

## Book Review

Lucie E. White and Jeremy Perelman, eds., *Stones of Hope: How African Activists Reclaim Human Rights to Challenge Global Poverty*. Stanford: Stanford University Press, 2011, pp. 249, \$70 (cloth), \$24.95 (paper).

Reviewed by Scott L. Cummings

### Introduction

The defining project of law and social change scholarship has been to answer a basic, yet fundamental, question: Can law be mobilized to contest the power of those who have it and build the power of those who do not?

Lucie White has spent her career, both as an academic and activist, working to illuminate the conditions under which power shifts and how lawyers contribute to social transformation.<sup>1</sup> One of her central concerns has been to understand how law may be deployed to empower those whose lives are structured—although never completely determined—by poverty, discrimination, and despair. In this regard, White's work has focused on when legal action contributes to the transformation of individual and group consciousness such that marginalized people may come to believe that change is possible and, most crucially, that they can be the agents of that change. White has emphasized consciousness, because it ultimately is the long-term, on-the-ground change in ideology and practice that produces sustained democratic transformation. Her early work, which examines change processes both in the United States and Africa, is associated with skepticism about traditional lawyering. White's account of the welfare hearing of Mrs. G. is the classic cautionary tale of how a well-intentioned but misguided lawyer may reproduce the very client marginalization the lawyer tries to contest by adhering too carefully to the conventional legal script.<sup>2</sup>

Over the past decade, White's work has charted new directions. Geographically, she has returned to Africa, developing a partnership with the Ghana Legal Resources Center to bring Harvard Law School clinical students

**Scott L. Cummings** is Professor of Law at the UCLA School of Law, where he is also faculty director of the Epstein Program in Public Interest Law and Policy.

1. See Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 *Wis. L. Rev.* 699.
2. Lucie E. White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 *Buffalo L. Rev.* 1 (1990).

to Ghana each year to work on human rights projects related to health care delivery. Intellectually, this work has generated new ideas about how pragmatic economic and social rights (ESR) strategies may be used to change consciousness, policy, and practice in an iterative and virtuous cycle. *Stones of Hope: How African Activists Reclaim Human Rights to Challenge Global Poverty* is the scholarly culmination of that project. Edited by White and Jeremy Perelman—a former Harvard Law School S.J.D. student who worked directly on right to health campaigns in Ghana and is now launching a clinical program at Paris’s Sciences Po—*Stones of Hope* is a foundational contribution to the law and social change field.

The book is impressive for both *what* it does—which I will turn to in a moment—and *how* it does it—which I will begin with here. The power and scope of the book genuinely reflect the manner in which it was conceived and executed: as a unique collaboration across continents between scholars and activists, who joined together out of a commitment to mutual learning in the pursuit of social transformation. My review will focus on White and Perelman’s central contributions for it is, of course, they who did the heavy lifting in developing the project’s core methodological, normative, and theoretical framework (the latter, in part, with Peter Houtzager from the Institute of Development Studies). However, it is crucial to begin by acknowledging the other key contributors who did the scholarly and, critically, the activist work that constitutes the core of the project (and provides the material for the book’s four case studies):

- Felix Morka, director of Nigeria’s Social and Economic Rights Action Center (SERAC), who contributed a powerful case study of his organization’s work to resist the state’s eviction of villagers to make way for a World Bank sponsored sanitation project in Badia;
- Zackie Achmat, founder of South Africa’s Treatment Action Campaign (TAC), Mark Heywood, director of South Africa’s AIDS Law Project, and Geoff Budlender, former director of the South African Legal Resources Centre, who collaborated with William Forbath, from the University of Texas, to produce the rich case study on TAC’s struggle to create and implement a national treatment plan for persons with HIV/AIDS;
- Helen Kijo-Bisimba, director of Tanzania’s Legal and Human Rights Centre (LHRC), who collaborated with Osgoode Hall’s Ruth Buchanan and the University of Toronto’s Kerry Rittich, to write the study on community resistance to mass evictions of the Nyamuma people from Tanzania’s Ikorongo animal reserve to make way for global eco-tourism; and
- Mahama Ayariga, former director of Ghana’s Legal Resources Centre (LRC), who, along with Katharine Young at the Australian National University, and Perelman, contributed the pivotal essay on how activists

in Nima seized upon the horrific detention of Mohammed Zakari to advance broader access to health care in Ghana.

