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Allan C. Hutchinson
Osgoode Hall Law School of York University, ahutchinson@osgoode.yorku.ca

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Practising law for rich and poor people: towards a more progressive approach

Allan C. Hutchinson

Distinguished Research Professor, Osgoode Hall Law School, York University, Toronto, Canada

It is 50 years since Stephen Wexler's essay, *Practicing Law for Poor People*, was published.[1] By any reasonable measure, this has become and remains an iconic piece. Whether he is agreed with or disagreed with, Wexler's arguments continue to define the terms of the debate about the proper role and responsibilities of those who practise law for poor people. Critics and jurists can be for or against Wexler's account, but they cannot make serious headway without it. As such, Wexler's essay deserves to be celebrated and showcased as it reaches its half-century milestone. However, his ideas and their informing assumptions about law and poverty also warrant serious reappraisal. Much has happened since his clarion call to arms. If the plight of those in poverty remains as dire and demanding as ever, the legal and social terrain is significantly different in regard to the formative dynamics and on-the-ground experience of poverty lawyers. So, in the constructive spirit of critical collaboration towards a firmer model of 'progressive lawyering,' it is fitting to challenge and push through on some of the primary motifs and underlying suppositions of Wexler's justly famous essay.

In this essay, therefore, I want to take up Wexler's provocation to understand better 'the relationship of poor people and the law.'[2] With the benefit of 50 more years of experience, reflection and theorizing, it should be possible to deepen and transform that appreciation by taking up Wexler's challenge to understand better how lawyers might contribute to that crucial task. Sadly, there is little cause for optimism: old attitudes and entrenched views die hard. Consequently, rather than re-hash the well-worn positions on what poverty lawyers can or should do on behalf of their clients or restate the urgent need for greater public support for poor or indigent people, I will instead look at the broader issues of how law and lawyering contribute to the institutionalization of poverty.

My focus is on what lawyers might do to change their contribution to the institutionalization of poverty, if not do away with it entirely. In so proceeding, I will utilise Wexler's urgings 'to change things so that … poverty does not entail misery'[3] as a launching-pad for suggesting a more compelling and perhaps controversial way for **all** lawyers, not only those practising law for poor people, to do that. By continuing to internalise the traditional

CONTACT Allan C. Hutchinson hutch@yorku.ca

[1]Stephen Wexler, 'Practicing Law for Poor People' (1970) 79 Yale Law Journal 1049. As an aside, it is worth noting that the editorial board at that time compromised a disproportionate number of students who went on to carve out careers as critical legal scholars or lawyers. These included Duncan Kennedy, Susan Goldberg, Mark Tushnet, Nancy Gertner and Rand Rosenblatt.
[2]Id. at 1051.
[3]Id. at 1053.

role and responsibilities of lawyering, all lawyers will not only fail to confront the debilitating nexus between law and wealth, but also actively work to perpetuate it and its debilitating effects. Changing society is not the sole burden of the have-nots and their lawyers (if they have one); it is imperative that the privileged haves and their lawyers take up that burden and responsibility as well.

Professional advocacy and lay advocacy?

The overall thrust of Wexler's argument is very Fitzgeraldian – 'Let me tell you about the very rich: they are different from you and me.'[4] Wexler's attention, of course, is on the very poor or what might now be called 'the underclass.' He makes a compelling case for appreciating how poor people live very different lives to others and for what this means for those who practice law on their behalf. The traditional understanding of the lawyer's role is based on the middle-class idea that people's lives run more or less smoothly and that people's use of lawyers is occasional and exceptional. On such an understanding, the lawyer's brief is to resolve temporary inconveniences (or even crises) and allow people to get on with their lives; this includes property purchases, wills, and family matters. As Wexler persuasively insists, 'poor people do not lead settled lives into which the law seldom intrudes; they are constantly involved with the law in its most intrusive forms.'[5] For poor people, legal problems are a way of life; they do not interfere with life, but define and constitute it. As such, the Wexlerian lawyer must grasp that 'a case-by-case injustice is not what poor people face; they confront a host of unjust institutions, acting for and within an unjust society.'[6] Apolitical engagement in social struggles through law is a luxury that poverty lawyers and their clients simply cannot afford.

