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To walk together – but where to?

Introduction

This chapter reflects my thoughts after reading Adam Gearey's 2018 book, *Poverty Law and Legal Activism: Lives that Slide Out of View*. I read it as an impossible exercise for an academic manuscript: an exploration of how to write from a privileged position at the top of the social ladder and address the situation of the poor below, while nonetheless remaining ethical and responsible in one's treatment of the people you meet through your practice of law. Gearey accepts the challenge posed by this situation, writing as he does from his position as a lawyer who works with underprivileged clientele and managing to avoid the cruelty of representation while remaining true to the social commitments outlined in his text.

What I find to be the most sympathetic and successful aspect of the book is that Gearey treats humanity as an uncomplicated affair. He does not construct fancy theories about the basic humanity of the poor, who are often treated as if accepting their humanity were a complicated endeavour. It is important that Gearey does not engage in that line of inquiry, opting instead to explore the act of being in solidarity with someone, of seeking the side-by-sidedness of each other through work on the self rather than on the other. Here he draws on Franz Fanon in describing this moment of solidarity, an "open-hearted pause before the other person, the connection or the reflection on the experience of the encounter are elements in a theory of 'social practice(s) concerned with changing the world.'"¹

¹ Adam Gearey, *Poverty Law and Legal Activism: Lives That Slide Out of View*, Routledge (2018), p. 33, 45.

This connection, I will argue, becomes a *walking with each other*, the lawyer walking with the poor, and a connection informed by the works of social movements such as National Welfare Rights Organisation (NWRO) and the Students for a Democratic Society (SDS).²

The Narrative of White Men with Brown People

While this idea of walking together is attractive, it can only work when the direction of the walk and idea of its final destination are shared by both parties—more so, when direction and destination are already given, so that no one party need question the intentions of the other.

Let me illustrate what I mean with two narratives of men with class. Here I mean to use the phrase “men with class” much in the way we can say that a woman is “with child”: they are *with* their bodies, giving life to their kind. The first man is from an iconic colonial episode, when Marlow meets the company accountant at the first outpost, up the river in Joseph Conrad’s *Heart of Darkness*:

“When near the buildings I met a white man, in such an unexpected elegance of get-up that in the first moment I took him for a sort of vision. I saw a high starched collar, white cuffs, a light alpaca jacket, snowy trousers, a clear necktie, and varnished boots. No hat. Hair parted, brushed, oiled, under a green-lined parasol held in a big white hand. He was amazing, and had a penholder behind his ear.”³

Conrad’s narrative is known for its naturalization of a genocide, wherein the torture and killing of indigenous peoples are given events on the road towards Marlow’s individual self-discovery, events set into the background as if simply part of the landscape.

So why is Marlow so taken by this accountant, a man he probably would not even notice on the streets of London or if they met by the River Thames? This encounter leads to an examination of what is fixed and what is in motion when two men with class meet: the accountant has resisted being dragged down from his middle-class position, not by the people, but rather by the very landscape of the colonial project, which is the naturalization of how individuals are borne from and perpetuate genocide and torture. Indeed, the indigenous people can only be seen as

² Ibid, 35, 38.

³ Joseph Conrad, *Heart of Darkness*, Collins Classics (1902, 2013), p. 20.

people when, walking up close, Marlow manages to distinguish the forms of beaten and almost worked to death men from the shade cast by trees. In the larger context of the colonial project, every experience is individual. Marlow is his own individual; the accountant, his own individual; and Colonial Kurtz is yet another individual. If you are not an individual, you have become one with nature. The risk is not of falling into the unintelligible mass of human life, but *to fall into the landscape itself*, to become a part of the tropical vegetation, to become extensions of the branches of the tree or the wooden fence outside of Kurtz's abode, where the picketed fence is decorated with the heads of people that have literarily been turned into extensions of wood. No wonder Marlow falls in love with this accountant who has *resisted* becoming one with the landscape. The risk of falling out of being an individual into the nature of genocide is ever present in *Heart of Darkness*. It is a risk faced in the encounter between men of different social stations, between self and other.

Fast forward to the social movements of the 1960s, where we meet the lawyer Stringfellow in Gearey's text. Stringfellow has sacrificed money and a profitable legal career as a Harvard-trained lawyer for community work in a poor black neighbourhood. Nevertheless, with great discipline and self-preservation, he holds on to his middle-class identity: "The shined shoes mean that Stringfellow 'had remained [himself] and had not contrived to change, just because [he] had moved into a different environment.'"⁴

As soon as I read this passage, I thought of Conrad's accountant. I have been struggling with the twin-images of these two men, the accountant and the lawyer, both striving to remain the same, both feeling the draw of change, yet fearing the risk of falling. For both men, the price of falling is a drastic metamorphosis: in the accountant's case, from person into nature; for Stringfellow, from individual into the undifferentiated masses.

