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THE SCOPE OF URBAN LEGAL STUDIES

PROFESSOR NORMAN REDLICH*

I plan to deal in the specifics of what I think we mean by urban law and what it means in terms of legal education. I bring to this subject a rather unique qualification for academicians. Most of the academicians have been trying to define urban law before having dealt with it. I found that I practised it for three years before I knew what it was or before I even knew that it was called urban law, therefore, the attempt to define came after the practise. In attempting to define it I am embarrassed to say that in looking at my own outline I see that I have fallen into the trap that we caution all of our law students to avoid. Namely, I have produced a pompous and meaningless tautology: "Urban Law is the study of the body of law arising out of our living in cities", which seems to me is another nice way of saying that urban law is urban law. So let us dispose for the moment with problems of definition and see if perhaps a definition might arise out of a more specific description of the subject matter.

I am going to talk to you primarily in terms of our own experience at the New York University Law School where we have made what we consider to be a significant commitment of the school's resources to the development of an urban and poverty law programme. We have, in the space of two years, added approximately 12 new courses to our curriculum, in the subject matter which we loosely call urban and poverty law. Let me tell you something about those courses and the subject matter that they cover, so that this can perhaps be a frame of reference for our discussion.

We have a basic course — a survey course at our school, which I teach, called the Law of Urban Affairs. It is designed to give students a kind of broad overview of what we consider some of the more important subjects in this field. Now what does that overview consist of? First, we devote a portion of this course to a subject which we call 'the people and the city', dealing with such problems as citizen participation in the various processes of government — citizen participation in the poverty programme, citizen participation in model cities, citizen participation in urban renewal, the whole question of citizen participation in the land use planning process. We deal there with questions of decentralization and community control as a technique of citizen involvement in the decisions of government. We deal with the question of referendum as a technique of citizen participation. We touch upon the techniques that have evolved in our law for securing citizen review of government decisions. We also deal with the way in which the citizen can somehow move through law to bring about a reallocation of government resources, dealing with the legal issues that arise out of

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what happens, for example, when people sue to improve the level of garbage collection in their part of the city.

A second part of this course is concerned with 'the city as an instrument of governmental power'. And here we perhaps deal with some of the more traditional concepts such as home rule, questions of fiscal powers, the relationship between the city and the various public corporations and public authorities which also exercise governmental power.

A third portion of this course focuses on the city as the employer in which we deal with problems arising out of labour relations in the public sector — the various changes which must be made in municipal structure to deal with a government which is now an employer in the collective bargaining sense. We consider such questions as what is the appropriate scope of bargaining in the public sector, to what extent may one delegate governmental decisions through the technique of collective bargaining, and what are the possible mechanisms for the resolving of public disputes.

A fourth section of this course we call 'preserving the city', dealing with problems of environmental protection, air pollution, noise pollution, aesthetic preservation, the landmarks and historic zoning. There we also cover the questions of the preserving of our housing supply, and some of the most interesting problems in landlord-tenant relationships.

And finally, in a section of the course called "Rebuilding the City" we set forth to the student some of the techniques that have been used by government thus far to try to physically rebuild cities, such as public housing, urban renewal, model cities, publically assisted housing, etc.

This course suffers from the defects of any survey course; it cannot go into the kind of depth that we might prefer, but we are satisfied that it does serve a very valid educational purpose. It familiarizes students with a range of legal problems in the urban field which they would not have otherwise been exposed to and does it in a fairly organized systematic manner. It also forms a basis from which students can move into some of the more specialized courses which I will mention to you now.

Apart from the survey course, we have a special course concerned only with the subject of urban housing and redevelopment. This is a three hour course in which we deal with the traditional materials, that I am sure most of you are familiar with: public housing, urban renewal, the various forms of public assistance to private housing, the various rehabilitation programmes, state housing and, to some extent, municipal housing programmes, and then ending with a discussion of model cities.

We have also developed a course on the subject of public education in urban society. Courses on public education have existed in law schools. In our course we have tried to focus on some of the particular problems that have emerged in the urban scene in the last few years — techniques of financing, the relationship between city and state in that context, the question of decentralization and community control, problems of personnel relations and civil service law within the context of the public education field.

We have a course in the subject of welfare and public assistance, dealing with the range of social welfare law issues, where the prime focus is on questions of individual rights and also public administration of various government assistance grants.

We have developed a course in environmental protection law which delves into problems of air pollution and water pollution and noise control. This is taught, in part, as a clinical seminar.

Another course in our programme is a seminar in state and municipal finance, dealing with problems such as tax and debt limits, and the various techniques of sharing resources among our different governmental structures. We also consider the question of how one finances a transportation system, whether the sanitation system should be financed through taxation or possibly through a user charge. We deal with questions of industrial revenue bonds, the use of credit of the state and of the city to finance projects in the public and quasi-public field, and questions of municipal bond exemption.