When lawyering for poor people, this means that the traditional shibboleths about professional responsibility – client independence; technical expertise; political neutrality; and individualized attention – do not apply and, if they do, result in bad lawyering. To adopt such a traditional and detached approach is to fall into the seductive trap of 'middle-class humanism.'[7] For Wexler, the poverty lawyers' major undertaking is to help poor people help themselves: 'it is better for poor people to acquire new skills than new dependencies.'[8] In line with this, the lawyer should be a teacher as much as a help-mate. At its most blunt, this entails the injunction to 'help them do their thing, or get out.'[9] Indeed, Wexler casts the poverty lawyer in the role of a committed mentor who must develop and cultivate in their clients the skills and techniques of the lay advocate. This can be achieved by writing manuals and by 'educating groups for confrontation.'[10] As such, the poverty lawyer is as much an enabling facilitator as a front-line professional.

This is stirring stuff. Not surprisingly, it remains controversial even among the ranks of poverty lawyers as well as the broader legal community.[11] In its best light, Wexler's

[4]F. Scott Fitzgerald, 'The Rich Boy' in *All The Sad Young Men* (1926).
[5]Wexler, supra. note 1 at 1050.
[6]Id. at 1059. See generally Pleasance and Balmer, 'Justice and the Capability to Function in Society' (2019) 148 Daedalus 140.
[7]Id. at 1054.
[8]Id. at 1055.
[9]Id. at 1065.
[10]Id. at 1056.
[11]Other leading voices are by Gerald P. Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992); Lucie White, 'Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.' (1990) 38

outlook can be viewed both as a disruptive polemic against the legal profession and as a set of instructions to be faithfully followed. Indeed, if lawyers are to do the kind of organizational work that he recommends, most lawyers are not that trained in such skills. Moreover, there is no guarantee at all that their untutored and amateur talents in teaching such a specialized mode of advocacy will not do as much harm as good; social workers might well do a better job. Also, Wexler is perhaps too harsh on do-gooders, those who become poverty lawyers out of liberal guilt or to bolster their own personal esteem. He is adamant that it is insufficient to engage in poverty lawyering if the lawyer's motivation is to 'feel useful … [and] to do his own thing.'[12] This seems to be a very high bar and might have the counter-productive effect of discouraging new lawyers from a professional endeavour that is already woefully under staffed. It is not always the case that 'doing the right thing for the wrong reason' is itself a reason to spurn the efforts of lawyers who might not otherwise assist poor people at all.

All that said, because they have not withstood entirely the test of time, I want to dig a little deeper into some of the supporting jurisprudential and ideological footings for Wexler's model of lawyering for poor people. In particular, I will explore and build upon three important issues that should inform future efforts to appreciate and develop the notion of 'progressive lawyering' – the fractured nature of poverty and the contributing role of law; the expansive responsibilities of lawyers who do practice with poor people; and the importance of treating *all* lawyers as political activists. Throughout, my goal is not to be so presumptuous as to provide specific recommendations for how poverty lawyers should practice law on a day-to-day basis; those dedicated people are much better placed than me to do that. Instead, I will offer more of a jurisprudential primer on how to think about what lawyers can and should do in the essential struggle to overcome poverty.

Living in poverty

Wexler is very clear that being poor is not the result of some moral or personal failings by impoverished people: 'poor people are not poor by chance; they are not poor through lack of personal merit; they are not poor because it is inevitable that someone be poor.'[13] For him, the plight of being poor, especially in rich North American countries, is not something that afflicts discrete individuals as individuals, but is a question of structural and group factors because poor people 'confront a host of unjust institutions, acting for and

Buffalo Law Review 1; Anthony V. Alfieri, 'Reconstructive Poverty Law Practice: Learning Lessons of Client Narratives' (1991) 100 Yale Law Journal 2107; Peter Gabel and Paul Harris, 'Building Power and Breaking Images: Critical Legal Theory and the Practice of Law' (1983) 11 N.Y.U. Review of Law & Social Change 369. For a survey of the different waves of poverty lawyering after Wexler, see Anthony Alfieri, 'Inner-City Anti-Poverty Campaigns' (2017) 64 UCLA Law Review 1374.

