanks, speakers bureaus, lobbying arms, and foundations) to challenge and reverse the jurisprudential and cultural dominance of liberal and left-of-liberal ideas and policy. For contrasting views of the memo's impact as a blueprint for the transformation of U.S. society, compare Charlie Cray, *The Lewis Powell Memo: Corporate Blue Print to Dominate Democracy*, <http://www.greenpeace.org/usa/the-lewis-powell-memo-corporate-blueprint-to-dominate-democracy/> (last visited Sept. 1, 2016) and Mark Schmitt, *The Legend of the Powell Memo*, *THE AMERICAN PROSPECT*, Apr. 27, 2005, available at <http://prospect.org/article/legend-powell-memo> (last visited Sept. 1, 2016).

<sup>4</sup> JOSEPH CAMPBELL, *THE HERO WITH A THOUSAND FACES* (3d ed. 2008) (1949).

<sup>5</sup> See *id.* at 29-30, 210-11.

them in anything but my wildest dreams. I was a shy, upper-middle-class, White boy. The closest things to hardship I directly experienced were my headmaster's taunts for my long hair or the oft-repeated pejorative stereotypes of Italians that several of my teachers and classmates voiced, as part of their routine practice of denigrating everyone and everything that wasn't Anglo-Saxon.<sup>6</sup> Indirectly, I saw the relentless abuse that my elementary school teachers and classmates heaped on my four classmates of color, incessantly telling them they were lucky to attend the school on scholarships and belittling their every perceived misstep as proof of their racial inferiority.

If my choice of heroes was unorthodox in many ways, and so plainly reflected my parents and the era's political leanings, the way I saw and understood my heroes was far more typical. I thought of them in much the same way that I imagine other Americans view heroes like Thomas Jefferson, John Adams, Abraham Lincoln, Frederick Douglass, William Lloyd Garrison, Harriet Tubman, Susan B. Anthony, Franklin Roosevelt, Thurgood Marshall, Martin Luther King, Cesar Chavez, or Ruth Bader Ginsburg. To admirers, these heroes were extraordinary individuals. They were brilliant, courageous, forward-looking. They sought justice for their people or for those less fortunate. They overcame, or at least put the fear into, powerful adversaries, and they toppled or pushed hard against oppressive institutions. They foresaw and built a new polity or society. Their moral clarity, intellect, strategic thinking, and force of will propelled them to celebrity and success. Their accomplishments benefitted long-suffering masses. They were leaders who acted wisely and successfully on behalf of their constituencies. They were the story of their times.

My view of heroes blended a quintessentially American frame of individualism and a European intellectual's valorization of a vanguard. My heroes were individuals on the cutting edge of political or social change, acting grandly on behalf of others to establish a new day. I saw them as acting primarily on their own to accomplish their goals. They did so by outsmarting or outperforming their adversaries. They may have had assistance, but their partners or allies were not in

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<sup>6</sup> The longevity of this anti-Italian prejudice and hostility to non-Anglo-Saxon backgrounds illustrates Ta-Nehisi Coates' insight that most people who today consider themselves White were once excluded (or their forebears were excluded) from that socially constructed category. See TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* (2015). For interdisciplinary explorations of how various groups of immigrants "became White," see NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* (1995); MATTHEW FRYE JACOBSON, *WHITENESS OF A DIFFERENT COLOR: EUROPEAN IMMIGRANTS AND THE ALCHEMY OF RACE* (1998); DAVID R. ROEDIGER, *WORKING TOWARD WHITENESS: HOW AMERICA'S IMMIGRANTS BECAME WHITE: THE STRANGE JOURNEY FROM ELLIS ISLAND TO THE SUBURBS* (2005).

the foreground of their stories. While their communities or constituencies reaped the benefits of my heroes' struggles, those beneficiaries played little role in the drama. Their constituencies were an abstraction or generalized mass, whom my heroes served, protected, inspired, led. If I noticed them at all, they were but a blur, far in the background. History was made by great men and women on behalf of their people. In my mental images, my heroes were always in close-up shots, dominating scenes and advancing the plot to its uplifting climax or tragic, premature denouement.

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As I grew up, went to college, and studied U.S. and Latin American history, I came to see and understand my childhood heroes—and the world—from new and varied angles. Shedding, or at least enriching, my youthful perspective, I saw significant human flaws and ideological blind spots in each of them. Most importantly, I gained a fuller appreciation of the contexts in which they operated and the role that widespread collective action played in creating the conditions in which these charismatic figures rose to prominence.

I came especially to appreciate the essential role of democratic (with a lower-case “d”) action and practice: the importance of social movements in which large numbers of everyday people negotiate how to stand up collectively for themselves and their communities. As I learned more about the period in which I grew up, for example, I became particularly enamored of the early days of SNCC (the Student Nonviolent Coordinating Committee) and its under-publicized *fundis* or teacher, Ella Baker, and her prize pupil, Bob Moses.<sup>7</sup> I came to realize too that the mass movement for racial justice in which so many participated (including Jackie, Malcom, Huey, and Muhammad Ali) was not simply or primarily a “civil rights” struggle, but a struggle for freedom, equality, and liberation.

When I went to law school in the 1980s, I felt suddenly thrust back into a worldview eerily similar to that of my youth and adolescence. I was immersed in a mentality that again assumed that change is created by a heroic vanguard, by giants who prevail through the

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<sup>7</sup> See JOANNE GRANT, *ELLA BAKER: FREEDOM BOUND* (1998); ROBERT P. MOSES & CHARLES E. COBB, JR., *RADICAL EQUATIONS: CIVIL RIGHTS FROM MISSISSIPPI TO THE ALGEBRA PROJECT* (2001); CHARLES M. PAYNE, *I'VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE* 67-102 (1995); BARBARA RANSBY, *ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION* 237 (1998); LAURA VISSER-MAESSEN, *ROBERT PARRIS MOSES: A LIFE IN CIVIL RIGHTS AND LEADERSHIP AT THE GRASSROOTS* (2016). For my previous discussion of Ella Baker and SNCC, see Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 *CLINICAL L. REV.* 541, 587-95 (2006).

force of their ideas and will. This time, the vanguard were lawyers and judges, rather than revolutionaries. I was enmeshed in a mindset that again focused on individual, larger-than-life heroes. It was a law-centered, lawyer-centered, and judge-centered outlook that lionized the strategic brilliance of legal architects of meticulously planned impact litigation<sup>8</sup> and lauded the insight and courage of judges who advanced the law.

Law school seemed invariably to equate judicial decisions with social change, and it acted as if the only power that matters is the power of well-crafted ideas. It was a return to a view that historic change is made by great men and women acting wisely on behalf of voiceless, or at least inert, masses. (Indeed, even among my student peers interested in “public interest” law, most expressed a strong desire “to be the voice for the voiceless.”) In those rare instances when the beneficiaries of heroic legal action by their lawyer-champions were mentioned, they were described as downtrodden, overwhelmed, or mystified.<sup>9</sup>

Even when the centrality of law and lawyers was not conveyed by extolling judges and impact litigators, law school celebrated the lawyers who were the heroic architects of such eras and programs as the New Deal, the War on Poverty, the modern Civil Rights Acts. All technically brilliant. All working on behalf of those who cannot speak for themselves, much less design what they legally need. All creating the legal structures presumed to change everyday social life.