We have a range of courses in the whole area of poverty law. I gather you are discovering by now that we do not view the urban law problem as exclusively a poverty law problem. That is why we call our programme 'the project on urban affairs and poverty law'. We do have, however a series of courses that center primarily on problems of poverty law. One I just mentioned is the welfare and public assistance course. In addition, we have developed a course called 'family law problems of the poor'. It appeared to us that much of a traditional family law course is based on the assumption that the clients have money. Property settlements, out-of-state divorces, alimony, these subjects are based on an unspoken assumption that we are dealing with people with funds. Well, it is apparent that poor people have a wholly different set of family law problems and we felt that it was useful to develop a course in that particular area.

We have developed a course focusing particularly on the changing law of landlord-tenant and the rapidly emerging law of consumer fraud. We call it 'private law problems of the poor', and it presently deals with those two areas.

Another new course is 'economic development for the poor' — a seminar course in which we explore the various techniques for trying to develop business, in an area where the essential ingredients of equity capital, and, to some extent, management services are lacking.

We have also developed a new jurisprudential course—'social justice'—which is offered as part of this programme, dealing with some of the more jurisprudential problems arising out of the urban crisis, such as, civil disobedience, narcotics addiction, and problems of juvenile delinquency.

I may not have touched upon every specific course or subject matter, but I think I have given you some idea of the totality of subject matter that we are talking about — at least at our law school, when we talk about urban affairs and poverty law.

Now, let me explore a few specific questions growing out of the teaching of this body of law. First, should it be taught at the under-graduate or graduate level? I think this is not an easy problem because it is quite apparent that, given the competing demands of an undergraduate law school curriculum, there is a limit to the extent to which students are going to be able to concentrate among this wide selection of courses. Our programme was developed within the context of a law school that offers a wide range of graduate courses. In fact, we have some three hundred and twenty (320) full time LLM candidates at our law school, plus several hundred others who matriculate toward a master's degree on a part-time basis. This spectrum of courses is therefore, quite meaningful within a school that is so structured. In a school composed primarily of under-graduate students, the problem might be different. Some of these courses, however, might well solve some of the traditional problems encountered in the third year. It may well be that the attendance, and interest we have been experiencing in these courses might not be duplicated elsewhere, but most of these courses are attended by undergraduates (where there seem to be great interest in this area), despite the fact that these courses are also offered in our graduate programme.

How should this body of law be taught? I have described to you a programme which essentially opted for the technique of the development of new courses. I am sure that you are familiar with what seems to be the ongoing controversy or discussion in this field. Do you develop new courses or do you take existing courses and attempt to infuse into them this type of subject matter? Theoretically, I suppose it would be possible to go through a curriculum at most law schools and take the subject matter I just described to you and work it into existing courses. This would be a significant contribution. Instead of adding new courses we would have taken our existing courses and brought them all up to date. However, heaven knows no love more sublime than that of a professor for his old notes. Most law professors already feel that their courses are overwhelmingly cramped, that the curriculum committee does not appreciate the full scope of their course and refuses to allocate the infinite number of hours that are really required. I think that it is unrealistic to expect many of our colleagues to infuse this new subject matter into their existing courses, even if they wanted to and even if they had the expertise to do so. Our conclusion was that the way to accomplish an important result quickly was through the technique of new curriculum development. I realize there are differences of opinion on this point and I do not propose our model as the universal one.

Another question that is raised is the question of materials. It is not too difficult to teach these courses in a purely seminar context without worrying about materials. With a group of 12 to 15 students you can send them off on independent research, you can place various materials on reserve (I am sure we have all had this experience). You can deal with a new field within the context of existing materials by encouraging students to develop independent study and research through papers. If you are teaching a course called "the law of urban affairs" to a class of 120 students, however, that technique simply will not work; the problem of developing materials is a critical one. We worked out an arrangement that I heartily recommend to you if you can

manage it. We received a grant from the U.S. Office of Economic Opportunity which was used to cajole or induce professors to spend the better part of two summers both developing and revising materials for most of these subjects. We have now produced sets of materials, cases, statutes, law review articles, governmental reports — a wide range of materials — which I think are quite respectable and which we look forward to having published by various publishers at some point in the future. I don't underestimate the problem of materials. I think we would have had a very difficult time developing this type of curriculum for the number of students who are taking the courses, if we did not have as a part of this development, a programme for the development of materials.