[12]Id. at 1061 and 1063. The response to Wexler's ideas are largely favourable and can be divided into two streams. A clinical stream that speaks from in-the-trenches experiences; see, for example, Shauna Marshall, 'Mission Impossible: Ethical Community Lawyering' (2000) 7 Clinical Law Review 147; Juliet Brodie, 'Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics' (2009) 15 Clinical Law Review 333. An historical stream that evaluates how poverty lawyering responded to neo-liberal or neo-conservative governmental reforms; see, for example, Ingrid Eagley, 'Community Education: Creating a New Vision of Legal Services Practice' (1998) 4 Clinical Law Review 433; Eduardo Capulong, 'Client Activism in Progressive Lawyering Theory' (2009) 16 Clinical Law Review 109.

[13]Wexler, supra note at 1052.

within an unjust society.'[14] The effect of treating poverty as a moral rather than political issue is that the poor are stigmatized as being lazy, unmotivated, weak-willed, profligate, and authors of their own fate. Such a characterization, allows the more privileged to feign a posture of helplessness and to recommend resolutions that ignore the collective and public sources of poverty. Indeed, if poverty has any moral or immoral salience, it is to be found in the routines and rationalizations of the rich and propertied. As Wexler sharply expresses it, 'poor people are poor because some people who are not poor believe that it is a good thing to have some poor people around.'[15]

In North America, one of the richest regions of the world, the extent and persistence of poverty has reached alarming proportions. Relative poverty rates are reasonably stable around 14% (45 million people) of the population in the United States and 7% (5 million people) in Canada. While Canada does better than the United States, even absolute poverty rates remain entrenched at around 2%.[16] Since 1970 (when Wexler was writing), poverty rates have actually worsened. All this is thrown into even sharper relief when it is appreciated that the gap between the richest and the poorest sectors of society has been steadily rising: whereas the top 10% have more than doubled their wealth since the 1980s, the bottom 10% have had their relative wealth reduced. Of course, these figures are social averages; the outcomes vary considerably across different groups. For example, in the United States, against a general social average of 15%, 24% of all Hispanics and 26% of all African-Americans are living in poverty.[17] One of the most extreme manifestations of poverty is homelessness; this afflicts as many as 500,000 people nightly.

However, as these figures imply, one of the most profound insights of the last 50 years has been that aggregating poor people into one homogeneous group or underclass is a serious mistake. Although it has never gained much traction in North America, the invocation of 'class analysis' as a decisive ploy in political analysis and argument is no longer viable. The reductionist politics of class struggle and a rich/poor mentality fail to respect sufficiently differences of race, gender, and background in its totalizing critique and any future march to improved social justice. The diversity of poverty-stricken people today strongly suggests that there will need to be different strategies of learning and response from one sub-group to another. The literature on 'diverse lawyering' is rich and suggestive; it challenges squarely the traditional tendency to view 'the client' as a fungible one-size-fits-all mould into which very different people with very different contexts and different needs can be poured.[18] In dealing with poor clients, therefore, lawyers will need to eschew universalistic judgments and standardized strategies in favour of more tailored initiatives that respond in less across-the-board ways to the particular needs of their diverse clientele. If the problem is complex and varied, so must the solution be.

[14]Id. at 1059.

[15]Id. at 1052. For my own fuller take on this, see Allan C. Hutchinson, '*Les Misérables* Redux: Law and the Poor' in *It's Too Late To Stop Now: Life, Law And Lore* (2019) 185–212.

[16]As the labels suggest, 'relative poverty' is measured within and across a particular society, but 'absolute poverty' is measured on a global scale. See James E. Foster, 'Absolute versus Relative Poverty' (1998) 88 The American Economic Review 335–41.

[17]U.S. Census Bureau, *Income and Poverty in the United States* (2015) <http://www.cwp-csp.ca/poverty/just-the-facts/>. See, for example, Jeff Madrick, *Invisible Americans: The Tragic Cost of Child Poverty* (2020).

[18]See, for example, Sue Bryant and Jean Koh Peters, 'Five Habits for Cross-Cultural Lawyering' in Kimberly Barrett and William George (eds), *Race, Culture, Psychology, and the Law* (2005), 47–62. However, it is equally important that 'class' or wealth does not get overlooked in recognising and understanding diversity. See, for example, Richard Thompson Ford, *Rights Gone Wrong: How Law Corrupts The Struggle For Equality* (2011) 142–43.