The outcome of this collaborative venture is a brilliantly synthetic work, which manages to succeed on three distinct levels. First, it offers one of the richest, most sophisticated, and contextually sensitive accounts of activist lawyering and advocacy that exists in the field. Second, it manages, skillfully and carefully, to derive from the rich case studies an embedded theory of social change that extends far beyond the particularities to guide us toward a clear-eyed, yet “hope”-ful account of how lawyers may help transform lives. Third, and finally, the book is a call to action, a searing indictment of contemporary development policy and simultaneously, a deep wellspring of inspiration for all who care about confronting the structural underpinnings of global poverty. It is this “third dimension” (to borrow White’s phrase<sup>3</sup>) that may well be the most profoundly important to its authors, who have spent their careers doing both the real-world and scholarly work of challenging the depredations of power by building community empowerment.

### **The *Stones of Hope* Project**

What is the central project of *Stones of Hope*? The answer to that fundamental question is crisply asserted by its authors on the book’s very first pages: It is, quite simply, to understand and analyze the multifaceted ways in which lawyers and activists have, in direct engagement with different African communities, deployed ESR strategies to challenge “the violence of radical poverty” (1).

Undertaking such a project invariably demands that one choose among a range of approaches, all of which have unavoidable tradeoffs. A key to framing and critically examining *Stones of Hope* is therefore to be clear *ex ante* about which approach White and Perelman adopt and how it shapes the story that they ultimately tell.

The primary lens through which the *Stones of Hope* contributors approach their task is, in Perelman and White’s terms, one of “historical institutionalism”: a mode of analysis that looks at how legal orders, patterns of behavior, and modes of thinking congeal over time into taken-for-granted, normatively privileged worldviews that structure behavior and thus prove hard to dislodge—but (and this is the critical part) nonetheless contain contradictions that may be exploited to redistributive ends (5–6). As one example, neoliberalism asserts a minimalist role for the state, which may exacerbate inequality, but also expresses fealty to the rule of law, which may create advocacy opportunities.

From this institutionalist stance, the *Stones of Hope* contributors weave stories that might be best understood as accounts of interest group politics. The picture is primarily one of organizational actors, composed of lawyers and activists, who collaborate with community members to contest state and corporate power through a range of ESR strategies. What this means is that, as a methodological and analytical matter, the studies are not (generally speaking

3. See White, *supra* note 1, at 763.

at least) about the backgrounds, motivations, and possible contradictions of the lawyer-activists themselves.<sup>4</sup> Rather, they are about how organizational actors, embedded in communities, use the legal and political levers at hand—deploying what the authors call “strategies of engagement”—to radiate power outward in an effort to ameliorate poverty and reform institutional practice (7).

### **From Hope to Action: The Mechanics of Social Change**

Viewing *Stones of Hope* from this institutional perspective, I want to suggest how the mechanisms by which the book’s protagonists seek to reshape power map onto—and in many ways challenge—fundamental critiques of social change lawyering. In each case study, we can identify three significant social change *encounters* in which the power of law is mobilized to advance campaign objectives. These encounters occur: first, at the point of contact between lawyers and community members, when legal and political goals are formulated and tactics specified; second, at the point of confrontation by the community-lawyer coalition against the state, when the community asserts legal rights to challenge state practice; and third, at the point of remedial state action directed back toward the community, when state power is exercised to redress the community’s claim. In each of these encounters, power is exercised, giving rise to tensions that form the basis for three important *critiques* of legal mobilization: what I shall refer to as the critiques of lawyer accountability, of rights, and of legal implementation. My aim here is to show how the social change encounters illuminated in *Stones of Hope* correspond to these critiques—and how the advocates in the stories seek to engage and navigate the concerns they raise. In the end, I suggest that *Stones of Hope* moves us decisively beyond the enervating progressive distrust of lawyering toward an inspirational, yet politically grounded, model of how law may meaningfully contribute to social change. However, in so doing, it leaves some important questions unanswered. Specifically, while the book provides rich and innovative responses to the critique of rights and legal implementation, it does not forcefully engage the issue of lawyer accountability.

