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DIGGING INTO DEMOCRACY: REFLECTIONS ON CED AND SOCIAL CHANGE LAWYERING AFTER #OWS

BARBARA BEZDEK[*]

Imagine your city free of poverty, racism, violence. Now consider, how does the law you teach or practice bring that vision closer to reality? I ask myself this question, in response to a key flexion point in Professor Haber's article, *CED After #OWS*,[1] which urges Community Economic Development ("CED") lawyers to assess how tame the social justice dimension of much CED law practice has become in the decades since its rebellious origins in the 1960s and 1970s era of civil rights and antiwar activism. Does CED practice hew so closely to establishment legal institutions that it impedes the transformative social justice aspirations of the communities in which we work?

In this Essay, I consider the tensions set up between 'being the change' in the prefigurative sense that the Occupy Wall Street ("#OWS") movement activism popularized, and Haber extols; and 'building the change,' a common rationale for much community-led CED practice that is criticized as small-ball and insufficiently impactful both locally and on the scale of social justice imperatives addressed by social movement activism. *CED After #OWS* suggests that now is the time to move on from aiding people in establishing their own community-led, community-benefiting alternative institutions to mediate the structures that impoverish and imperil their neighborhoods,[2] in favor of more frankly politically conscious and activist "anti-authoritarian community counter-institutions."[3]

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1. Michael Haber, *CED After #OWS: From Community Economic Development to Anti-Authoritarian Community Counter-Institutions*, 43 FORDHAM URB. L.J. 295 (2017).

2. See WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY 3 (2005) (presenting CED as an approach to social policy implementation (1) that embraces efforts to develop and deliver core social goods to geo-social communities, such as affordable housing, jobs or business opportunities to low-income residents, (2) in which a leading role is played by nongovernmental organizations (3) that is transparent and accountable to residentially defined communities). Two distinguishing characteristics are the centrality of the *community as agent* in determining the desired development, and the *community as beneficiary* of the projects undertaken. *Id.* at 3–4, 69–142. Primary organizational forms in practice have been not-for-profit corporations and cooperatives, although numerous adaptations and innovations are documented throughout Simon's book. *Id. passim.*

3. Haber, *supra* note 1. Haber explains that he uses the term "anti-authoritarian" more inclusively than many activists use themselves, to also encompass activists who are "more likely to call

CED after #OWS assesses CED programs as having made missteps that can potentially be overcome by embracing anti-authoritarian activism, described more completely as it influenced the Occupy Movement. The history offered of CED begins in 1960s radical lawyering to seize and hold power for communities, briefly traces its transitions through the market-focused 1980s and 1990s, determines that CED's development work is "too small" as effective anti-poverty lawyering or community empowerment, and explains this as the consequence of reliance on the non-profit industrial complex, that system of foundation-dependent tax-exempt organization used by many community-based programs that depoliticizes social movement efforts by funding services while minimizing community control over naming and meeting community concerns. Real social justice activists can challenge poverty rather than embrace this status, and fight structural equality from within communities more effectively than the dominant social justice non-profit and CED models do. To challenge poverty and inequality, Haber's proposition is to move from CED to "community counter-institutions" in an anti-authoritarian frame, that will focus on politicized community organizing and mass-movement building, and while experimenting with how to structure these anti-authoritarian community counter-institutions to give control to the community's members, eschew hierarchy, gain meaningful participation, develop tools for accountability while avoiding the tyranny of structurelessness. *Spoiler alert*: A reader might think that there is little need for lawyers in Haber's theoretical realm, but after 80 pages of well-documented literature-knitting, Professor Haber acknowledges that "CED lawyers can play supportive, collaborative roles with community counter-institutions in many of the same ways that they do for more traditional CED clients," including long-term, house-counsel relationships, and consideration of collaboration representation.[4]

The argument for refreshing and reframing CED practice as movement lawyering is both timely and appealing; yet it elides the sticky dynamics common across human groups who assemble in the expressive stages of shared concern, protest, and resistance, and then seek to transition into some form for sustained collective action. CED practitioners regularly engage with people at this pre-formative stage who are eager to act and who—in some respects that affect the efficacy and sustainability of their vision for change—

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themselves anarchists, anti-capitalists, autonomists, feminists, horizontalists, radicals, and many who reject all of those labels." Haber, *supra* note 1, at 320. Haber offers the moniker *anti-authoritarian community counter-institution* to express "both a degree of permanence and a commitment to challenging the institutions of the dominant social order." *Id.* at 345. It conceptualizes an evolutionary possibility extending the prefiguration of a radical democracy-to-come in a space of dissent and discourse, to also establish profoundly democratic counter-institutions that also act to meet needs in the real-world-now, while remaining focused on their "core missions of using prefigurative politics to build community power for social change." *Id.* at 372.