Who should teach this material? Here I would like to set forth what I regard as a cardinal principal of our programme, one which we try at all costs not to deviate from: that urban and poverty law should be woven into the main stream of the intellectual life of the law school. We did not want an institute or a center spun off from the law school, as so many of these things develop where you have one or two part-time teachers and some staff men, and a few students removed from the main focus of law school life. For the programme to make a meaningful contribution to our students (which is after all our ultimate goal), it was essential that this programme really become a significant aspect of the law school's life. The best way to ensure that was to have the best faculty members teach the courses. If these courses are taught by professors who the students feel are somehow not too important to the life of the law school — and you all know as well as I that the students are aware of this — then the students will conclude that these courses do not really represent a significant commitment of the law school's interest. Now, this is not easy, because it means, for example, that we might want a professor whose principle interest is in the property field to move into the area of urban housing and redevelopment, or a professor of taxation to deal with municipal finance. We now have eight members of our faculty who are teaching in this programme. I strongly urge that something along this line has to be done if you are going to have urban law taught in a way that will be intellectually exciting for the students and for the teachers themselves.

Moreover, the development of urban and poverty law offers law schools an opportunity to recruit in certain areas where they might normally not recruit. It seems to me that urban and poverty law are fields where the normal method of recruiting — the normal ponds in which recruitment committees usually fish (law review editors, supreme court clerks), — may not be the most productive pond in which to fish for teachers of urban law. I acquired my knowledge of urban law not through my experience on an undergraduate law review, or any of the more traditional forms of legal research, but through a demanding government job in the corporation counsel's office in the City of New York. There are some very able people who are developing practical governmental experience in these fields who could make important teaching contributions. A good example is found in a new member of our faculty, Professor Walter G. Farr, who was the director of the federal model cities programme and who is now teaching the course in economic development and shares the survey course in "the law of urban affairs".

At our state of development we have tended to neglect the research aspect of the teaching of urban law. Research is, however, critically important if this field is not to become a passing fancy, something that is just titillating to the interest of students and professors at this moment. I think the field is going to have to be justified in terms of the scholarly work that we ultimately produce. This is not going to be easy, because the volume of the material that must be assembled and mastered in the urban field is enormous and is made more difficult by the fact that there does not seem to be any organized way found yet to put it together. It is unlike the tax field, for example, where the CCH or Prentice-Hall tax services organize things in a fairly neat package. It is a difficult body of law to get hold of, and therefore, it is difficult for the professor to free time for scholarly research. This may have to be solved in terms of reduced teaching loads and leaves of scholarly research and scholarly writing in this field has not reached the point that it should.

It seems to me that the urban and poverty law fields are ones in which a well conceived clinical programme can be of great educational benefit, not only to the students who are engaged in it, but to the professors who have to teach in the programme, because the traditional methods of keeping abreast of these fields are frequently of little benefit. The advance sheets, the cases, even the government regulations (if you can possibly secure them and keep track of them) do not really help and I have found, and I think most of our professors have found, that the feedback of a clinical programme can provide the teacher with a real awareness of developments in the front lines of the area of urban and poverty law. Our clinical programme is basically this: We have now fifty-three Vista lawyers at our law school. These are young men who are at the law school under a two year programme. They are all graduates of law schools. They have received their JD or LLB degrees and come to us two months after they receive these degrees for the purpose of a two year programme. Last year we had twenty-five and this year we have another complement of thirty. At the end of the two year programme they will receive an LLM degree. They spend about thirty to forty percent of their time taking the courses I have just described to you. The remainder of their time is devoted to acting as house counsel to community groups throughout the city. This is a relatively unstructured setup. They are not placed in neighborhood law offices. They work directly with community groups such as welfare rights groups, tenants rights groups, and educational action groups. Some are assigned to health centers some are assigned to economic development groups. They work in teams of two to five. We have on our staff at the law school three non-faculty lawyers, who act as supervising attorneys.

The eight faculty members who teach in the programme work with the Vista lawyers to maintain an on-going supervision. Without this faculty supervision of clinical programmes, the feedback I was describing and, the academic component of these programmes, will be lost. It would simply be, a work study programme without any type of faculty involvement and academic content.

Finally, I ask in broad terms, what is the role of the law school in all this? It seems to me that in order to have an urban and poverty law

programme that make a significant contribution to the student's education, there must be a major commitment from the institution in the form of financial and personnel resources. In other words, a desire to do it. And this, of course, involves inevitably a shift of resources from other programmes. A professor who is willing to teach a course in the urban field will not be teaching in some other field. I do not know how resource allocation decisions are made at your law school. At ours they are not made with any great degree of precision, but a resource-allocation decision is tremendously important, since there will not be an urban and poverty law programme unless this type of commitment is made and that commitment will inevitably mean that the school will forego other choices.

Perhaps, as we view the whole scope of urban legal studies, I become a little less bothered by my initial tautology — that urban law is the law that arises out of living in cities. The tautology conceals a very significant truth. Those living in cities have found that the goals and the aspirations of our society have somehow not been fully realized. They have found that the democratic ideals we profess are coming to naught in the failures of city life. Urban law is the body of law through which our society can make cities a fitting home for people in a democratic society. Viewed in those terms, I think the learning and teaching of urban law is both a challenge and an obligation for the world of legal education.