It is this mentality—of lawyers as heroic vanguard—that Jerry López so powerfully shattered twenty-five years ago in *Rebellious Lawyering*.<sup>10</sup> Thank goodness! In its place, he provided a radically different lens that reveals a world populated by a myriad of everyday, life-sized heroes—some of them lawyers, some activists, some neither.

## II. THE REBELLIOUS VISION OF LAWYERING

In *Rebellious Lawyering*, López critically examines the prevailing, “regnant” (i.e., reigning) approach to progressive legal practice and proffers in its place a richly detailed and layered vision of an alternative, “rebellious” practice. He defines rebellious work as any deliberate, concerted effort to fight the subordination of people of color, of

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<sup>8</sup> For a powerful, insider’s view of this mentality today, see Martha L. Gómez, *The Culture of Non-Profit Impact Litigation*, 23 CLINICAL L. REV. (forthcoming 2017).

<sup>9</sup> See PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 155-56 (1991) (noting recurring depictions of clients’ naiveté, powerlessness, helplessness and voicelessness, especially by their advocates).

<sup>10</sup> GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

immigrants, of low-income, working-class, LGBTQ or other marginalized people or communities. By subordination, he means a set of relations, systems, and material conditions in which those with power, status, and presumed knowledge lead and dominate—and those without are expected to follow, obey, and accept their plight.

The rebellion in rebellious lawyering is against subordination itself, in all its manifestations. The central aim is to consciously resist every practice, every system that treats some as superior and others as subordinate. It is a call to ensure that our means are consistent with our ultimate aims. López urges us not to accept, acquiesce to, or unwittingly reinforce the notion that some people and groups are unable to contribute meaningfully to efforts to change their own lives and our society. He insists the fight against subordination requires the active participation (and often collective action) of subordinated people and groups themselves. It can't be effectively waged only on their behalf by enlightened elites or heroic champions. Successful resistance typically also requires collaborating with as many allies as we can productively enlist.

As López reveals in his autobiographical introduction to the book, these issues are personal. He recounts how he, his family, and fellow residents in East Los Angeles were disappointed by the self-styled “radical” lawyers who entered their community in the 1960s and early 1970s. Those attorneys professed an interest in fighting for the Latino community, but wound up treating residents much as other Anglo outsiders did; they showed little interest in or appreciation for community members' individual and collective efforts to combat their own subordination and ultimately had little impact on their lives.<sup>11</sup> From the outset, he makes plain that he judges lawyers, as clients do, on their actions, not their motivations. This strong identification with clients and communities is a distinguishing feature of his work. It often challenges those readers predisposed to see from the perspective of legal professionals.

Like most path-breaking work, *Rebellious Lawyering* aims to reveal and shake the foundations of prevailing orthodoxy in order to replace it. It challenges rather than reassures its audience. It upends prevailing prestige hierarchies among public interest lawyers<sup>12</sup> (a term it consciously avoids), questions the efficacy of much impact litigation

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<sup>11</sup> See LÓPEZ, *supra* note 10, at 1-3.

<sup>12</sup> For a discussion of prestige hierarchies within social justice lawyering, see Susan D. Carle, *Re-Valuing Lawyering for Middle-Income Clients*, 70 *FORDHAM L. REV.* 719, 729-40 (2001). For a history of the genesis and rise of “public interest” lawyers in the 1970s, supplanting self-styled “radical” lawyers, see Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 *CLINICAL L. REV.* 109, 139-42, 148-56 (2009).



as conventionally practiced, and valorizes instead some lawyers who work “closer to the ground,” often in direct services practices others dismiss as mundane and intellectually unchallenging. López focuses on how lawyers’ approach to their work impacts subordinated clients and communities. He urges us to treat clients and communities as full-fledged partners in efforts to reshape the world and change the power dynamics in which they live. He insists that progressive lawyers must change the way we see and perform our work—if we are serious, as he assumes we must be, about changing our society.

In telling detail, López depicts an array of heroes cut from wholly different cloth, who embody his vision of rebellious practice. The fictionalized lawyers and activists he celebrates in his book—an amalgam and extension of actual people he has encountered<sup>13</sup>—share at least five habits of heart and mind:

- They are grounded in and connected to the communities they serve and committed to learning from and with them. Rather than presuming they are smarter or more knowledgeable than subordinated people, they appreciate the intelligence, insights, and skills of all those with whom they work. They don’t view subordinated people or communities as helpless, overwhelmed, or duped. Instead, they see them as insightful (but not omniscient) partners, capable of acting effectively on their own behalf and in concert with others. They act with, rather than for, clients and communities.
- They are tenaciously committed to implementing their ideals and vision of the world they seek to create. They act on those ideals through their work and in their workplaces. They don’t give up easily, scale back their ambitions, or resign themselves to minimal impact. They pick themselves and their partners up after defeats. They recognize and value victories small and large. They continue forward, changing their methods, but never their central aim to resist subordination. They prefigure the egalitarian world they seek to create by acting as if it were already in place.
- They are perceptive, curious, and keen observers. They listen intently and watch carefully, noticing the unspoken and under-appreciated. They focus first and foremost on under-

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<sup>13</sup> López explains:

I don’t name real people or depict actual struggles: *Everything* I describe is fictional. But I do draw on my observations of and my work with a wide range of people, groups, institutions. . . . [B]y using imagined characters and storylines, I try to extend the boundaries of, nearly as much as I try to report, all that I so much admire.

LÓPEZ, *supra* note 10, at 8 (emphasis in original).

standing, before they seek to persuade. They don't crave the limelight; they operate comfortably in the background. Rather than playing a vanguard role, they look for, find, and encourage others' individual and collective efforts to change their circumstances. They strive to partner with clients and communities, rather than to speak for them.

- They critically and rigorously reflect on their and others' work and adjust tactics and strategies based on sober assessments of successes and failures—assessments in which their clients and allies join. They resist routinization, never clinging to “the way things are done here,” ever open to trying out new approaches. They are quintessential evidence-based practitioners.
- They pay attention to macro-level theoretical ideas from diverse disciplines that explain the systems and contexts in which they and their partners find themselves. “Fancy ideas” about the intimate relationship between the political economy and law pervade their everyday efforts to understand and to persuade. At the same time, they attend assiduously to micro-level details of implementation. They notice and navigate, for example, uncomfortable gender, class, race, and LGBTQ divides.

Although some find López's rebellious characters too good to be true or impossible to emulate, they strike me as thoroughly life-sized. Most of us, if so inclined, could realistically aspire to adopt their basic inclinations and approaches. We need not be geniuses, nor once-in-a-generation, visionary heroes.

López uses his characters' observations, journals, memos, and questions to lead his readers to pay close attention to the details of *how* lawyers (and other activists) conceive, structure, and actually implement their practices—and to the sort of world those practices either recreate or reinvent. He urges lawyers interested in altering the status quo to pay close attention to how we conceive our role, with whom we work, and how we interact with others—because the prevailing model of what a lawyer does is more likely to recreate than to upend existing social conditions. True social change is not a new set of progressive policies or laws, but rather a new set of power relationships in which no one is relegated to subordinated status.