  4. *Id.* at 373.

do not know how to accomplish what they aim to achieve. There is a deeper pool to plumb among CED practices concerning the processes of building effective community action—of instantiating the power of organized and activated communities in truly community-led institutions, which should not now be sidelined by an overly dogmatic or theoretical prescription of movement practice.

My perspective in this Essay is forged by my work as a law professor who, with law students, has represented the collective action efforts of community-based groups for the last twenty years. My aim here is not a defense of same-old CED, exactly—rather it is to defend CED law clinics' significance as a complementary way of instantiating change that matters to subordinated communities. Current CED practices continue to advance the purposes selected by many grassroots efforts underway in my city, whose demand for access to the CED toolkit exceeds the capacity of two law school clinics, a nonprofit law firm of ten and its extensive pro bono panel. In important part, then, the problem posed is the persistent one of how lawyers in law school clinics can work most effectively—serving clients, advancing causes, disrupting oppressive structures, devising more just alternatives. More specifically, it is important to engage in the pragmatic work of establishing well-designed institutions that both embody social justice principles and that actually work in practice. Where movements build support for an alternative future-to-be, the tasks of building that future must incorporate concern to understand what would make good alternative institutions. That future will need predictable and stable rules, routines, and structures for decision making. Both movements and institutions matter, although each proceeds by a different logic.

This Essay aims to contribute to the conversation among legal educators on the relationships between community economic development practice by law schools and the present movement-attentive moment in United States seeking progressive social change. I proceed in two parts. In Part I, I reflect on points of divergence and convergence between CED lawyering and social movement lawyering, and framing CED as potentially, yet not essentially, social change lawyering. The emergence of economic justice campaigns to create citywide infrastructures for worker cooperative businesses and community owned housing are two examples where CED can marry movement-centered social change activism with more conventionally cognizable "delivery" of "legal services" to "client" communities. Part II underscores the doing-democracy dilemmas of many new community activist groups, and argues that CED organizations' use of available corporate forms is not the significant contributor to this common problem. Rather, expressive activism and organized action capability are each quite different undertakings, and the gaps and synapses between them are not self-evident to communities, activists, CED practitioners or legal academics.

Lawyering allied with movement-centered social change campaigns is the subject of a growing body of scholarship, exemplified most prominently by Sameer Ashar, Ascanio Piomelli, Jennifer Gordon, and Scott Cummings.[5] Haber's call to refresh the commonly transactional character of much CED work provided by law-school clinics[6] conjoins at least two branches of legal scholarship: critical legal theory as applied to public interest lawyering,[7] and socio-legal studies of social movement mobilization, which includes research into the ways that individuals conceive of law and legality and resist extant legal regimes in everyday life.[8]

Whether lawyers help or hurt social movements has been a subject of scholarly argument and inquiry following the decline of progressive movements that began in the 1970s. A rich literature presents powerful critical accounts of lawyers' roles, particularly domination by lawyers and overinvestment in legal tactics, to the detriment of sustained grassroots activism. The progressive critique of post-civil rights era public interest lawyering that came to be called collaborative lawyering, or rebellious or community lawyering, augmented the client-centered advocacy perspective dominant throughout clinical legal education. Collaborative lawyering instructs student attorneys to advance clients' agency in the work, and to set aside lawyer-centered social change aims in favor of respect and deference to their clients as experts in their conditions of injustice and ideas about relief. Movement lawyers function in coordination with social movement networks, coordinating legal and political advocacy in many fora: helping to construct narratives,