Let me start by sketching the mechanisms of social change embedded in the book—what Houtzager and White refer to as the “long arc of pragmatic ESR advocacy” (172). The *Stones of Hope* project is organized around four detailed case studies: SERAC’s campaign to resist evictions in Badia, Nigeria (17-41); TAC’s HIV/AIDS campaign in South Africa (51-90); the LHRC’s campaign to compensate victims of evictions in Tanzania (91-121); and the LRC health care campaign in Ghana (122-145) (note the pattern of issues: land, health, land, health). All of these campaigns follow a particular (though

4. In this sense, White and Perelman’s account is, for example, very different from that of Dezalay and Garth, who are primarily interested in how lawyers’ quest for justice aligns with their simultaneous quest for status. See Yves Dezalay & Bryant G. Garth, *Asian Legal Revivals: Lawyers in the Shadow of Empire* (Univ. of Chicago Press 2010).

never precisely identical) social change logic marked by a sequence of the three crucial encounters outlined above.

The first occurs when the lawyers encounter affected communities—Badia in Nigeria, the broad constituency of poor South Africans with HIV/AIDS, the Nyamuma in Tanzania, and Nima in Ghana. These encounters create the “generative spaces” (183) in which lawyers engage community members to (1) identify or “name” social problems; (2) “frame” the deprivation and demand for redress in the most resonant and practically useful legal-political lexicon; and (3) develop pragmatic advocacy responses—the “strategies of engagement” by which the activists plan to move the campaign forward. I will return momentarily to this first encounter, but let me briefly note a few of its features. One, the forces that draw lawyers and communities together have a consistently global texture: evictions pursuant to a World Bank-sponsored project in Nigeria, the refusal of multinational drug manufacturers to permit widespread use of generic antiretroviral drugs in South Africa, global ecotourism in Tanzania, and the impact of structural adjustment on the health system in Ghana. Second, the focus of these encounters is to directly enlist community members at the grassroots level in a process of mutual exchange and education in order to activate community participation in the campaign.

The generation of movement energy and strategic planning then leads to the second social change encounter, in which the now-formed lawyer-activist-community coalition intervenes in the political world to advance mutually agreed upon goals. It is here that lawyers and communities identify the available political and legal “hooks” to leverage pressure on state and corporate actors to advance claims of redistributive justice. A key insight of the book is that lawyers and activists at this stage view traditional court-centered advocacy as one tool among many in a multifaceted political campaign. They neither discount it nor privilege it, but instead deploy it when they think it will provide leverage in the overall struggle. Litigation is thus a means, not an end—but still an important means. It is in this sense that the lawyers are considered to be engaged in “pragmatic” rights-claiming. They understand the limits of rights strategies, but use them when they are perceived to be the best available tool—even if they do not always succeed. Consider the invocation of rights across the four campaigns:

- SERAC’s petition to the World Bank Inspection Panel (which resulted in an ultimately inadequate response), followed by a federal lawsuit, which resulted in an injunction that was disregarded.
- TAC’s successful court challenge to the South African government’s refusal to permit the provision of antiretroviral drugs (to prevent mother-to-child HIV/AIDS transmission) to a handful of pilot sites, which did not overcome HIV/AIDS denialist opposition, but gave TAC crucial leverage with reformist officials in ultimately negotiating a clinic-focused national treatment plan. (Note here that it was the fortuitous illness of the resistant Minister of Health that triggered the final resolution in favor of a comprehensive national antiretroviral

treatment plan (76). The arduous and persistent TAC campaign laid the political and legal groundwork to take advantage of this opportunity.)

- LHRC's petition to the Tanzania Commission on Human Rights and Good Governance, which did not stop evictions or provide compensation.
- And LRC's habeas petition on behalf of Mohammed Zakari, which also asserted a human rights claim challenging Ghana's inadequate system of health care funding for the poor, and ultimately led to Zakari's release.

It is important to highlight the following aspects of these legal campaigns. First, the campaigns are multi-tiered in that they are targeted at venues both inside and above the state: national courts in South Africa and Ghana, the World Bank panel in Nigeria and internationally funded Human Rights Commission in Tanzania. Second, the use of rights is strategically and self-consciously geared to achieve the overall result. The advocates are sensitive to over-claiming rights. The best example of this came out in the TAC campaign, in which TAC framed the legal claim as a negative right—to be free of the government's refusal to permit antiretroviral treatment beyond pilot sites—as opposed to an affirmative right to adequate HIV/AIDS treatment. This was a deliberate choice that was skillfully executed, ultimately resulting in the court accepting the negative right asserted (63). The third point is that the rights-claiming in these campaigns is always coordinated with other tactics: media strategies (in Badia), active political lobbying (in the TAC campaign), petition gathering (in Zakari's case), and civil disobedience (in all cases). The campaigns therefore show multidimensional advocacy in full force.