Because the book has been out of print for many years, I offer an overview of each of its chapters. I hope to encourage those who have not read it, or not read more than its opening chapter, to track down a

copy.<sup>14</sup> This overview reminds us that the bulk of the book is devoted to showcasing rebellious practice, rather than merely critiquing regnant lawyering.<sup>15</sup> Through evocative novelistic methods, López reveals how rebellious practice emerges entangled with the top-down, elite-driven, regnant vision that he sees pervading our social, political, economic, and legal realms (and efforts to reform them).

In Chapter One, López describes his “Rebellious Idea of Lawyering Against Subordination.”<sup>16</sup> Through the eyes of Catherine, a third-year law student trying to decide where and how to enter the field, López introduces readers to snapshots of three regnant lawyers and two rebellious ones. The regnant lawyers—Teresa, an impact litigator, Abe, a partner in a union-side labor law firm, and Jonathan, a housing attorney in a legal aid office—work primarily alone on cases *on behalf of* their clients. They don’t pay much attention to what clients (or other problem-solvers in their community) might contribute to solving their own problems. And they don’t examine whether or how the results they deliver to their clients actually penetrate and change their lives. The rebellious lawyers—Sophie, a young White immigration attorney for a community law office and Amos, a middle-aged African American director of a neighborhood non-profit—eschew isolation. They strive to work *with* rather than *for* their clients. They tenaciously seek out potential allies—people and groups within the local community, as well as politicians, foundations, journalists, and academics.

López articulates a sophisticated theoretical underpinning for his expansive view of lawyering as a form of problem-solving through persuasive storytelling in which everyone engages daily.<sup>17</sup> Rejecting law school’s insistence that “thinking like a lawyer” is a radically different and better way to think, he casts professional lawyering as one specialized instance of what we all do whenever we seek to convince someone to accommodate our own needs or desires (or those of a family member, friend or acquaintance). Indeed, an early working title of his book was “Everyone Here Lawyers.”<sup>18</sup>

Also at the heart of his vision is the conviction that people in

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<sup>14</sup> At the opening plenary session on *Rebellious Lawyering* at the AALS Clinical Section Conference on April 30, 2016, in Baltimore, Maryland, electronic polling of the audience of clinicians indicated that 64% of 263 respondents had never read the book, 15% had only read its opening chapter, and 21% had read most or all of it. (Results on file with author.)

<sup>15</sup> See *infra*, note 46.

<sup>16</sup> LÓPEZ, *supra* note 10, at 11-82.

<sup>17</sup> He distills here his ground-breaking article, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984), in which he drew heavily from then-emerging cognitive theory.

<sup>18</sup> See Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 2, n.1 (1989).

subordinated positions and communities are not powerless, passive victims, who submit “belly up” to those who would dominate them. Instead, he stresses the everyday coping skills and knowledge—particularly of their “superiors” and the reality of the systems in which they operate—that subordinated people use to survive. López argues there is a vital need for *both* lawyers’ and clients’ knowledge and skills; he insists that lawyers’ and clients’ knowledge must inform each other. Lawyers and clients must join together—often in collective efforts with others—to change societal power dynamics and to make and preserve lasting change.

In Chapter Two, “A Non-Profit Law Office in Transition,” he turns his gaze to a community law office and the efforts of its experienced, interim executive director, Lucy Fung, and a young staff attorney, Helen Padilla, each striving to reinvigorate and reorient the office’s practice.<sup>19</sup> Through Fung’s wise eyes, López leads readers to recognize the significance of a receptionist’s impact on clients and the tone of an office, of lawyers’ interviewing styles and structures, of their file maintenance and fact investigation practices, and of their role conceptions and staff meetings. Through Padilla and her detailed memos, we see the challenges of trying to reorient one’s lawyering in a rebellious direction—and of convincing skeptical co-workers to entertain, let alone implement, a new vision of practice.

Chapter Three, “A Young Lawyer in a Small For-Profit Law Firm,” explores the work of Martha Fisher, another promising young attorney, this time in a small, private, civil rights firm. Her client is a Latino restaurant owner in a small Anglo-run town, who recounts how town officials are subjecting him and his customers to racially-motivated harassment.<sup>20</sup> Painting in shades of grey, López presents Fisher as an “emerging” rebellious lawyer, feeling her way toward rebellious practice, but often falling into regnant habits or unintentionally reinforcing regnant expectations. Through glimpses of her interviews with her client, her legal analysis and case planning, her creation of a fact development plan, work with a professional investigator, and improvisation of responses to unexpected case developments, López probes the effective scope and limits of U.S. civil rights law, the efficacy of rights discourse, and the opportunities and challenges of integrating litigation and community mobilization.

In Chapter Four, “A Lay Lawyer at Work,” he explores the work of an experienced community housing activist, Etta Johnson, through

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<sup>19</sup> See LÓPEZ, *supra* note 10, at 83-165.

<sup>20</sup> See *id.* at 167-273. The chapter had previously been published as Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEORGETOWN L.J. 1603 (1989).

the eyes of Dan Abrams. Abrams, another young, rebellious attorney at the Community Law Office, selects Johnson as his mentor because he is deeply impressed by the deftness with which she mobilizes tenants for key political battles, drafts ordinances to protect canvassing and gets them passed, and enhances her own and fellow tenants' knowledge of their local rent law and how to use it effectively.<sup>21</sup>

López turns in Chapter Five, "Beyond Orthodox Organizing," to the work of professional community organizers.<sup>22</sup> His point is not to endorse organizing as the best way to make progressive social change. He seeks instead to show that its effectiveness and political valence depends on how it's practiced, on how its details express one political vision or another. In the chapter, Carlos Leonard, an experienced organizer, comments on a job application in which an anonymous young organizer juxtaposes two different accounts of the same type of organizing campaign (setting up a one-day, medical screening clinic for the Brown Lung Association). The latter version illustrates a far deeper appreciation of interpersonal and institutional context. The fictional job application and the chapter tellingly illustrate that like lawyering, organizing too can be pursued rebelliously or regnantly. For López, there is no practice—including organizing—inherently more radical than any other. What matters is how we define and routinely pursue our work with others.

### III. A RADICAL ALTERNATIVE TO CLIENT-CENTEREDNESS AND TRADITIONAL HEROISM

How does rebellious lawyering differ from the client-centered approach that figures so prominently in the discourse of law school clinics? How do the two visions compare to law school and the profession's implicit model of lawyers as champions or heroes?

You may wonder why I ask how rebellious lawyering differs from client-centered lawyering. In *Rebellious Lawyering*, López explicitly targets a wide audience, everyday people as much as lawyers, contrasting his rebellious vision with the regnant approach to problem-solving, never mentioning this or that formulation of clinical skills training. And others already have taken aim at client-centeredness in powerful and provocative ways. Most prominently, Ann Shalleck, in a stunningly insightful 1993 essay (influenced in part by López's and Lucie White's work), explicitly and forcefully confronted client-centered-

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<sup>21</sup> See LÓPEZ, *supra* note 10, at 275-329. For a wonderfully astute exploration and interrogation of the chapter, see Daria Fisher Page, *Etta and Dan: Seeking the Prelude to a Transformative Journey*, 23 CLINICAL L. REV. \_\_\_\_ (2016).

