

KEYNOTE ADDRESS:
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BEYOND CIVIL RIGHTS TO HUMAN RIGHTS

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In thinking of Edward Sparer, my own remarks from a statement I gave at the memorial service held for him best capture my sense of the person that he was.

Edward V. Sparer cared about evil and social injustice. He represented the poor and sought to empower the powerless. If greatness is measured (as it ought to be) by compassion for children in the dawn of life, the infirm in the pit of life, and the old in the twilight of life, Ed Sparer will be remembered as a great man, as a giant. But whatever the measure, this generation of lawyers and the generations that follow are indebted to him for proving that there are options—lawyers can choose to serve the poor instead of the privileged, the oppressed instead of the powerful, the cause of justice for all instead of the interests of a few.

To his credit, Ed Sparer will be remembered for more than his

pathbreaking contribution to what some call poverty law or public interest law. He will be remembered all the more by those who knew him because of the person he was and the qualities he embodied. Ed was the kind of person who cared about evil, social injustice, *and people*. Even when he rose in righteous indignation about some instance of injustice, Ed never forgot that human beings were involved. He always sought to acknowledge the humanity of those who opposed him even as he deplored their conduct as inhumane and their views as unenlightened. Ed suffered fools more easily and far more gently than most. He embodied those qualities that many of us treasure most. Those who saw him from a distance marveled at his eloquence and his passion. Those who worked with him respected him for his courage and his commitment. Those who knew him best will remember his

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enormous capacity for empathy and his seemingly boundless compassion.¹

Those were the words I framed eleven years ago and they still accurately reflect my remembrance and my affection for Ed Sparer. I think this law school could do him no greater tribute than by encouraging and enabling students to continue to focus this law school on those issues which touch upon and in many respects impact in devastating ways the lives and the limited chances of people who are poor.

When I think of Ed, I think of these conferences and of these issues, and I am reminded of Rip Van Winkle. As the story is told, Rip Van Winkle used to frequent a local pub before he retreated into the mountains. In this pub was a portrait which bore a striking resemblance to the King of England. When he awoke from his slumber twenty years later, he rushed down the mountain to be confronted with a society transformed. One of the most immediate changes he observed was that the portrait was no longer of the King of England but of George Washington, President of the United States and Commander-in-Chief of the American Army. The wonder was not that Rip Van Winkle had slept for twenty years, the wonder was that he had slept through a revolution that changed the face of the world.

So one might wonder whether Ed Sparer, if he were to return today, would find that he too had slept through a revolution that had changed the face of the world. What differences would he observe?

In describing such developments to him, we might talk about what has happened throughout the world, the amazing advancements that have taken place in our lifetime. Ed would listen with tremendous interest and then, after we had told him about the international condition, about the breakup of the Soviet empire, about the collapse of the Berlin wall and the like, Ed would gently prod us to tell him about what has happened in this country. We might be inclined to tell him about the enormous progress that has been made in any number of areas. Then, as he guided us towards the people about whom he was most concerned, we might be compelled to tell him that, among the ranks of social workers and people on the front line, we find people of immense caring and seemingly boundless empathy, qualities that he would have applauded.

We would tell him that we live in a nation that is spending three-quarters of a trillion dollars on human services-related programs and initiatives. We would tell him that within our various professions, we now know what works to protect and shelter people from the ravages of poverty. We would tell him that we know that programs have to be preventive, comprehensive, community-based, child-centered, family-focused, and that they must be empowered and culturally sensitive. If he were to ask around, he would hear that mantra repeated with minor variations on the order of such characteristics. Ed might then be a bit more forceful and might ask us what has been done with this knowledge in relation to the condition of people. He might frame the

question in a way that I have framed it for the past decade and this is a question that in many respects motivates my work and the inquiry. How can we know as much as we do, spend as much as we do, care as much as we do and accomplish so little that so many children over so long a period of time have their chances permanently compromised to develop and grow into productive adults, effective parents, and participating citizens?