It is at this juncture that Gearey's honesty clearly comes through in his use of the term the "white ally" – a demonstration and acknowledgement of a hierarchy not to be upheld but to be acknowledged as a simple social fact.⁵ The turning of the table, from being the one who studies "a problem," in the words of W.E.B. Du Bois, to making oneself useful in the gestalt of the "white ally," reflects acceptance in sharing the burden

⁴ Adam Gearey, *Poverty Law and Legal Activism: Lives That Slide Out of View*, Routledge (2018), p. 104.

⁵ *Ibid*, pp. 33.

of real social boundaries and the pain and suffering that follows their fault lines.⁶ Although Stringfellow is unable to actualize this potential, Gearey's study of Stringfellow enables us to imagine the possibility of accountable allyship across social class.

Neither Conrad nor Stringfellow are capable of questioning hierarchy itself; they are merely questioning its conditions. Both figures take hierarchy as a given, a norm where deviation from it means falling down the social ladder, followed by a loss of being – the erasing of the self. This what cannot be changed – this that has to remain the same – not only the feeling of being but also to be.

What makes the narratives of the accountant and of Stringfellow incompatible is what in Adam Gearey's book can be understood as *walking with*: an attempt to bridge a divide through working alongside another. However, this *walking with* is usually cast as towards a fixed, stable norm: that of the middle class.

The Broken Contract

For the larger part of the 20th century and now well into the 21st, the middle class has served as the promise of the “Great Society,” or as Alain Supiot describes it, “a secular adaptation of an eschatology of salvation.”⁷ This idea of the middle class promises both movement and fixation. The promise of movement is drawn from the idea that the middle class possesses unlimited flexibility: able to include all the people from below, it is capable of eternal expansion. The promise of fixation is located in the idea that we will always have a significant, sizable middle class that, once entered, affords stability and permanence. Yet for the outcast, the non-desired, the immigrant, the refugee, the minority established on change, the social contract granting membership into this Great Society is neither movement nor stillness. Rather, it is primarily recognized by forms of sameness, what are known as integration policies, the banning of the veil, language tests, and learning Swedish values. With each change, so the promise goes, comes the lifting up, the entrance into a stable middle

⁶ See W.E.B. Du Bois, *The Souls of Black Folk* (1903): “How does it feel to be a problem?”

⁷ Alain Supiot, *The Public-Private Relation in the Context of Today's Refeudalization*, *I-CON* 11.1 (2013), p. 133.

class, further away from the unpredictable everyday of poverty where anything and everything can happen.

To Stringfellow here is a clear hierarchy over who is there to change. Gearey writes: “The lesson that Stringfellow took from his friend was that ‘in order that my life and work [should have] integrity I had to remain whoever I had become as a person before coming there.”⁸

What does it mean to walk with someone if one has the goal of standing still while the other moves forward? Additionally, what is the cost of change? Adrien Wing has written about what she has termed the “spirit-injured soul” of women of color in the U.S. legal academy, where women are expected to both be in the process of changing within the academy and, at the same time, to be the change in the academy itself.⁹ As Wing asserts, these expectations accompany the goal of reaching the middle class which, as Wing describes, is willing to include the other, but not to change itself.

Gearey poses a similar charge to the middle class with the following questions: “What does it mean to be a radical now that the 1960s have gone? How do you achieve the balance between the seeming failure of a period of radical social action and the hard times of the present?”¹⁰

The non-revolutionary rejection of the welfare state(s) in their different variations in Europe and the slipping away of the Great Society in the U.S. together challenge the ideal of being able to walk with each other towards somewhere better, even when one party agrees to change.¹¹ Both presume a middle class that is stable in its location and, at the same time, flexible in its inclusion – underneath all this is the idea of economic growth.

Pierre Schlag similarly writes about this presumption of progression as being forward facing and moving:

“Where history, culture or intellectual life is concerned, the enlightenment holds to a plucky belief in a linear progression. In the advanced industrial-

⁸ Adam Gearey, *Poverty Law and Legal Activism, Lives That Slide Out of View*, Routledge (2018), p. 104.

⁹ Adrien K. Wing, *Poverty, Lawyering and Critical Race Feminism in the Trumpian Era*, Iustus (2021), p. 31.