<sup>22</sup> See LÓPEZ, *supra* note 10, at 331-79.

ness.<sup>23</sup> Shalleck's work is a masterpiece. Her challenge to client-centeredness should be required reading in every curriculum that invokes the term.

Still, I ask how rebellious lawyering differs from client-centered lawyering because, in my experience, client-centeredness remains the unexamined "default setting" for so many clinicians. Something deeper than the market share of the original book drives this allegiance. First published at a time of political tumult, outside and within legal education, David Binder and his colleagues' depictions of client-centeredness<sup>24</sup> harken back to a time when lawyers' work and training could be understood as professional through-and-through, neutral, and anti-ideological, tacitly insisting that the social, economic, political, and legal realms do not overlap, intersect, or inevitably define one another. And yet their ideas simultaneously challenge lawyers to explore emotional and relational dimensions of clients' lives that the profession long ignored. Client-centeredness continues to make many feel good about the world, their training, and practice, even if—and perhaps because—it overlooks the deeply fractured and divergent settings in which subordinated clients and their lawyers work and live.

#### A. *Client-Centeredness*

Answering how rebellious lawyering differs from client-centered practice is complicated primarily by the vagueness in what constitutes client-centered lawyering. Over time, Binder and his changing set of co-authors have significantly revised one of its central tenets (of lawyer neutrality).<sup>25</sup> Client-centeredness is widely taught by law school

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<sup>23</sup> Ann Shalleck, *Constructions of the Client in Legal Education*, 45 STAN. L. REV. 1731, 1742-52 (1993).

<sup>24</sup> David Binder and Susan Price published their original book in 1977. DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977). Binder and Price were joined by Paul Bergman in 1991 and retitled their work. DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991) [hereafter BINDER ET AL. 1991]. In the second edition of that book, they were joined by Paul Tremblay. DAVID A. BINDER, PAUL BERGMAN, SUSAN C. PRICE & PAUL R. TREMBLAY, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (2d ed. 2004) [hereafter BINDER ET AL. 2004]. In its third edition, Ian Weinstein replaced Susan Price. DAVID A. BINDER, PAUL BERGMAN, PAUL R. TREMBLAY & IAN S. WEINSTEIN, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (3d ed. 2011) [hereafter BINDER ET AL. 2011].

For a cogent summary of its original core principles and exploration of the historical context within which Binder and Price developed their vision, see Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 376-385 (2006).

<sup>25</sup> Binder and his colleagues' stance on the permissibility of lawyers' giving clients advice (*i.e.*, answering the question "what do you suggest I do?") or challenging clients' decisions has shifted dramatically over time. In the initial volume in 1977, Binder and Price insisted that lawyers should steadfastly refuse to advise clients. BINDER & PRICE, *supra*

clinical programs in the U.S., some using Binder's text, many not. As scholars have noted, despite or perhaps because of the ubiquity of the term, there is no clear consensus on what client-centeredness means.<sup>26</sup> Its hegemony has led it to be individually adapted by the myriad clinical legal educators who use the term and recognize their lawyering in the concept.<sup>27</sup> In each individual adaptation, different aspects are highlighted, downplayed, ignored, stretched, grafted on, re-shaped, and re-imagined.

Despite the term's many interpretations, it is possible to identify at least one core value at the heart of most clinicians' understanding of client-centeredness: ensuring clients' autonomy,<sup>28</sup> especially in decision-making and especially against encroachment by their lawyers. Client-centeredness focuses on ensuring that lawyers do what their clients truly want, that they fully understand clients' needs and priorities, explore with them the likely ramifications of different steps they might take on their behalf, and encourage them to make key decisions to guide the legal work on their cases. A central justification for this approach is that clients best know their own desires, interests, and risk tolerance and they are the ones who will live with the consequences.<sup>29</sup>

The primary attention of client-centeredness is on the lawyer-client dyad and ensuring that lawyers pursue clients' interests and desires, rather than their own. Its aim is to cabin lawyers' power and influence vis-à-vis their clients. It counters the traditional vision of lawyering in which attorneys use their training, experience, and superior judgment to decide which strategies and tactics are in their clients'

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note 24, at 186. The 1991 volume abandoned the absolute proscription on advice-giving, but insisted lawyers must give advice based on their understanding of clients' values and priorities, not their own. BINDER ET AL. 1991, *supra* note 24, at 21. The most recent volume, using the second adjective pejoratively, characterizes the original 1977 position as an incorrect, "radical" interpretation of client-centeredness. BINDER ET AL. 2011, *supra* note 24, at 335. It now frames client-centeredness as simply delaying advice-giving until one is sufficiently familiar with clients' "objectives, concerns, and values" to ensure that advice given reflects "clients' best interests and values." *Id.* It also now encourages client-centered lawyers to feel free to ask clients to reconsider choices that contravene the attorney's moral beliefs. *Id.* at 339-41.

<sup>26</sup> See Kruse, *supra* note 24, at 371, also citing DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 51 (2002).

<sup>27</sup> At the ceremony bestowing on Binder the 2006 William Pincus Award for outstanding contribution to clinical legal education, Stephen Ellman commented, "we are all client-centered lawyers now," even if we each have a different interpretation of the concept. Ascanio Piomelli, *Cross-Cultural Lawyering by the Book*, 4 HASTINGS RACE & POV. L.J. 131, 137, n.19 (2006).

<sup>28</sup> See Kruse, *supra* note 24; BINDER ET AL. 2011, *supra* note 24, at 4 ("Underlying client-centeredness is the philosophy that clients are autonomous and therefore deserving of making important decisions that lead to resolution of their legal problems and the achievement of their goals.").

<sup>29</sup> See BINDER ET AL. 2011, *supra* note 24, at 4-8.

legal and rational best interest.<sup>30</sup>

Some students and clinicians consequently perceive “client empowerment” as a central aim of client-centeredness. Empowerment is not a term I use or find helpful.<sup>31</sup> But to the extent it has utility and meaning for others, it is important to recognize that we are primarily referring to a voluntary delegation of decision-making authority by client-centered lawyers to their clients. Others see enhancing client voice as central the client-centered approach. That enhanced voice is directed to the lawyer’s ears. The aim is to improve the information flow between attorney and client, to ensure they are on the same page, to ensure the attorney-agent acts as the client-principal desires.

Arising in part from the neutral, universally applicable, professional “skills” focus from which it arose, client-centeredness typically presents itself as apolitical.<sup>32</sup> It does not proffer any explicit vision of our society, political economy, or even the legal system. Implicitly, though, it seems to presume that our legal system typically provides meaningful and effective remedies, so long as lawyers and clients attend to legal interventions’ possible adverse “non-legal” consequences—most typically on clients’ relationships with others. Binder and his colleagues cast the legal realm as the lawyer’s primary domain of action and the “non-legal” as the client’s realm, with little discussion of the interplay between them.<sup>33</sup>

In these respects, client-centeredness does not break with law school and the profession’s image of lawyer as champion or traditional hero. The client-centered lawyer is still the primary actor, the protagonist who enters the fray, skillfully faces adversaries, and delivers results at the client’s behest.<sup>34</sup> Client-centeredness seeks to ensure that the lawyer is no longer Don Quixote, charging off on behalf of others who have not asked him to act on their behalf or signed off on his plan. But it still presumes that the now well-informed and well-instructed lawyer acts on behalf of her client in the legal realm as a

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<sup>30</sup> *Id.* at 4.