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5. JENNIFER GORDON, SUBURBAN SWEATSHOPS 9 (2005) (detailing rise of worker centers that organize and serve low-wage immigrant workers neglected by the trade union movement); Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. (forthcoming 2018); Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 Calif. L. Rev. 1879 (2007) [hereinafter Ashar, *Public Interest*]; Scott L. Cummings, *Hemmed In: Legal Mobilization in the Los Angeles Anti-Sweatshop Movement*, 30 BERKELEY J. EMP. & LAB. L. 1 (2009); Scott L. Cummings, *Rethinking the Foundational Critiques of Lawyers in Social Movements*, 85 FORDHAM L. REV. 1987 (2017); Jennifer Gordon, *Concluding Essay: The Lawyer is not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CALIF. L. REV. 2133 (2007); Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383 (2009); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541 (2006).

6. *See, e.g.*, Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997).

7. *See, e.g.*, GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992); Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987); Anthony V. Alfieri, *Impoverished Practices,* 81 GEO. L.J. 2567 (1993); Scott L. Cummings & Ingrid V. Eagley, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 700–01.

8. *See, e.g.*, Patricia Ewick & Susan Silbey, *Conformity, Contestation, and Resistance: An Account of Legal Consciousness*, 26 NEW ENG. L. REV. 731 (1992); Austin Sarat, *" . . . The Law Is All Over": Power, Resistance, and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMAN. 343 (1990).

building legal theories, and bringing litigation as needed, as well as co-generating resources for community education.

I read Haber's challenge as directed principally at transactional CED. Although CED legal clinics vary considerably, they generally take one of three broad forms: transactional, critical, or community-embedded. Law school faculty and clinical programs no doubt face variant constraints in their freedom to innovate and to relate to movement activism. The constraints each faces may be rooted in their institutional homes, and in the characteristics of communities where they are situated.[9] It bears remembering that the social justice action tent is big, as the social justice agenda is long.[10]

I welcome the rising generation's activism, working together to build new networks, coalitions and community-based projects, even as I wonder how it will manifest in sustainable practices. My CED practice in a post-industrial city won't let me forget that my clients live their realities in a particular place—indeed there is tremendous power and fuel for moral outrage and critical analysis in the material deprivations and the spatial injustices of the disinvested places where the poor, oppressed and marginalized live. Communities—as well as individual residents—experience eviction, foreclosure, job loss, inequitable public education and spending, and limited services of the market or the state, in people's lived places.

A movement critique of CED practice rightly identifies the risk and reality that law students can, in a blindered way, learn substantive and practical skills transferable to future paying clients from beavering along on small pieces of community groups' concerns to establish this or that street-level social service—and not engage meaningfully with the root causes of their clients' needs for change. Indeed there is every reason to expect that many law schools (comprised of students, faculty, and administrators serving a pipeline of consumer-employers) prefer this model.

Geo-political forces have rescaled the causes of neighborhood distress, with implications for community lawyers as well as movement mobilizing. Large systemic injustices continually reproduce the oppression, subordination, and disempowerment of low-income communities and communities of color, in particular, imposing mass incarceration, inequitable educational opportunities, and the persistence of poverty wages. CED strategies of prior decades do less than they once did to alleviate the material deprivations of

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9. Professors' personal views; academic freedom; freedom on the one hand to promote progressive 'public interest' practice as either apolitical or acceptably conventional or (institutionally) acceptably to advance 'unpopular causes' or other principal of selective legal representation. Politically conservative movements too—would movement activists welcome these too in the academy?

10. *See* BEAUTIFUL TROUBLE: A TOOLBOX FOR REVOLUTION (Andrew Boyd ed., 2012) ("The big tent of social-justice movements covers an astonishing spectrum, from education/awareness/mindfulness/personal practice change, at one end, through expression/communication/inspiration/call your congressman forms, professional policy and practice change development and advocacy, to prefigurative communities, and militant mobilizations.").

poor communities, or pierce their social and political subordination. As the road gets steeper, our clients need a bigger engine and a sustainable power supply. The tapestry of progressive lawyering scholarship is an invaluable resource for legal educators and activists, but there is no one formula for lawyers in building, sustaining and nurturing client activism. The task remains before us, to go beyond law, lawyering, community organizing, mobilization, social movement building, to aid in the structure and support of sustaining organized efforts for change. CED After #OWS is a useful lens on the questions, although (not surprisingly) not a handbook.