We might then have to share with him a reluctant conclusion. That conclusion is that we don't know as much as we think we do and we don't have the political will or personal courage to do that which we know we ought to do. We might conclude that we don't spend as much as we should. What we do spend, we spend with such ineffectiveness that it is unlikely that we will receive what we need until we demonstrate that we can competently handle what we do have. We would tell him that we have come to the adverse conclusion that we don't care as much as we say we do because some children matter more than others and some children matter not at all. We would tell him that we live in an era where the popular press glorifies the onset of a suburban era, an era of distant and walled communities, private schools, private security forces, virtually self-contained islands and villages for the powerful and the privileged.² We would tell him that this suburban era brings with it the explicit and implicit abandonment of urban America because of the perception of it as being too poor, too democratic, too problem-ridden, and much too colorful for things to work.

We would tell him that we have essentially forsaken urban America through a series of public systems, public housing, public welfare, public works, public health, and public schools.

Ed might ask us about the extent of the efforts to shape the law, legal institutions, and social systems to address the needs, interests, and concerns of those who are less privileged in this society. We would be forced to tell him that the struggle in many respects continues at a level where it receives neither the attention nor the support it deserves. He might ask us about practitioners, who would not necessarily be limited to lawyers. These practitioners would include the people on the front line who work with and live in urban communities on a daily basis, among them social workers and teachers, whom he might agree are the real heroes and heroines. Why? Because we would find that in the areas where demographics bespeak problems—in Philadelphia, Detroit, Chicago and Los Angeles—the levels of despair and abandonment are so extraordinarily high that these are communities into which lawyers won't visit clients, into which doctors won't make house calls, into which firefighters will go only accompanied by police, and into which the police will go only when armed. These are communities into which teachers and social workers venture every day, not because they have to but because that is their job, that is their career, and that is their life's work. We would tell him that we have contrived to make teachers and social workers confront what is quickly becoming a mission impossible, a situation

in which they are being overwhelmed by the ravages of poverty. We would tell him that we force teachers and social workers to work within a set of systems that are fragmented, duplicative, crisis-driven, ineffective, and therefore politically vulnerable.

We would tell him that enormous attention is paid to children who are born addicted to drugs or other substances in utero, yet much less attention is paid to the fact that most children are born healthy and that it is what we do to them after they are born that dramatically affects their life chances. We would tell him that we abandon those children from the time they are born until they trudge into school four, five, six, or seven years later as weary survivors of the trek from birth to school. We will tell him that those children come to school unprepared for what school has to offer, and we would quickly agree with his observation that schools need to be equipped to teach the children that they have, and not the children they might wish to have. He would agree with us that children who are abandoned by the health care system and therefore come to school with undetected, undiagnosed, and therefore untreated physical illness, hearing and vision impairments, emotional scars, developmental delays, social capital deficits—that these are children worthy of attention. We would tell him that these children come to school without the early education to which we continue to say they are entitled and which we continue to say works. We would tell him that these children come to school without the developmental support and the

family support programs that they need. He would ask us who is responding to this problem, who is stepping up and saying that we are prepared to guarantee school-ready children. We would be forced to tell him that no one has done so, and that while we have a national goal that promises that all children will be school-ready by the year 2000, we have absolutely no mechanism to ensure its success.³ Instead, we passively issue annual reports.

We would tell him that he would be proud of the practitioners who have realized that the system of human services and social supports that we currently have in place has failed and continues to fail dramatically. We would tell him that there are people who are prepared to say that we must do more than have a safety net through which children today are free-falling with increasing speed. We would tell him that there are practitioners who now argue for family support systems which not only provide a safety net, but also create steps, ladders, and platforms for families to move from dependency to sufficiency. We would tell him that across the country there is a movement which seeks to respect and affirm the dignity of the family. We would tell him that we are moving away from a child-centered system which reflects social triage, which attempts to save the child and jettison the family.

We would tell him that these practitioners who are on the front line urging this re-orientation are usually ignored. We would tell him that in many respects the left, progressives and liberals of this country have ceded the family area to

the right. We would tell him that we have shied away from talking about family values because we believe that to confront the issue, we must necessarily agree with those who seemingly respect neither family nor values. Thus, we have succeeded in limiting ourselves to discussing only the children. This debate gets us nowhere, but allows us to feel as if we are doing something worthy of attention—even as we deny support to those who are leading what seems to be the struggle.