While such group-sensitive tactics and sensibilities are needed, this does not mean that Wexler's emphasis on collective action should be set aside. The upshot of this analysis is that, if poverty is to be substantially reduced, understanding and action must itself be taken along similar structural lines; case-by-case treatment will do little to alleviate, let alone eradicate the problems of being poor. In planning and organizing such collective action, lawyers must accept that they are part of, not apart from, the basic structures that hold poverty in place. As privileged operatives of the established order, lawyers must acknowledge that, as a group, they are major sub-contractors in the political enterprise of maintaining socio-economic relations and wealth disparities; their professional ideology and action helps to constitute and hold in place existing social relations and official institutions. This is not to say that any and all lawyering and legal action is doomed to such a conservative and even reactionary fate. But it does recommend that lawyers tread very carefully when they take on the kinds of causes and clients that Wexler talks about. Progressively-minded lawyers must always be alert to the dangers and pitfalls of tackling poverty through the legal process; short-term gains come at the considerable price of reinforcing the long-term legitimacy, centrality and prestige of the law as a force for social good. History, at best, teaches caution about such progressive efforts.

It can be fairly reported that lawyers have done a poor job at obliging law to appreciate the importance of wealth and poverty to matters of social justice. For instance, the courts have read and applied constitutional rights in line with a negative neo-liberal agenda; they have resisted efforts to incorporate social rights and to recognize 'wealth' as an equality issue. Both the American and Canadian courts have toyed with the idea of recognizing such social rights, but have been unwilling to go too far down that road. In both the United States and Canada, activist efforts were made to protect and develop government social assistance programmes by bringing them within the constitutional framework. After an initial success at conferring protective rights on welfare recipients, courts confirmed that there was no constitutional obligation for the state to support poor persons.[19] In recent years, this restrictive attitude has been on full display in the context of health care. Courts have relied upon a deep and informing ideology in which the state not only has no particular obligation to provide health care to poor people, but also it must not interfere with the rights of individuals to make their own health care arrangements.[20] This has a massively disproportionate effect on poorer people who have little choice other than to rely on government to obtain basic health care: health care becomes one more commodity to be sold and secured in the marketplace where the poor have little leverage or power.

Changing responsibilities?

When it comes to overcoming poverty, Wexler brooks no disagreement about the fact that the primary responsibility for overcoming poverty lies with poor people themselves: 'if

[19]Goldberg v. Kelly, 397 US 254 (1970) and Dandridge v. Williams, 397 U.S. 471 (1970). In Canada, the story is much the same, see Gosselin. v. Quebec, [2002], 4 SCR 429 and Canadian Bar Assn. v. British Columbia, 290 DLR (4th) 617 (2008). For the most compelling account of welfare rights in constitutional thinking, see Frank Michelman, 'The Supreme Court, 1968 Term-Foreword on Protecting the Poor Through the Fourteenth Amendment' (1969) 83 Harvard Law Review 7.

[20]See *National Federation of Independent Business v. Sebelius*, 567 US 519 (2012) and *Chaoulli v. Quebec*, [2005] 1 SCR 791. For a compelling account of constitutional law's role in all this, See Adam Cohen, *Supreme Inequaltiy: The Supreme Court's Fifty-Year Battle for a More Unjust America* (2020).

poverty is stopped, it will be stopped by poor people.'[21] By this, I take it to mean that poor people themselves must challenge not only the deprivations and debasements of poverty, but also the very existence of poverty itself. While he insists that this is a collective, not individual responsibility, he leaves no doubt that 'poverty will not be stopped by people who are not poor.'[22] There is much merit to this view–poor people will have to play a major and perhaps decisive part in any effort to confront and destabilize the social structures and systemic dynamics of poverty. However, it seems that placing the complete burden on poor people is both unduly onerous and unnecessary. Already weighted down by their poverty, poor people are ill-suited to fight such a battle single-handedly: a broader coalition of forces can and should be marshalled.

It is a strategic error to argue that 'poverty will not be stopped by people who are not poor.'[23] Unless 'people who are not poor' (i.e. the rich and upper middle-class) are implicated or involved directly in the collective struggle to eradicate poverty, the chances of any success are substantially reduced. As with confronting and resolving most social problems, the privileged need to acknowledge their participation, implicit and explicit, in perpetuating the status quo and its injustices. More pertinently, they also must be made to recognize and accept that the benefits that are entailed by their privileged position are inextricably tied to the negative effects and disadvantages experienced by poor people and under-privileged persons generally. Although much effort and imagination is given to separating the one from the other, the reality is that privilege and disadvantage as well as wealth and poverty are flip-sides of the same social coin; they feed off and on each other.[24] The challenge must be to change that brand of social coinage.