<sup>31</sup> See Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 472, n.218 (2000) [hereafter Piomelli, *Appreciating Collaborative Lawyering*]; Ascanio Piomelli, *Foucault’s Vision of Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395 (conceptualizing power as a continually shifting dynamic within relationships, rather than a resource that can be held or transferred from one party to another) [hereafter Piomelli, *Foucault’s Vision*].

<sup>32</sup> See, e.g., BINDER ET AL. 2011, *supra* note 24, at 3 (touting client-centered counseling as neutral, universally applicable method for helping any client achieve any goal or solve any problem).

<sup>33</sup> See Shalleck, *supra* note 23, at 1744-46.

<sup>34</sup> The terrain of battle, in litigation matters, is the legal realm, particularly the court or administrative system. In transactional contexts, the expectation is that lawyers will craft legal instruments and entities that fulfill the aims their clients set.



solitary expert, guide, and champion. Client-centeredness offers a softer, more responsive, interpersonally astute, and emotionally attuned interaction with clients—certainly compared to López’s most widely known regnant characters, Theresa and Jonathan. But it does not constitute a rejection of regnant practice.

### *B. Contrasting Visions Of Clients, Society, Aims, Roles, And Realms*

Rebellious lawyering represents a radical, alternative approach<sup>35</sup> to lawyering and the traditional model of heroism that law school inculcates or reinforces. Rebellious lawyering doesn’t mask its politics. As I’ve elaborated at length, a participatory democratic vision lies at the core of the rebellious approach.<sup>36</sup> López views rebelliousness not simply as an approach to lawyering, but a full-fledged philosophy and way of life.<sup>37</sup> Its primary concern—fighting subordination side-by-side with communities—flows from a political analysis of our society and diagnosis of the central aspect we must challenge. Rebellious lawyers differ from client-centered lawyers in how they understand clients and our society, the relationships and roles they seek, and the realms in which they operate.

#### *1. Autonomous Individuals vs. Connected Members Of Communities That Resist*

Client-centered lawyering views clients as *autonomous individuals*<sup>38</sup> operating in a world that is not necessarily seen as systemically unjust. Client-centeredness doesn’t call on lawyers to seek out similarly situated others or to consider third parties, unless clients explicitly value their connection with them.<sup>39</sup>

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<sup>35</sup> In an earlier article, I referred to client-centeredness as a “theoretical antecedent” of what I then called collaborative lawyering and now call democratic lawyering—conceptual tents under which rebellious lawyering prominently fits. See Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 31, at 433, 436-38. I intended antecedent solely in its temporal meaning, identifying client-centeredness as a model that predated what I characterized as a new vision of practice. *Id.* at 438. Client-centeredness was not a stepping stone to or jumping off point for rebellious or democratic lawyering. The aim was not to tweak or improve client-centeredness, but to devise a new conceptual model for the progressive lawyer’s work.

<sup>36</sup> See Piomelli, *supra* note 7; Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 *FORDHAM L. REV.* 1383 (2009).

<sup>37</sup> See Gerald P. López, *Living and Lawyering Rebelliously*, 73 *FORDHAM L. REV.* 2041, 2042 (2005) (characterizing reigning and rebellious approaches as “about how to live and work”). For a discussion of John Dewey’s view of democracy as a way of life, see Piomelli, *supra* note 7, at 567-70.

<sup>38</sup> See Piomelli, *supra* note 36, at 1397-99.

<sup>39</sup> Client-centered lawyering has historically been heavily criticized, prominently by Robert Cochran and Thomas Shafer, for its failure to consider potential impacts on third

Rebellious lawyers view and treat clients as connected (or connectable) *members of communities* with shared experiences. They see these communities as resisting, even if fitfully and imperfectly, an unjust social order that is riven by subordination. Rather than aiming primarily to maximize individual autonomy, rebellious lawyers often highlight and seek to strengthen relations of interdependence and cooperation with others. The rebellious vision strives to assist individual clients and, simultaneously, strengthen community and collective capacity to act in concert with others.<sup>40</sup> The goal is horizontal connection with others to achieve shared aims.

## 2. *Technically Skilled Service Vs. Joint Political Action*

Client-centered lawyering primarily focuses on the individual lawyer-client relationship and the effective resolution of a particular case or transaction. It is a blueprint for improving lawyers' technical skills, especially in interviewing and counseling, to provide optimal service to clients.

Rebellious lawyers view their lawyering as political action that both constitutes and goes beyond skilled service. Rebellious lawyers' fundamental aim is to fight subordination and the institutionalized inequality it manifests and sustains. Because they see subordination as pervading our society and political economy, the lawyer-client relationship is but one of many they seek radically to reform. The path to that change, to a world in which all are treated as true equals, is through joint, concerted action by political equals.

## 3. *Perfecting The Principal-Agent Relationship Vs. A Collaboration Of Engaged Partners In Multiple Realms*

Client-centeredness is fundamentally about ensuring clients' decision-making on issues that substantially impact their cases or lives.<sup>41</sup> It aims to enable clients to make informed decisions about how their attorneys should best handle their cases for them. At its heart, it seeks to perfect the principal-agent relationship, in which the agent-lawyer responsively acts in the legal realm on behalf of the principal-client. It seeks informed consent for the lawyer's expert interventions.

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parties. For an entry to this discourse, see Robert F. Cochran, Jr., Deborah L. Rhode, Paul R. Tremblay & Thomas L. Shafer, *Symposium: Client Counseling and Moral Responsibility*, 30 PEPP. L. REV. 591 (2003).

<sup>40</sup> See, e.g., Piomelli, *supra* note 7, at 608, n.419 (quoting Luke Cole's goal of "changing the power dynamics in a particular community or neighborhood so that the people with whom we are working have more power collectively, as a group, at the end of the struggle than they did going into the struggle"); Piomelli, *Foucault's Vision*, *supra* note 31, at 479.

<sup>41</sup> See, e.g., BINDER ET AL. 2011, *supra* note 24, at 321-27 (clients should participate in making decisions likely to have "substantial legal or non-legal impacts").

The essential question that client-centered lawyers pose to their clients is: “What would you like me to do for you through the legal system?”

In place of an agent-principal relationship, rebellious lawyers seek a collaboration of partners or “co-eminent” problem-solvers with overlapping and complimentary knowledge, skills, and roles.

Rebellious lawyers see clients’ skills and scope of action as broader than decision-making. Clients and community members’ roles extend further: to participating in analysis, in framing, persuasion, concerted action, and advocacy and deal-making on their own (and others’) behalf. The central question rebellious lawyers pose to those with whom they work is: “What shall we do together and with others, through whichever channels seem most promising?”