We have a system in place which not only fails to move families from dependency to sufficiency, but is corrosive of values and denies children the kind of adult leadership, mentoring, support, and guidance that they need. Yet, lawyers are strangely silent on these issues. Lawyers continue to act within the confines of a box which is prescribed by prevailing constitutional analysis and statutory interpretation. Lawyers are failing to hear the front-line workers who are saying that a growing number of people in these communities do not believe, based on their life experiences, that the system could possibly change. These are the people who live in public housing that was initially conceived as transitional housing. This public housing was intended to provide temporary respite from market forces by providing safe and sanitary housing while the family gathered its resources. Public housing today in many cities of the United States is neither sanitary nor safe. Rather than seeing public housing as the possibility of a twenty-four hour intervention to deal with the multiple issues confronting families, we have seen public housing become an

incubator for every form of pathology. We have essentially gone from transitional housing to intergenerational warehousing and we tolerate it. Lawyers find themselves arguing about whether people ought to own a dilapidated unit near a housing project where people ought not to be living at all.

We have a system of public welfare that remains claim-based and shame-based. Once the claim is made and the shame endured, what a family gets is too little money to even attain the poverty level. We have a system that, once the claim is made and the shame endured, operates to guarantee that the family remains fully dependent and fragmented. We have a system where fathers are seen as either absentee fathers or "deadbeat dads," but not as people who have the ability and the potential to contribute to the life and well-being of their children in any other than financial terms.

We have a system of public works which should offend our sensibilities. We have a system where we can travel from one community to another and tell simply by the physical deterioration of the streets that there are some communities which deserve services and some which apparently do not. We have a system of public health that is an international disgrace.

We have a system of public education which could be the last hope for saying to the children and their families at the margins of society that we care. What we really tell them is that we don't care. We accept a situation at a large urban school district where it has been documented that one out of four children will be failed in first grade;

where, of those children who are failed in first grade, one out of two will fail at least one more time before leaving elementary school; where, of those children who have failed more than once before leaving grade eight and who are sixteen years or older, 92% of them will drop out of high school. At the end of a five-year study, there were more of those children in jail and on probation than there were as high school graduates. We tolerate this system yet we wonder why young people in their manner, dress, and music speak of society with contempt and disregard.

If these conditions existed outside the boundaries of the United States, our discussion would be about human rights. We would understand the psychological injury of children growing up in a war zone where their physical safety is threatened and their sense of personal security is compromised, and our response would be in terms of humanitarian aid. We would airlift children out and airlift medical supplies in.⁴ We would go to the United Nations and speak in ominous tones about grave violations of human rights.

This human rights framework might be useful when addressing the rights of people in the United States. One could look at the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social, and Cultural Rights of 1966, and the Declaration of the Rights of the Child proclaimed in 1989. One could look at the Convention on the Rights of the Child, adopted by the United Nations General Assembly in 1992, which was endorsed by over 127 parties and which I

would like to point out the United States has yet refused to sign.

How remote these provisions must seem to the circumstances of the people in urban America and yet, how relevant. The thread that connects this evolving body of international law is the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family."⁵ This fundamental assertion is the common denominator of all of these provisions. One could look at Article 25 of the Universal Declaration of Human Rights which states "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services."⁶ One could look at Article 6 of the Covenant on Economic, Social and Cultural Rights which "recognize[s] the right to work . . . the fundamental right of everyone to the opportunity, if he so desires, to gain his living by work which he freely accepts."⁷ The member states are expected to take the appropriate steps to safeguard these rights.