It is imperative, therefore, that the perpetrators of injustice are disabused of their self-serving ignorance and enlisted, where possible, in the progressive struggle to change things for the better. Again, history is replete with examples of how the victims of injustice have combined with enlightened segments of the privileged class to effect positive change. Slavery and women's lack of suffrage were brought to an end by an alliance of diverse forces, not by the disenfranchised alone. Whereas the former had Abraham Lincoln and his Northern supporters, the latter had Theodore Roosevelt and his political allies. This is not in any way to devalue or marginalize the primary efforts of the victimised group. Nor to lionize such privileged leaders. As Wexler insists, the poor must be fully integrated into and lead the struggle against poverty: any campaign against poverty '[must] be fully controlled by poor people.'[25] Nevertheless, to leave poor people entirely to their own efforts, initiatives and fate is to reduce, not enhance the risk of improvement. If the problem is collective and not only individual, society itself must be rallied to take action.

[21]Wexler, supra note 1 at 1053.
[22]Id. at 1053.
[23]Id. at 1053.
[24]In an important sense, this is the most significant difference between relative and absolute measures of poverty. See supra note **. The former (and more revealing) indicator speaks to people's comparative position and status within a society; the more resources a society has and the more unequal their distribution, the greater the relative disparity will be. In a short note (that is more about philosophy than lawyering), Wexler recognises belatedly this interrelatedness of wealth and poverty. See Steve Wexler, 'Some Further Reflections on Poor People and Law' (2007) 40 UBC Law Review 859.
[25]Id. at 1066. For a contrary stand, see Rebecca Sharpless, 'More than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy' (2012) 19 Clinical Law Review 247.

As such, it is unwise to relieve others, especially the privileged (i.e. white, male or wealthy), of the responsibility to bring about substantial change. Those with privilege must be brought to account and mobilised to remedy widespread wrongs. Barring revolution, some involvement or, at the very least, passive acceptance by the indifferent elite is required to bring about systemic or structural changes. So, if the existence and spread of poverty is to be resisted, the most effective action, along with other similar measures, would be the introduction of a more highly redistributive tax scheme. This is no easy task. However, it is hard to envisage how such a change could be engineered by poor people alone. While organisation and protest by poor people will be essential, that in itself will not deliver the changes needed. As the history of the Great Depression of the 1930s shows, it was only when the establishment began to respond to poor people's appalling plight with Roosevelt's New Deal package of reforms and programmes, albeit delayed and inadequate, that some change occurred. Again, this is not to praise the rich and privileged or sideline the efforts of poor people, but it is to explain how change requires a more social-wide and collective initiative, even if it is in the nature of *noblesse oblige*. In short. It demands structural changes in the regulation and arrangement of legal services.[26]

A significant portion of the social, economic and political elite comprises or is serviced by the legal profession. By virtue of their professional standing and institutional status, lawyers are well placed to participate in that struggle against poverty and to activate the push for such structural and systemic changes. Of course, it is essential that lawyers do not take over the lead role in that struggle: lawyers should not become merely the mouthpieces for their clients' views or use their clients as soapboxes for their own preferred causes. For instance, the integrationist impetus of much American civil rights litigation of the 1960s and 1970s failed to respect the political demands of blacks for local schools over which black communities could exercise some control: the lawyers' visions overwhelmed and took precedence over the clients.[27] While lawyers have a role to play in the struggle for greater social justice, all of Wexler's powerful reasons for demanding that poor people are front-and-centre in any struggle, legal or otherwise, must be heeded by lawyers and others. No matter how fervent or sincere their motivations, lawyers must remember that it is their role 'to help poor people do their thing, not … to do [their] own thing.'[28]

Nevertheless, mindful of that stricture, the ambition of progressive lawyers should be to establish the lawyer-client relationship as a conversational microcosm of democratic culture in which both lawyers and clients can share, learn, and change. This might result in a plan of action that will suggest a mutually viable way of proceeding; talking must only be a prelude to action. Of course, this would not be anything as pretentious or preposterous as *the* right thing to do. Experience teaches that what counts as a just means to achieve a just end will be fluid and context-specific; there is no one tried-and-true approach to progressive lawyering.[29] However, lawyers must do more than help

[26]See, for example, Noel Semple, 'Access to Justice: Is Legal Services Regulation Blocking The Path?' (2013) 20 International Journal of the Legal Profession 267.