Rebellious lawyering calls on lawyers to develop knowledge and connections not only in the legal sphere, but also to collaborate with players in the social, political, and economic realms. Rebellious lawyers often participate in multi-pronged persuasive efforts in which multiple actors tell stories, make arguments, and take action in both legal fora (such as courts and administrative agencies) and non-legal settings, such as the political realm or the media.<sup>42</sup>

### C. *Client-Centered Regnant Lawyering*

It should be clear now how one can lawyer in ways that are client-centered but still regnant.

- A lawyer can, for example, encourage subordinated clients to make key decisions in their legal cases, simply believing they should decide because they will live with the consequences of their choice, rather than with heartfelt confidence in their knowledge and capacity.<sup>43</sup>
- Or she can defer to individual clients’ decision-making without treating them as members of similarly-situated communities and without believing—and acting on the belief—that she needs to connect (and connect her clients) with community groups and non-attorney allies from other walks of life.
- A lawyer can follow subordinated clients’ ideas about how to pursue their legal goals without believing—and acting on the

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<sup>42</sup> For examples of such efforts or citations to accounts of them, see, e.g., Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 31, at 427-29, 492-508; Piomelli, *supra* note 36, at 1396-97; Piomelli, *Foucault’s Vision*, *supra* note 31, at 401-06.

<sup>43</sup> Lack of confidence in the judgment and capacity of low-income and working-class clients and communities is perhaps the key dividing line between rebellious and regnant worldviews. López’s regnant lawyers often view their clients as overwhelmed, emphasize their deficits (e.g., vulnerability and confusion), and act as if they must overcome a self-defeating culture that perpetuates their subordination.

belief—that they are capable of, and potentially interested in, doing more than deciding what she does for them and that they might also participate effectively in advocating on their own behalf or with others.

- Finally, a lawyer can encourage clients to make key decisions in their legal cases, but fail to view it as her job to explore and participate in problem-solving approaches outside of, or parallel to, the formal legal or administrative process.

Rebellious lawyers do more than place clients at the center of decision-making. Rejecting deficit-based views of subordinated clients (that focus, for example, on the formal education or other resources they lack), rebellious lawyers genuinely respect and tap clients' full array of capacities—their knowledge and their know-how. They treat clients as members of communities, rather than as atomized individuals. They seek out and partner with activists and allies in other disciplines or professions, as well as those who operate in no formally credentialed domain. They don't focus exclusively on legal remedies and procedures, but are alert to other paths. They strive to avoid routinized practice and resignation to the intractability of subordination or the limited impact of their efforts. They aim to be connected partners rather than responsive champions.

#### IV. RESPONSE TO CRITIQUES

For those open to a powerful alternative to the dominant approach to progressive law practice, *Rebellious Lawyering* remains a paradigm-changing call to action. A quarter century after its publication, it continues to beckon us as progressive lawyers to fundamentally re-orient our mindset, aims, and practices. It urges us to recognize and resist the socialization of law school and conventional assumptions of what it means to be a lawyer, as well as our society's dominant understandings of heroism, expertise, and whose insight is valued. It insists we harmonize our practices with our ultimate end: the sort of new society we strive to create. It presents a dozen detailed sketches of a rebellious orientation and practice—in lawyers, activists, and organizers, as well as receptionists and investigators.

Not everyone, of course, has been open to or persuaded by *Rebellious Lawyering*. In academic critiques,<sup>44</sup> conversations with clinicians and attorneys, and two decades of classroom discussions with students to whom I've assigned excerpts, I have perceived three chief objec-

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<sup>44</sup> See, e.g., Gary L. Blasi, *What's a Theory For? Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063 (1994); William H. Simon, *The Dark Secret of Progressive Lawyering*, 48 U. MIAMI L. REV. 1099 (1994); Ann Southworth, *Taking the Lawyer Out of Progressive Lawyering*, 46 STAN. L. REV. 213 (1994).

tions to the book and its vision of practice: (1) López's critique of regnant lawyers is too harsh; (2) his standard for rebellious practice is too high; and (3) his view of subordinated people and communities is too rosy. For some, these perceived flaws have justified rejecting further consideration of his ideas.

These objections presume a more static division between rebellious and regnant practice and between resistance and submission than López intends. They miss his heuristic aim to depict contrasting archetypes of thought and action. Regnant/rebellious practice and resistance/submission are most helpfully understood as poles of a spectrum along which the same actor can and does occupy different positions at different times.

#### A. *Excessive Harshness*

For many who read *Rebellious Lawyering* primarily from the perspective of lawyers, rather than of subordinated clients or communities, it can come across as an unfair critique of well-meaning, under-resourced, public interest attorneys who are trying their best in difficult circumstances.

I am struck by how many readers who voice this position—perhaps because they only read his first chapter<sup>45</sup>—perceive the book as primarily a critique of regnant practice, and miss that its chief focus is instead a celebration of rebellious practice.<sup>46</sup> They miss, too, López's awareness of the resource limits and difficult circumstances that all progressive lawyers face.<sup>47</sup> Indeed, what he appreciates most about

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<sup>45</sup> I assign only excerpts from the introduction and first chapter to students in my Social Justice Lawyering Concentration seminar. The students who later also take my Community Group Advocacy & Social Change Lawyering Clinic re-read the introduction and first chapter and also read the entire second chapter. They often comment on how the additional chapter aids their understanding of the book's aim.

<sup>46</sup> By my rough count, eighty-five percent of the book is devoted to rebellious practice; only fifty-one of the book's 382 pages focus on regnant lawyering. In Chapter One, the first nineteen pages are devoted to regnant lawyers and lawyering, *see* LÓPEZ, *supra* note 10, at 11-29; the final fifty-three are devoted to rebellious lawyers and lawyering, *id.* at 30-82. In Chapter Two, thirty-two pages depict the work of two regnant lawyers, *id.* at 102-33, and thirty are devoted to rebellious lawyer Helen Padilla, *id.* at 133-62. All 107 pages of Chapter Three discuss the work of Martha Fisher, an attorney with rebellious aspirations and instincts, *id.* at 167-273, and all fifty-five pages of Chapter Four, *id.* at 273-329, are devoted to the work of a rebellious lawyer and rebellious activist. (Chapter Five discusses organizers, so its fifty pages are not included on either side of the ledger.)

<sup>47</sup> As he notes:

Subordinated people and their lawyers typically meet only infrequently, usually for short periods of time, in the midst of hectic and overburdened schedules, with limited budgets constraining their problem-solving. They must make do in circumstances many others would find inadequate to the task of good lawyering, even if the challenge were less formidable than trying to change social life radically.

LÓPEZ, *supra* note 10, at 62.

rebellious lawyers is their ability to more than “make do” under these challenging conditions. He sees rebellious lawyers as “making the most of limited resources” by augmenting theirs with those of clients, community groups, and problem-solvers from other disciplines.<sup>48</sup>

At times, I detect in this critique of excessive harshness a tacit notion that it is unseemly to criticize “altruistic” attorneys, who forego more lucrative areas of practice to serve the less fortunate. In this view, progressive lawyers’ good intentions (and willingness to work for middle-class wages, rather than the extraordinary sums of big-firm lawyers) should immunize them from forceful criticism. I can’t imagine, though, that we would feel the same way about well-meaning, public health doctors, if we thought their approach undermined, rather than enhanced, the health of their patients. Occasionally, a few students have gone further in moments of candor and let slip that clients should be grateful for whatever efforts their attorneys provide free of charge.