In the wake of a successful ESR campaign, there is a third, iterative, encounter, when the state mobilizes its power to bring change back to the community level. This encounter raises two issues. One is how the state implements legal victories; the other is how community members are continuously engaged in the implementation process. Sometimes there simply is no implementation. In the Tanzania example, the state disregarded the commission's order to compensate displaced villagers. But other times, implementation is robustly community-based. In the TAC example, the key implementation issues were training clinic personnel, especially in rural areas, to administer antiretroviral treatment and educating those with HIV/AIDS on their treatment regimens. As the authors suggest, TAC's grassroots practice "prefigured" (189) the institutional response in a way that enhanced implementation: TAC's on-the-ground commitment to clinic-based and community-led antiretroviral treatment programs was ultimately adopted as a model for South Africa's national HIV/AIDS treatment plan (76). In this way, a role for ongoing community engagement was built into the policy response.

It is the power of ongoing community mobilization that is key to the *Stones of Hope* analysis. The goal of these campaigns is, ultimately, to activate the community so that they sustain the struggle for justice after the campaign

passes. It is here that Perelman and Young's "rights as footprints" (122–23) notion becomes a central metaphor of the book. The assertion of rights and the achievement of shifting power is imprinted upon the collective community consciousness and retold in ways that sustains and re-motivates activism over time.

### From Action to Theory: The Specter of Accountability

Understanding how the arc of pragmatic advocacy occurs across these pivotal social change encounters (lawyer–community, lawyer/community–state, state–community) allows us to then examine how they relate to three fundamental, and familiar, critiques about the scope and power of legal activism. These critiques raise concerns about (1) the degree of lawyer accountability to communities in social change contexts, (2) the political risks of rights claiming, and (3) the effective enforcement of legal victories. I suggest that the central theoretical contribution of *Stones of Hope* is to challenge two of these critiques (of rights and legal implementation), while leaving the third (of accountability) unanswered.

I begin by outlining how the social change encounters identified above create the very conditions upon which the critiques are predicated. The first encounter, in which empowered lawyers engage disempowered communities around the project of social transformation, gives rise to the *critique of accountability*. Here the familiar concern is that lawyers set the social change agenda, make strategic decisions based on their own priorities, or privilege the views of one sector of a broader constituency, as in Bell's classic critique of the NAACP Legal Defense and Educational Fund.<sup>5</sup>

The second critique relates to the execution of legal strategy during the encounter between the community, their lawyers, and the state, in which lawyers assert rights in front of an adjudicative body with the aim of changing law to redress the community's grievance. In the *critique of rights*, this type of rights-claiming is viewed as politically dangerous because it individualizes grievances and thus fragments collective action by channeling it into slow-moving and demobilizing courts.<sup>6</sup>

The third critique—now at the remedial stage of state enforcement—may be called the *critique of legal implementation*, which is premised upon the classic disjunction between law on the books and law in action. Here, the concern, captured by Scheingold's "myth of rights"<sup>7</sup> and Rosenberg's "hollow hope,"<sup>8</sup>

5. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *Yale L.J.* 470, 489–91 (1976).

6. Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 *Harv. L. Rev.* 938 (2007).

7. Stuart A. Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (Yale Univ. Press 1974).

8. Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Univ. of Chicago Press, 2d ed. 2008).

is that judicial pronouncements do not easily translate into change on the ground because of bureaucratic impediments to enforcement and the potential for backlash. Therefore, lawyers may be lured into misguided legal strategies when other forms of political action might be more effective.

What does *Stones of Hope* have to say about these critiques? A lot, it turns out, about rights and implementation, but very little about accountability. Let me address the critiques in reverse order.

With respect to the critique of legal implementation, the studies in the book offer a rich and compelling account that both accepts this critique, but then offers ways of moving beyond it. It is at the point of legal victory, in many ways, that the *Stones of Hope* campaigns start. The campaigns are thus organized around fulfilling the promise of the legal victory through what McCann calls legal leveraging: negotiating policy concessions, influencing public opinion in the media, and using the victory to stimulate grassroots energy.<sup>9</sup> It is at the grassroots level, then, that the hard work to implement and sustain victories occurs. The lawyers accept this as a critical starting part of their work. They are not bewitched by court pronouncements and lured into a false sense of law's formal power. To the contrary, the lawyers are self-consciously antiformalist and pursue legal change in the context of overarching strategies of ongoing political struggle.