[27]See DA Bell Jr., 'Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation' (1976) 85 Yale Law Journal 470. For a restrained account of how lawyers might become civic campaigners, see William Simon, *The Practice of Justice* (2000).

[28]Wexler, supra note 1 at 1063.

[29]See, for example, Robert Vischer, 'Legal Advice as Moral Perspective' (2006) 19 Georgetown Journal of Legal Ethics 225; Allan C Hutchinson, *Fighting Fair: Legal Ethics for an Adversarial Age* (2015).

poor people 'do their thing, or get out.'[30] Lawyers have a role to play in helping poor people decide what is their own thing and how it might be put it into effect; lawyers' professional and up-close knowledge of the structures of power is a valuable complement to poor people's existential understanding of the deprivations and indignities of poverty.

Across the board

In calling lawyers to professional arms, Wexler is focussed on the work and approaches of those lawyers who practice law for poor people. This is all well and good as far as it goes. However, like many others, he categorises such lawyers as having special duties and responsibilities over and above that of other lawyers in addressing and helping to change the 'misery' that poverty entails.[31] The fact is that this position, like the poor people that they serve, puts all the responsibility on such lawyers and, as a corollary, ignores the role that all lawyers play in maintaining the existence of poverty and should play in overcoming it. As major operatives for and within the established order, the legal profession as a whole has some degree of accountability for the laws and decisional structures that help to create and perpetuate poverty; the law that exists is, in large part, a function of the arguments that lawyers make. Indeed, the pervasive notion that lawyers can and should practice in a detached and apolitical manner must be abandoned. Taken to its more obvious conclusion, Wexler's account hints at, but does not follow through on such a destabilizing alternative.

The insistence that lawyering is a neutral exercise that does not implicate lawyers in any political process or demand a commitment to any particular ideology is as weak as it is wilful. Such an image is a profoundly conservative and crude understanding of what it is to engage in the business of courts, legislatures, and the like: it accepts and works within the bounds of the status quo. Lawyers tend to confuse legal justice with social fairness. Indeed, the power and prestige of lawyers flows from their professional allegiance to the state's official laws and existing institutions; lawyers are the enlisted custodians of the status quo. However, lawyers' broader duties encompass a more justice-based rationale. It is surely incumbent upon lawyers to stand up for what is in the public interest and to address wrongs, single or systemic, that prevent the legal process from becoming a justice system. This mandate should apply not only to lawyers practicing for poor people, but also to lawyers throughout society. As with so much else, Martin Luther King Jr. hit the nail on the head – 'injustice anywhere is a threat to justice everywhere.'[32] By standing by while injustice occurs (or even aiding in its continuation), the legal profession is implicated in those injustices.

Wexler warns that lawyers must tread carefully as it is 'often the government that a poverty lawyer will oppose in his client's interests.'[33] It is true that the government will have an enormous impact on the lives of poor people and that lawyers for poor people will often have to confront government's bureaucratic officials and procedures.

[30]Wexler, supra note 1 at 1065. See also William Simon, 'The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era' (1994) 48 University of Miami Law Review 1099.
[31]Id, at 1053.
[32]Martin Luther King, Jr. 'Letter From Birmingham Jail' in *I Have A Dream: Writings and Speeches that Changed the World* (James M. Washington ed. 1992).
[33]Id. at 1051.