I. CED AFTER #OWS: CAN CED BE SOCIAL JUSTICE MOVEMENT LAWYERING?

Haber has offered a constructive reconsideration of potential lessons from #OWS for CED lawyers and law clinics. The Occupy Movement was inspired by and can be seen as a part of civil resistance activism, which includes the Arab Spring protests in Northern Africa and the Middle East in late 2010 and 2011; the student occupations from 2008 through 2010 at the New School in New York and throughout the University of California school system; and Eurozone protests against deep austerity measures imposed in the global financial collapse. This is a time when millions are questing for movement-building approaches to act on what animated many supporters of both Bernie Sanders and Donald Trump: a demand for major rather than incremental change. Movements aspire to be broad and impactful—although the scale of impact, and the path of change, may be scantily articulated.

Haber's piece encourages reflection about the long road travelled by both CED lawyers and movement lawyers more broadly speaking.[11] A further utility of the discussion is that it renews and refreshes the longstanding tension within much CED practice about the relationships between organizing and development.[12] Can CED practices be compatible with movement activism—for communities? For lawyers?

One of the converging points in discussing "community economic development" within social justice lawyering is the wide swath of justice queries that CED evokes. CED legal work may focus on achieving the immediate needs of a community client, or on changing the structural causes of those needs, or both. Community economic development may aim to summon ideals of democracy, social justice, and equality. Its praxis commonly aims to

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11. *See* Bill Quigley, *20 Tools for Movement Lawyering*, LAW AT THE MARGINS, http://lawat-themargins.com/20toolsmovementlawyering/ (last visited Jan. 5, 2018).

12. This point is elucidated in a famous piece by Randy Stoecker. Randy Stoecker, *Community Development and Community Organizing: Apples and Oranges? Chicken and Egg?* 3 (2001), https://comm-org.wisc.edu/drafts/orgdevppr2c.htm; *see also* FROM ACT UP TO THE WTO: URBAN PROTEST AND COMMUNITY BUILDING IN THE ERA OF GLOBALIZATION 2 (Ron Hayduk & Ben Shepard eds., 2002).

redress poverty, rebalance power, and generate participatory process. Community based organizations, CED practitioners, and academics invoke a variety of theories of change, which focus on the failures of the state, the market, civil society, corporatism, and hyper-capitalism.

Yet, even faculty and students who feel themselves deeply committed to social justice may have only vague impressions and untutored notions of *how* social change occurs. Here are threshold questions for CED clinicians who wrestle to situate law students in experiential learning settings with clients who yearn for change. With whom do we work—are our clients change agents? What value do we bring to our community clients' aims for change? How ought we update our teaching of tools for change?

A. *What Counts as Social Change? Appreciating Institution-Forming as Strategy Among Levels of Change*

"There are no problems too large or intractable once we begin to play with all of the pieces on the chess board. There are no unwinnable campaigns. For every system of oppression in existence, there is far more than enough latent grassroots power to dismantle it."[13]

The Common Ground Collective ("the Collective") is one of three illustrative 'community counter-institutions' Haber describes as alternative models to more familiar forms of CED, which he argues show the potential for reinvention of CED by social justice activists coming of age during the evolutions of #OWS and the Movement for Black Lives ("MBL"). The Collective formed after Hurricane Katrina's devastation in New Orleans, as a "revolutionary aid organization . . . of residents and outside volunteers with support from larger civil society, one that engaged in aid work without government interference."[14] In the first year after Katrina struck, Common Ground Collective accomplished tremendous results: It served 100,000 local residents of the Ninth Ward and surrounding precincts; hosted ten thousand volunteers (including dozens of law students and professors); cleared 1,200 ruined houses; established community gardens and distribution centers for food, goods and bicycles; set up a legal clinic and a health clinic; surveyed housing conditions and the state of home ownership records of 12,000 storm-

