

Good morning. Thank you James [Sandbach] and Clare [Johnson] for inviting me here today. And thanks to all of you – all of the clinic coordinators, supervisors and volunteers who work tirelessly as part of the broader movement for social justice and access to justice.

The critical role clinics play in delivering legal services is an issue very close to my heart. For eight years I ran a clinic in America, as a faculty member at NYU School of Law and a lawyer at the American Civil Liberties Union. Our clinic served both the needs of New Yorkers whose civil rights were under threat and as a training ground for law students bridging the gap between theory and practice.

Although an ocean separates me from that clinic now, the issues we tackled there are the same issues we continue to tackle at Liberty today. Whether it's

- the Government's hostile environment toward immigrants, a series of policies designed to divide communities and breed racism by turning neighbours and public servants into border guards;
- the reversion to discredited policing practices such as over-reliance on stop-and-search, an ineffective and discriminatory tactic that serves only to undermine relationships between police and the communities they serve;
- the human rights fallout from austerity, which – among many other things – pushes people with mental health and learning disabilities to crisis points that result in forced institutionalisation and other coercive responses, and encourages local councils to push measures that criminalise poverty and homelessness,
- or the rise in big data-driven automated decisionmaking about matters ranging from public benefits to policing to immigration, which writes discrimination into code and threatens to replace empathetic if imperfect human judgment with equally imperfect machine learning,

we see all around us systemic injustices that Liberty tackles at a policy level and you work on the ground to mitigate the havoc those policies wreak.

These injustices arise against a backdrop of enormous political instability. Political rhetoric continues to stoke a politics of fear and anger. Security trumps liberty, stability trumps dissent and political whim trumps democratic debate.

This may feel bleak. But as I look across this room I feel hope. Because while we all come from different backgrounds – some of us privileged, some of us less so – all of us have the extraordinary privilege of practicing law.

It should go without saying that the law is not inherently a tool of social justice. It must be wielded. It *is* wielded by the powerful to reinforce their power, every day. But should also go without saying that the rule of law is measured not by how we treat the rich, the powerful and the privileged, but how we treat the poor, the disenfranchised, and the condemned.

As lawyers who *use* the law to give power to those who lack it – to those who are denied access to it by institutional racism, misogyny, homophobia, transphobia, economic inequality and other systemic injustices – we in this room are part of a movement for social justice.

To be a movement lawyer requires complex thinking that takes us far beyond the blackletter education our profession bestowed upon us. The law student is taught that the law is a neutral, stable thing that needs only to be teased out from its hiding place by objective tools of interpretation and analysis. The movement lawyer knows that the law is written and interpreted by people with power; that it is subject to unconscious bias and conscious manipulation by people seeking to preserve that power.

The law student is taught to leave behind a “muddleheaded world where everything is relevant and [step] into the lawyer’s world where the few critical facts prevail.”<sup>1</sup> The movement lawyer knows that choices about which facts are critical and which are not reflect the experiences and perspectives of people with the power to exercise that choice, and that such power is not evenly or fairly distributed.

The movement lawyer does not *reject* the law because of these flaws but rather *embraces* the law as a tool for social justice, using it all the more powerfully because of a clear-eyed understanding of those flaws.

One of my lodestars as a movement lawyer is the great legal scholar Mari Matsuda. She put this idea well when she wrote that “the best lawyers are the ones who are able to detach law and to see it as a system that makes sense only from a particular viewpoint. Those lawyers can operate within that view, and then shift out of it for purposes of critique, analysis, and strategy.” Matsuda spoke about having a “multiple consciousness” when it comes to the law – the ability to operate within its logic while also seeing clearly its limitations as a vehicle for actual justice – in particular, seeing this clearly from the perspective of the communities most often affected by injustice.

Developing that multiple consciousness requires us to get closer to people who live on the margins of society -- closer to the poor, the neglected and the excluded, the disfavoured. It’s necessary that we, as lawyers, see the anguish and get proximate to the problems facing those communities to understand the urgency and importance of the struggle for justice. We have to

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<sup>1</sup> Mari Matsuda

see these things directly, by listening to those affected and even venturing into different places. No matter who we are, the world of the oppressed is accessible to all of us. Refusing to access that world is a deliberate choice. Abstraction and detachment are taught to law students as virtues of a proper legal mind. But “abstraction and detachment are [also] ways out of the discomfort of direct confrontation with the ugliness of oppression.”<sup>2</sup>

The beauty of human rights law is that provides a framework to circumvent the barriers of abstraction and detachment and make the experiences of the powerless more proximate to the corridors of power. The question in human rights law is not merely “does the state have this power,” but *should* it have this power, judging by the constraints of certain fundamental rights? Is the exercise of such power necessary at all? And is it proportionate when considering the rights of those whose lives will be affected by this exercise of power?

As a matter of logic and justice, we can’t answer those questions without developing a clear sense of the reality of those affected lives.

And yet too often human rights lawyers fail to ground their work in that reality. Our judicial reviews keep affected communities out of courtrooms and filter their reality through witness statements designed more to speak the language of the courts than the language of the people. The structure of the profession and the culture of the Bar divide the people who experience injustice from the people whose job is to translate, represent, and articulate those injustices before the judges who hold the power to redress them. Deeply ingrained conventional understandings of the role of the barrister, and – speaking frankly – a pervasive culture of

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<sup>2</sup> Mari Matsuda

elitism within the Bar, stand as barriers to using human rights litigation to empower affected communities and build sustainable movements for social justice.

Solicitors are not immune from these cultural attributes. As a whole, our legal profession inculcates us to see lawyers as a governing class rather than as instruments of our clients, the people. It rewards us for behaviour that reinforces institutions of power, including our own power.

The work so many of you do every day stands as a rebuke to that culture. The choice you make to exercise your privilege as a lawyer on behalf of people facing eviction, denial of benefits, a threat to have their children removed, or any of the broad range of legal issues you address – is a testament to value and the valour of movement lawyering. And when those of you on the front lines of movement lawyering team up with those of us with the multi-faceted tools of strategic litigation, policy and political work, and strategic communications, we build alliances that can dismantle systemic injustice.

At a recent panel on strategic litigation I participated in at Doughty Street Chambers, Helena Kennedy and I – as two lawyers with experience of legal practice both here and in the United States – both noted that the American legal profession has a much more robust culture of movement lawyering than we have here in the UK. Baroness Kennedy suggested that one of the reasons for that was that American lawyers have a broader community of fellow-movement lawyers to draw upon for support, and to lend one another credibility and courage to advance a radicalised, client-centred view of the law. I think that's right – I certainly drew on that support myself throughout my career of practice over there.

But that American community was built in part by the tradition of legal clinics, bringing social justice lawyers together, forging academic relationships that spawned scholarship that legitimised and mainstreamed movement lawyering within the profession, and inspiring hundreds to go out put those principles into a movement-oriented legal practice. You are building that tradition here. You can build that community. You must draw on one another for support, credibility and courage.

And you will need it. It takes courage to do uncomfortable things, to challenge traditions, to push the envelope and to demand that systems of power bend to the interests of the powerless. No battle for justice in the history of the world was won by people doing things the way they have always been done. We need a movement, and we need lawyers to be part of that movement. It starts in places like this, with a group of people willing to call themselves movement lawyers and support one another to get proximate to the world of our clients and use our multiple consciousnesses to wield the law as a tool for their liberation and fulfilment.