¹⁰ Adam Gearey, *Poverty Law and Legal Activism: Lives That Slide Out of View*, Routledge (2018), p. 133.

¹¹ For a discussion on the concept of the welfare state in Europe, see Thomas Wilhelmsson, *Varieties of Welfarism in European Contract Law*, 10 EUR.L.J. (2004), p. 712.

ized nations of the West, this enlightenment ratchet narrative has become (certain bloody and catastrophic exceptions noted) an institutionalized truth: the way things are and the way they are supposed to proceed.”¹²

My question is then: How do we argue for social change with a shrinking middle class? Not only inclusion but even the mere re-shaping of basic preferences presumes the possibility of a growing middle class. Yet as Gearey writes, “a new mood has come into poverty law in the years following the banking crisis of 2008.”¹³ If we do not want to take the road of Huey Newton and the Black Panthers who, rejecting the middle class and its conditions, instead choose disruption, what choice do we have in this “new mood”?¹⁴ Is there a way today to walk with someone into something stable, something that is better and not just different from where you came? Today, something has changed: even if Stringfellow remained the same, society has not.

With the words of Martha McCluskey, we are bought back to Marlow again, but this time with new eyes, where the landscape has become populated with exploited bodies fed to the economic engine. She writes: “The master-servant hierarchy constructed and rationalized a market that made gender and racial inequality, violence, and insecurity the basis of economic production that was highly successful for some but costly for many.”¹⁵

Much like McCluskey, Scott Veitch has identified the terms of the economic engine as yet another form of obedience maintained despite the appearance of walking with the other, seeming to make mutual progress:

“In a substitution of ‘obediential obligations’ the combination of economic and legal structuring of debt replaces religion, but the chief quality of the obligations remains the same as before: they cannot be bargained about by the parties themselves. Why not? Because despite their appearance at one level as the result of ‘freedom and engagement’ what appears as choice is so in appearance only.”¹⁶

¹² Pierre Schlag, *The Enchantment of Reason*, Duke University Press (1998), p. 23.

¹³ Adam Gearey, *Poverty Law and Legal Activism, Lives That Slide Out of View*, Routledge (2018), p. 131.

¹⁴ *Ibid.*, 33.

¹⁵ Martha T. McCluskey, *Are We Economic Engines too? Precarity, Productivity and Gender*, *University of Toledo Law Review*, Vol. 49 (2018), p. 640.

¹⁶ Scott Veitch, *The Sense of Obligation*, *Jurisprudence: An International Journal of Legal and Political Thought*, 8:3 (2017), p. 427.

Given the illusory sense of choice Veitch describes as central to our lingering obediential obligations, it is understandable that poverty law has found such a challenging reception in legal studies. But if the law can never serve as a revolutionary tool, does the progressive ideal that is still presented today – inclusion into a stable middle class – hold any longer?

The New Right

Much like the last time fascism came to power, it does so now through our democratic institutions and through our own legal and political choices. Duncan Kennedy demonstrates how the authoritarian streaks of an intolerant church, a fascist egalitarianism in its devotion of a god-like leader, and the nationalism of a militarized fetish are each embedded within the Western liberal legal fabric.¹⁷ Kennedy argues that authoritarian legal arguments are fully possible to make within secularized Western democracy in the guise of the traditional family and in “defining the scope of prosecutorial powers of detention without trial”—or to put it in other words, in failing to draw the line for the use of police powers. The god-like leader remains a figure within democratic law, Kennedy claims, in the idea of military leaders, corporate CEOs, and (in family law) the father.¹⁸ In these insidious ways, authoritarianism is not an alien concept to our democratic state – yet according to Kennedy, it has, until now, been suppressed as a marginalized impulse in reaction to the post-World War rebuilding of Europe. It is partly the wearing down of the common ideological and political project in the West that is making it possible for authoritarianism to resurface in its direct form through our legal and democratic institutions.

Instead of advocating for change in exchange for entrance into the middle class, the authoritarians of the world are promoting the fixedness of status, whiteness, maleness, and Christianity. The recipients are no longer the people from the below to be brought up, but the slipping middle class, falling out and away from the social contract of the welfare state that was to be eternal. The direction and the end station when walking within someone, on a class journey, I suggest might not have to

¹⁷ Duncan Kennedy, *Authoritarian Constitutionalism in Liberal Democracies*, in *Authoritarian Constitutionalism* (Helena Alviar & Gunter Frankenberg, eds.) (2019- forthcoming).

¹⁸ *Ibid*, 5.

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be predetermined, it might have to be along roads never before travelled, and towards new a horizon based on a new imaginary of the life of a middle class.