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13. Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 166 (2016).
14. *See* SCOTT CROW, BLACK FLAGS AND WINDMILLS: HOPE, ANARCHY, AND THE COMMON GROUND COLLECTIVE 74 (2011) (Its co-founder Scott Crow was inspired by how the Black Panthers "tried to address the myriad issues in an integral way by feeding people, defending communities from police brutality, offering education, and providing basic health care . . . as agents of change that didn't need or want to wait for the white power structures to do something.").

impacted homes; and employed 40 low-income local residents in the rehab of a housing complex.[15]

The Collective had the will and ability to create politically-engaged community groups that could deliver meaningful results at the grassroots, while committing to anti-authoritarian principles, avoiding bureaucratic structures such as not-for-profit organizations, and eschewing the compromises of dependence on established government and philanthropic resources. Haber details the counter-bureaucratic character of the Collective in support of his argument for the need to develop new tools for use by community activists to balance their commitments to anti-authoritarian values, with the capability to deliver effective community services and to devise internal accountability structures—a balance he describes as a critical challenge in the struggle for social change.[16]

The Collective intended to act effectively and accountably to deliver services, without replicating the turgid qualities of bureaucratic agencies or the monetized values of market-economy distribution. The stickiness of these models' dominance in meeting housing needs after the devastations of Hurricane Katrina is highlighted by the account of Common Ground Collective's evolution. Common Ground discovered that its loose affinity-based structure was not up to the challenges of its initial foray into property management. The Collective had taken responsibility for a decrepit yet occupied multifamily building, based on an oral promise by the owner to sell to it; then spent hundreds of thousands of dollars to employ locals to renovate the building; yet—unconstrained by legally enforceable agreements or other form of claim to protect the Collective's investments—the owner then sold to a third party, evicting the Collective's participants. After that, several Collective members left New Orleans, and those remaining formed a not-for-profit tax-exempt organization, Common Ground Relief.[17]

The decision to establish a community-led institution to hold its own vis the other owners and actors on the ground is a classic CED strategy, implemented in part by forming an entity (so as to have the powers of ownership and autonomous operation assigned under state law to own, borrow, sue and so forth).[18] Haber analyzes this tack as a compromise of the Collective's anti-

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15. Don Paul, *Common Ground's Eight Anniversary*, TRUTHOUT (Sept. 16, 2013), http://www.truth-out.org/news/item/18772-common-grounds-eighth-anniversary-a-model-of-volunteer-driven-rebuilding-in-new-orleans.

16. Haber, *supra* note 1, at 82.

17. *Id.* at 54; *see also History of Common Ground Relief*, COMMON GROUND RELIEF, http://www.commongroundrelief.org/history (last visited Jan. 22, 2018) (noting the formation of multiple projects which were organized so as to make use of existing Statist legal structures, including health and legal clinics and Section 3 small business employment projects).

18. *See* Simon, *supra* note 2; Roger A. Clay, Jr. & Susan R. Jones, A Brief History of Community Economic Development, 18 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 257, 264 (2009) (describing authors' view of "market based CED"). CED transactional lawyers work with

authoritarian principles, because the members who stayed were "creating more of a hierarchy and a leadership-designed five-year plan, and bringing in experienced senior staff from outside the community to manage operations and impose greater accountability."[19] The implication is, while the activists created a community counter-institution, it was not an anti-authoritarian one.

That assessment unhelpfully conflates organizational form with cooptation by the nonprofit organization ("NPO") industrial complex,[20] as if connection to a broader change movement or shared political critique of extant corporate power arrangements precludes tactical use of the not-for-profit form. This error elides the equally significant issue of the *level of change* a group aims to attain. Some aims and strategies necessitate degrees of conformity with extant structures—for example, community land trusts (in which housing commitments and services are promised to endure for decades), worker-owned cooperative businesses, and community benefit agreements. A CED approach would engage the client groups as to their objectives, and strategy and tactics to achieve them: At what level of change does the community want to intervene? Where, on a spectrum of conformity, contest or resistance, do its aims lie, and where do its strategic choices lodge? Whether CED can deliver grassroots social change depends considerably on what the community clients aim to accomplish. CED lawyers can bring to these decisions a knowledge of legal possibilities and constraints to support groups' collective analysis; to form, structure, govern, and control legal entities; and to foresee and foreclose legal vulnerabilities that could imperil their aims.