It would be interesting to see what would happen if there was some domestic application of Article 27 of the Convention on the Rights of the Child which discusses "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development." It continues on to state that "[p]arties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement

this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing."⁸

It would be interesting that if we were to apply this evolving body of human rights law to the United States today, we would fail the test miserably. However, in applying these standards domestically, it invites us to raise our sights and enables us to broaden our field of vision. The human rights lens has transformative and explanatory potential because it creates a different arena for discussion of issues of social injustice and economic justice. It liberates us from the predictable arguments around constitutional interpretation and statutory construction and invites consideration of a broad array of possibilities to be informed by our values and our institutions. Unlike the traditional American analysis, a human rights framework does not pose any necessary antipathy between rights and entitlements. In fact it assumes that the right must be made real, otherwise the right is abridged. A human rights analysis does not necessarily pose any necessary contradiction between the public and the private. It acknowledges that the primary responsibility might be private but it imposes upon the public sphere an obligation to ensure that children and families are protected. A human rights analysis does not create a seemingly irreconcilable tension between individuals and communities. In fact, a human rights analysis assumes that, with inherent dignity and with inalienable rights, human beings can live within welcoming communities of

interest that can support, nurture, and nourish them. All of these are possibilities which seem unlikely and distinctly un-American in terms of the prevailing domestic legal and constitutional analysis.

The merging concern about environmental racism is one which demands our attention as communities make decisions about trying to build an economic base to move from the corrosive and destructive quality of joblessness. Yet they continually find themselves having to accept, sometimes with their agreement and sometimes against their wishes, industries and conditions which are destructive to their physical well-being, their emotional health, and the larger environmental conditions. These are issues that can be shaped not only by people of good will and not only by looking at evolving statutory and constitutional analysis within this country, but also by seeking to look at a human rights analysis and not just solely some restricted notion of naturalists. These issues would incorporate an evolving legal system that is becoming the basis for international cooperation and understanding, a developing consensus among peoples and among nations about the best methods to jointly and cooperatively inhabit this planet earth.

The truth, to conclude, comes from Ed Sparer and his notion of what the social struggle and our special vocation should be about.

I believe that the social struggle is what the radical law teacher's special vocation should be about. But even if, in the final analysis,

there is no effective radical practice for the radical law teacher as teacher to exemplify and demonstrate to her or his students, there is still another task: to demonstrate concern and ways of working—doing legal work—that at the very least are helpful to some oppressed human beings, regardless of their impact on oppressive *systems*. This, of course, is a "liberal" task as well. But that is no reason for radicals to dismiss such an effort. Caring about their fellow human beings is the beginning of both radical and liberal faiths. Take that "caring" away, remove the impulse always to help your fellow human being (in a small way if you cannot do it in a more systemic way), and the radical becomes a hollow fake, a dangerous imposter. We cannot build a new society of caring human beings if we do not act to help our fellow humans now. However small the ways, we are what we do.⁹

Ed had a passion which informs my thinking and my remarks and he would be offended to be referred to as Ed Sparer, a radical law professor or even a radical law teacher alone. He would know that there must be some other source of inspiration.

ENDNOTES

1. Ralph R. Smith, *Edward V. Sparer*, 132 U. PA. L. REV. 420, 430 (1984).
2. *See generally* William Schneider, *The Suburban Century Begins*, THE ATLANTIC, July 1992, at 33.
3. *See generally* Improving America's Schools Act of 1994: Hearings on S.181. Before the Subcomm. on Education, Arts, and Humanities of the Senate Committee on Labor and Human Resources and the Subcommittee on Education, Arts, and Humanities, 103d Cong., 2d Sess. 67 (Mar. 7, 1994) (statement of Wendy D. Puriefoy, President, Public Education Fund Network).
4. *See generally* Scott Steele, *To The Rescue; the Plight of a Little Girl Sparks Western Assistance For Innocent Victims of Bosnia's Civil War*, MACLEAN'S, August 23, 1993, at 30.
5. *Universal Declaration of Human Rights*, G.A. Res. 217A (111), U.N. GAOR, 3d Sess., Preamble (Dec. 10, 1948).
6. *Id.* at art. 25.
7. *Covenant on Economic, Social, and Cultural Rights*, G.A. Res. 2200A (XVI), U.N. SCOR, 18th Sess., Supp. No. 7, at 62, U.N. Doc. A/31/391 (Dec. 16, 1966).
8. *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 3d Sess., (1989).
9. Edward V. Sparer, *Fundamental Human Rights, Legal Entitlement and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 STAN. L. REV. 509, 574 (1984).