Skeptical readers often note that López seems entirely uninterested in dialogue with “regnant” lawyers and writes them off as hopeless cases and implacable enemies of innovation. It is true that his depiction of regnant practice is often harsh. In Chapter One, he does sometimes add unbecoming comments or traits to his fictionalized regnant lawyers that enable skeptical readers to dismiss these characters as caricatures.<sup>49</sup> He does not evince interest in a respectful, two-way dialogue with thoroughly and unrepentantly regnant practitioners or their defenders.<sup>50</sup>

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<sup>48</sup> Gerald P. López, *Changing Systems, Changing Ourselves*, 12 HARV. LATINO L. REV. 15, 28 (2009).

<sup>49</sup> For example, Latina impact litigator Teresa claims that she “always knows what [her Latino clients] want” and “repeatedly brushes off . . . suggestions that the politics of her organization might extend to its work environment.” LÓPEZ, *supra* note 10, at 14, 16. His union lawyer, Abe, is wary of crossing (presumably White male) union leadership’s hostility to focusing “undue attention” on the status of women, people of color, and LGBT people. *Id.* at 19. His legal aid lawyer, Jonathan, acknowledges that he “tends to treat his clients like 8 year olds and that he would not act this way if he were representing a business-person.” *Id.* at 22.

The most sophisticated version of this critique argues that these characters’ unbecoming comments and traits poison readers against them, predisposing his audience to accept López’s critiques of other facets of their lawyering.

<sup>50</sup> As he states in his Epilogue:

I try not to fool myself. This book alone is not going to convince people to reconsider what they do in and around progressive law practice . . . We’re all awfully well defended against our own failures. Not many like being told they could have done something better. So who really wants to hear that they must rethink what they probably already take pride in doing well? Who really wants to discover that they remain in many ways part of the problem and not part of the solution? It’s not a message that sells well . . .

LÓPEZ, *supra* note 10, at 381.

But, as Chapter Three makes clear, López is supportive of attorneys like Martha Fisher who get “stuck in habits and patterns that reflect . . . regnant ideas,” so long as they are striving toward a more rebellious practice.<sup>51</sup> For those who display a willingness to try to collaborate with subordinated clients and communities, he shows real patience.

His strident insistence that regnant practice harms clients and communities by reinforcing subordination flows from his lived experience. It stems from his deep-seated—to my mind, justified and righteous—revulsion toward any practice or mentality that presumes, even tacitly, that subordinated people and communities are incapable of effectively helping themselves. This presumption, conscious or not, echoes and perpetuates ugly, centuries-old, pervasive cultural and cognitive conditioning in the U.S., which asserts the genetic, intellectual, and cultural inferiority of people of color, especially low-income and working-class people of color.<sup>52</sup> Ensuring that our lawyering actively resists, rather than unwittingly perpetuates, this ugly conditioning warrants emphatic expression.

López’s dichotomizing of fictional characters is best understood as a device to focus our attention. Given clinicians’ professed aspiration to model Donald Schön’s introspective, reflective practitioner,<sup>53</sup> we should remain open to carefully considering critiques, even those that are not judiciously phrased or modulated to avoid offense. We need to be thicker-skinned, if we aim to be adaptable, life-long learners. To become the best progressive lawyers we can, we may need to tolerate, even welcome, a coach who doesn’t pull punches in bluntly highlighting for us the habits we must break and the new skills and approaches we must develop to take our game to a higher level.

Every year, two-thirds to three-quarters of my students report they have met lawyers just like Theresa, Jonathan, or Abe—and they do consider them realistic depictions. I do too. Having studied and worked in the same San Francisco Bay Area public interest community as López in the eight years before publication of *Rebellious Lawyering*, I recognize several local lawyers whom I easily imagine as Theresa or Jonathan, as well as Sophie. The staff of his fictionalized Community Law Office in Chapter Two feel deeply familiar. Whether I’m correct in my attributions or not, that I’m convinced they might be

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<sup>51</sup> *Id.* at 172.

<sup>52</sup> Gerald P. López, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C.R.-C.L. L. REV. 315, 317 (1996); López, *supra* note 48, at 17 (“The stock stories and arguments that shaped law and life in the 1950s defined Mexicans (Mexican-Americans, *Mexicanos*, *Chicanos*) as genetically and culturally inferior.”).

<sup>53</sup> See DONALD SCHÖN, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* (1983).

the models—that I can picture the lawyers I knew saying and doing the things López portrays—confirms for me the verisimilitude of his characters.

*Rebellious Lawyering*'s first chapter does sort lawyers into one camp or the other.<sup>54</sup> But I read the entire book's central aim as educating, inspiring, and enticing readers to explore a rebellious vision of practice. I don't picture López lurking in the shadows, monitoring our every action or interaction, waiting to burst in to denounce our first misstep as proof that we are, in fact, hopelessly regnant. Chapter Three's sympathetic depiction of Martha Fisher's imperfect efforts makes that plain. His goal is to find—and encourage us to become—reliable partners, willing to resist our society's and profession's reigning assumptions and take up instead the complex task of working together as equals with diverse others to challenge subordination's many forms and consequences.

López is pitching his ideas to those attracted to the rebellious vision, those who view regnant practice as a counterproductive habit to break, rather than an approach to defend. Readers who experience his exposition of regnant practice as an unfair attack (on them or on lawyers they admire) are not his audience. He is reaching out to those who are eager to take on the arduous task of re-making their practice and unlearning behaviors and attitudes instilled by law school, the dominant understanding of the profession, and our society's model of heroism.

### B. Unrealistic Models

Another common reaction of those unmoved by *Rebellious Lawyering* is that López's fictionalized rebellious lawyers are unrealistically perfect. For these readers, no one but a fictional character could live up to the rebellious standard. Some students, especially those who find conventional lawyering challenging enough, explain that rebellious practice seems too dauntingly demanding to implement.<sup>55</sup> The most candid share that they don't want to work that hard.

Like the critique that his portrayals of regnant lawyers are too harsh, the critique that his depictions of rebellious lawyers are too un-

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<sup>54</sup> López recently shared that he wrote the first chapter at the suggestion of his editor and had not originally intended to use expository prose or such briefly sketched characters as the means to distinguish lawyering approaches. Telephone conversation with Professor López, April 2016.

<sup>55</sup> Almost invariably, the first example students cite is what they read as López's prescription that progressive lawyers must live in the community they serve—because that's what Sophie does. If they were to read the entire book, they would see that most of López's rebellious lawyers (Lucy Fung, Helen Padilla, Martha Fisher, Dan Abram) are *not* identified as living in the community they serve.



realistic, too difficult to emulate, misses that his rebellious/regnant division is an analytical device designed to catalyze recognition and understanding. He is sketching archetypes to direct our attention to practices and habits of mind and heart that he urges us to reflect upon and choose consciously to adopt or reject. He is not necessarily trying to “accurately” depict individual lawyers, the way a photograph or video would. Nor is he attempting, once and for all time, to categorize each and every lawyer as either regnant or rebellious. He aims instead to portray, the way an impressionist painter might, contrasting tendencies: a reigning one that dwells within each of us and a rebellious alternative. This is what he means by calling his fictionalized characters extensions<sup>56</sup> of people he has encountered: their views, actions, and contrasts are stretched, magnified, and amplified to make his points and help us to see law practice and life in a new way.