There is the question of whether the lawyers and activists ultimately succeed in this regard and here I think the record from *Stones of Hope* is a bit less clear. For example, take TAC's case. Although the case study discusses the formulation of the national treatment plan and allocation of resources to support it (86), we are not told in any detail how the plan has played out on the ground. Similarly, in the Zakari case, we are told that the user fee health care system is ultimately disregarded in favor of national health insurance, and that LRC was involved in this process (144). But the linkage between the campaign and this resolution is not clearly specified. Overall, we are told that democratic and experimentalist practice on the ground presages the institutional design of programs to come. However, just how that process works is less clear, leaving the reader with a question: How does prefiguring actually end up transfiguring?

When it comes to engaging the critique of rights, the book makes perhaps its strongest contribution by moving us beyond the debilitating debate about whether rights help or hinder movements to show how they can be used as resources to spur political action. The central framing of the project is "reclaiming human rights," which suggests a deep engagement on the part of the lawyers with the limits and risks of rights strategies and a commitment to carrying them out with sensitivity to the pluralism of local political discourse and rights' potentially imperialistic overtones. It is fair to ask whether the turn toward "pragmatic" rights claiming—which might be viewed as incrementalist

9. Michael McCann, Law and Social Movements, in *The Blackwell Companion to Law and Society*, at 506, 514 (Austin Sarat ed., Wiley-Blackwell 2004).



and too focused on discrete policy achievements—is ultimately the “best” form of transformative politics. However, this type of criticism always requires an analysis of the viability of alternative political options, without which we are left to judge political success against an untested—and perhaps untestable—ideal.

The book does, however, leave open some fundamental questions about the critique of accountability. In its commitment to foregrounding the agency and voices of the community members involved, it tends to obscure the voices and stories of the lawyers. I suspect that this is a deliberate, and in many ways refreshing, choice. However it is one with consequences for our understanding of one of the ultimate advocacy objectives: community empowerment. Generally speaking, the lawyers in the stories are hidden behind their organizations. What are their backgrounds and motivations? How did it come to pass that they adopted such innovative, pragmatic views of advocacy? How did they develop and hone their strategies? By deemphasizing the advocate, we are left to wonder about how closely their interests map onto their clients’ interests and how accountable they might be. It is often asserted that lawyer and community interests match up, but it is not clear how that match was achieved and how contested it might be. For example, in the case of Tanzania, the decision to file with the Commission on Human Rights and Good Governance is accepted as the product of consensus, but it is not clear what informed that decision.

More broadly, the important fact that White and Perelman, along with other elite Harvard Law School students, were central actors in many of the stories told in the book raises important questions about how that encounter, across a vast expanse of space, culture, race, class, and power, was managed and what the points of tension were. Potential divisions and tensions are downplayed in presenting stories of advocacy and outcomes. But in so doing, we do not learn how the tricky process of community engagement is sustained over time. In the end, the book leaves us with a theory of change bereft of a theory of accountability. That, of course, does not ultimately detract from its seminal achievements, but it does raise precisely the sorts of questions and concerns about lawyer power that White so eloquently surfaced in her early work. Particularly to the extent that this book speaks to the next generation of progressive lawyers eager to understand how to effectively engage poor communities in transformative politics, it would be useful to learn more about the processes and practices that successfully forged the *Stones of Hope* collaborations.

### Conclusion

In the end, of course, no book can be all things to all people and any scholarly approach carries its own tradeoffs. We may focus on what a work does not do only to devalue what it does. That would be a grave mistake here, not only for those who study lawyering for social change but for those who actually carry it out. *Stones of Hope* is, in the final analysis, a stunning

achievement that lives up to its brilliantly evocative title. It is, in my view, essential reading not only for those who care about the sociology of law, but for all students and practitioners who care about using law to make the world more just and humane. In this sense, *Stones of Hope* is a model of what legal scholarship should be: academically rigorous and—most importantly—deeply engaged in the project of social justice. That is the stone that we all should carry forth.