Nevertheless, this is a blinkered view of the causes and conditions of poverty. In the struggle against poverty, it is often the case that government, for all its faults and failings, might be the only friend or support that poor people have. More importantly, this depiction of the primary dynamic of poverty as that between poor people and government is to ignore and let off the hook the vast apparatus of private power and wealth. Without incorporating that elite and the lawyers who practice for rich people and organizations, the heart of the problem (and its likely remediation) is being ignored and thereby excused. Granted, this should come as no surprise because society's important and fundamental constitutional rights are only actionable in the public, not private sphere.[34]

In contrast to the traditional model of lawyering, a progressive view recognizes and insists that all lawyering is political in that who receives legal services, how they are delivered, and what results are produced has enormous implications for the balance of power and influence in society. This is especially so in regard to wealth and poverty; lawyers have nowhere to stand or serve that does not implicate them in the existing allocation of economic and social power. Whatever they do, lawyers are either working to maintain the status quo (or even worsen it) or they are part of the struggle to change and improve it. The effect of the standard model of lawyering enables lawyers to obscure and finesse that fact; the pretense of being apolitical and non-committed fools only the complicit. In short, it is not only Skid Row lawyers that are taking a political stand, so are Wall Street lawyers and even Main Street lawyers; the only difference is not whether they are political or not, but the nature and cut of those political commitments.

By urging this very non-traditional understanding of lawyers' collective responsibility, it is simply to take seriously the informing preamble to the Model Rules of Professional Conduct – a lawyers is 'a public citizen having special responsibility for the quality of justice … [and] should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.'[35] It would be naïve to believe that such an invocation will have any practical, let alone radical effect. But it puts the responsibility upon the legal profession at large to demonstrate why that formal exhortation is not merely window-dressing or ideological fluff. Lawyers are protected by a state monopoly and, therefore, might be expected to advance the public interest, even if what amounts to 'the public interest' is itself highly contentious and the unavoidable stuff of political contestation. There is no 'technical' place upon which lawyers can stand aside from political engagement and from which they can function in a purely professional style. Consequently, lawyers of all stripes and varieties must take responsibility for the cases that they take and the causes that they pursue. Being a lawyer ought not to be an abdication of responsibility for the justice of theirs and the law's work, but an embrace of it.

Of course, asking lawyers to assume such responsibility is not at all guaranteed to produce results that will comply with the logic and leanings of progressive lawyering. There are as many or more lawyers who are happy with or, at least, tolerant of the status quo as there are those who are troubled by it. That said, adopting a more publicly-oriented view of lawyering will oblige lawyers to justify what they do and why they

[34]See supra, pp**–**. The basic claim is that the successful appeal to constitutional rights would only be used to combat government and 'state action.' See *San Antonio School District* v. *Rodriguez*, 411 US 1 (1973) and *Edmonson v. Leesville* Concrete Co., Inc., 500 U.S. 614 (1991).

[35]ABA, *Model Code of Conduct*, Preamble (1983).

do it. It does not direct lawyers to do any particular kind of lawyering or take on any particular kind of client. In this sense, it squares with the more traditional account of ethical lawyering. But what it does do is ask lawyers to come clean about whether they are one of those 'people who are not poor [and who] believe that it is a good thing to have some poor people around.'[36] Unlike others in society, lawyers cannot simply pass the buck; they cannot pretend that it is someone's else problem and that their work has no effect in stymieing the efforts to ameliorate or eradicate poverty. Lawyers must accept that whatever they do, wherever they do it, and whoever they do it for will have political consequences; there are no fences to locate and sit on when it comes to poverty and its eradication. By working for rich people, lawyers are signalling that they are content with or sufficiently untroubled by the status quo that entrenches poverty and its deprivations and indignities.

Conclusion

Lawyers have little option other than to work within the existing legal process. After all, it is a profession of *law*. Yet that does not mean the wholesale adoption or rejection of the legal order as a process for effecting substantial social and transformative change. Progressive lawyers must be entirely clear-headed and strategic in their interventions and practices; they are obliged to tread a thin line between engaging with the system and being co-opted by that system. In taking up the challenge of confronting poverty and all the misery it brings, Wexler realized that and laid out his own particular strategy for lawyers who have poor people as clients. In particular, he eschewed the appeal of a 'middle-class humanism'[37] and warned of the dangers of dabbling for those with a do-good professional state of mind. Instead, he challenged lawyers to put poor people before their own professional and personal interests. As such, his robust and challenging essay remains a touchstone for all those who practice law for poor people. This short essay on Wexler's contribution after 50 years has sought to reinforce his message and to add a few extra twists and turns for those who wish to continue to practice in the Wexlerian spirit.

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[36]Wexler, supra note 1 at 1052.
[37]Id. at 1054.