To cast his view of rebellious lawyers as too demanding—or of regnant lawyers as too harsh—is to read *Rebellious Lawyering* too literally. I read it instead as evocative. In telling detail, it sketches a worldview, mindset, and approach to practice—one that will appeal to some readers and not others. For those of us drawn to the vision, it has offered a compass to guide our actions. It maps an aspirational horizon to strive toward. The participatory democratic commitment to equality and solidarity that infuses the rebellious vision is a habit of mind and heart that some of us will seek to cultivate, even as we know we will not always achieve it.

López acknowledges the rebellious path is difficult for everyone—and impossible for anyone to follow without ever deviating. In Chapter Three, his emerging rebellious lawyer, Martha Fisher, recognizes that the “regnant idea lives within her as well as within her allies, threatening regularly to subvert even her most inspired efforts to work with others in imaginative ways.”<sup>57</sup> Four years after *Rebellious Lawyering*, more than twenty years ago, he reiterated that no one is completely or always rebellious: “we shouldn’t kid ourselves. We’re all vulnerable to the allure of this [reigning] way of doing work and living our lives.”<sup>58</sup> He continued:

I do draw at least one line, however, between those who are with us and those who are not. Wherever we work and whatever we do, we shouldn’t tolerate in ourselves, much less encourage in others, a well-defended refusal to make clients and client communities partners in our collective work. That simply won’t do. That simply can’t help.

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<sup>56</sup> See *supra* note 13 (quoting LÓPEZ, *supra* note 10, at 8).

<sup>57</sup> LÓPEZ, *supra* note 10, at 170.

<sup>58</sup> LÓPEZ, *supra* note 52, at 322.

As strongly as I feel about this line, however, it's disturbing to realize *just how often we all have crossed it—and just how easily we might again.*<sup>59</sup>

As he has summarized, “the very people who with all their hearts hope to change a system simultaneously live within its jurisdiction,” and thus cannot help but sometimes submit to and thereby reinforce it.<sup>60</sup> López is not calling for or expecting perfectly rebellious lawyers, he is looking for those willing to try their level best to fight subordination side-by-side as partners.

### C. *Unrealistic View Of Subordinated People And Communities*

Some skeptics consider López's depiction of subordinated people and communities unrealistically optimistic. In this view, not every client or community resists; not every client is interested in participating actively in resolving their situation; many clients are overwhelmed and just want a lawyer to solve their problem *for* them. Indeed, some cast López as un-client-centered in presuming that all clients want to work as partners. Underlying this critique is a view that rebellious lawyering places greater, even excessive, burdens on clients. Some of these readers add that many communities are quiescent; often there are no community groups or activists with whom to connect. And for some, there is an uglier, unspoken version: that there is no point to collaborating as equals with those who simply aren't.

The critique that his view of subordinated people and communities is too rosy—that he overstates the extent of resistance—misses that López views power relations too as dynamic and fluid. Resistance and submission are not timelessly separate dichotomies or either-or categories into which people or communities can be classified once and for all. Resistance is not only the high-profile, direct defiance for which my childhood heroes were known. It is often subtler, less direct, intermittent. It ebbs and flows, visible at times, submerged at others, depending, in part, on an assessment of the risks and rewards of open resistance.<sup>61</sup>

In *Changing Systems, Changing Ourselves*,<sup>62</sup> López illustrates this point through reminiscences on how, growing up, he regularly saw his parents engage in both active resistance and submission. They “raged against degrading stereotypes,” boldly confronted racist classifications, mobilized voter registration and get-out-the-vote efforts, and

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<sup>59</sup> *Id.* at 323 (emphasis added).

<sup>60</sup> López, *supra* note 48, at 19.

<sup>61</sup> For an extended discussion of this understanding of power, see Piomelli, *Foucault's Vision*, *supra* note 31.

<sup>62</sup> López, *supra* note 48.

participated in efforts to incorporate East L.A. But, in struggling to get by, to keep jobs and pay for health care, López stresses: “they compromised plenty. Compromised. Plenty. They submitted in ways they probably never noticed. In this sense they were like everyone else, across generations.”<sup>63</sup> He clarifies that these moments or periods of submission did not define his parents: “sometimes forced to grovel for a roof and a meal and care for their families, my Mom and Dad nonetheless aimed to obliterate the limits and conditions they found unacceptable.”<sup>64</sup>

Rather than focus on moments or outward appearances of submission, *Rebellious Lawyering* urges us to seek out, nurture, amplify, and connect moments and networks of resistance. It calls on us to appreciate and draw upon the insights that people in subordinate positions have about how systems really work in practice on the ground and how they might be changed. Rather than wait around for the grand occasions of large-scale, open rebellion that my childhood heroes exemplified, López implores us to act now, to usher in the egalitarian world we seek to create, by acting as if it already exists. We do so by working side by side (and in coalition with other problem-solvers) as co-equals with people and communities that elites have long treated as their inferiors—and encouraged the rest of us to do likewise.

López calls on us to connect with people and groups who are “fully human, rather than smaller or larger than life.”<sup>65</sup> Rejecting the conventional call to heroism, he urges us too to remain “entirely life-sized.”<sup>66</sup> As his fictional organizer, Carlos Leonard, elaborates:

Yes, life-sized. In stature [we] should be a part of the everyday—both in [our] own mind and in the experience of all those around [us]. [We] shouldn’t necessarily come off as either less noticeable or more prominent than those around [us]. That sounds like ‘no big thing,’ you say? But it is, it is. Being life-sized more or less rules out the idea of heroic individualism that has fastened itself to professional organizers . . .<sup>67</sup>

and, as López clearly agrees, to progressive lawyers.

I read *Rebellious Lawyering* as an exhortation to reject my childhood lessons of Underdog, Mighty Mouse, and Don Quixote: to forget about flying or riding in to save the day. That means discarding, too, law school’s version of the same idea: the conviction that brilliant law-

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<sup>63</sup> *Id.* at 19.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 26.

<sup>66</sup> LÓPEZ, *supra* note 10, at 358.

<sup>67</sup> *Id.*

yer-heroes, operating primarily within the legal system and with other lawyers and judges, can remake the world on behalf of and apart from “vulnerable” people and communities. It also means abandoning my pre-adolescent infatuations with larger-than-life heroes, who appear to make history on their own through their brilliance and force of will. It means instead bringing into focus the blurry background of my adolescent mind’s images, moving past the close-ups of famous heroes to appreciate the individuals, groups, and communities moving to end their subordination.

Fundamentally, it means being a partner and an ally, rather than the sort of hero our culture and profession envision. *Rebellious Lawyering* calls on us to recognize, join with, and emulate the life-sized heroes all around us. It invites us to commit our hearts, minds and practices to resisting subordination everywhere and every way we can. It recognizes that even though we will regularly fall short of that unreachable goal, our steps together with partners on that quest help build the world we imagine. Pursuing that world isn’t an impossible dream. It’s a thoroughly grown-up aim that I wholeheartedly embrace.