Haber's critique of CED suffers from murkiness about the change that is credited as 'social change'. Whose vision of social change counts in the

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community clients on a wide range of both substantive and pragmatic concerns. Some client groups seek to advance an agenda within a substantive area such as affordable housing or ameliorating food deserts. Electing informality has costs, as does electing to formalize, and this is a central point of inquiry and counseling as to how the group aims to sustain its collective efforts. "Transactional work" of course can include legal tasks of formalization (start-up issues of choice-of-entity, tax exemption decisions, or affiliating with existing organizations), help with corporate, tax, employment, and other ongoing compliance matters; yet it also readily extends to substantive issues of eviction law, land use and environmental regulation, local administrative procedure and constitutional law questions, and legal support for clients' programming and organizing campaigns.

19. Haber, *supra* note 1, at 348.

20. *See id.* at 316–20 (summarizing the critique of many grassroots activists of those social justice organizations beholden to the "nonprofit industrial complex" articulated in the 2004 conference and anthology, THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX (INCITE! ed., 2007); *The Revolution Will Not Be Funded Conference*, INCITE!, http://www.incite-national.org/page/revolution-will-not-be-funded-conference (last visited Jan. 22, 2018), by which 501(c)(3) not-for-profit organizations' dependence on foundation and government grants results in the depoliticization of social movements through capture and redirection away from community residents' claims for structural social change).

analysis? Change what, exactly?[21] On the ground, change aims may be somewhat fluid. The Collective's theory and strategies of change evolved through at least four identifiable levels: 1) everyday decision making for immediate collective action; 2) change in some policy covering a whole class of people; 3) change in the structures affecting shared experiences; and 4) change in a narrative expressing and extending people's ideation, mindset, and perspective.

At the Collective's origination, its first change aim was the '*everyday politics*' of neighborly action, essentially in the form of the bucket brigade to feed the hungry, provide clothing and shelter, and to be the help before help arrives. Ninth Ward residents had little scope in which to contest the bureaucratic decision making, enmeshed in legal rules of disaster recovery, longstanding local exclusionary practices, and vulnerable to predatory rehab contractors. As needs intensified and outside aid did not arrive, the emerging Collective reframed its strategy to reflect its broader appreciation of the scale of official non-response to the Ninth Ward. The Collective called for reinforcements, calling upon non- and anti-authoritarian volunteers and resources to aid residents of the Ninth Ward and surrounding neighborhoods. This call-out expressed the understanding that the institutionalized power arrangements along lines of race and class infected official disaster response and thus were non-responsive to Ninth Ward residents. The Collective instead created its own political agency to counter officialdom's policy to defer Ninth Ward needs to other segments of the city. The Collective garnered resources, and deployed these as it judged just.[22]

Third, the Collective took aim at the existing structural arrangements that it saw were perpetuating the conditions of injustice—the rule-makers, money-lenders, those with ownership and control of resources, and those with knowledge and the ability to leverage, or make allies with, others in command of these structures,[23] and aimed to *change the playing field*, by becoming one of the players. Whereas examples of field-change include technological revolutions, and of course, political revolutions, field-change strategies also include labor organizing, the National Labor Relations Act, and

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21. The narrative? The space to act lawfully? Specific policies targeted for specific change? Specific new economic actors or modes of political voice? New practices of transparency, accountability, equity, and justice?

22. Common Ground Collective's motto was "Solidarity Not Charity": It saw its emergency response measures as service work as a support to those directly affected by injustice, aiding them to address the unjust systems that produce the symptoms that charity alleviates temporarily. CROW, *supra* note 14, at 102. *See generally id.* at 92–105 (recounting the Collective's blossoming projects to respond to emergency conditions and survival needs, while fending off hostile police and military personnel).

23. *See* PAUL ENGLER & SOPHIE LASOFF, RESISTANCE GUIDE: HOW TO SUSTAIN THE MOVEMENT TO WIN 8 (2017); *see also* John A. Powell, *Structural Racism: Building upon the Insights of John Calmore*, 86 N.C. L. REV. 791, 810 (2007) (applying a structural racism lens to New Orleans pre- and post-Hurricane Katrina).

labor agreements; Community Reinvestment Act compacts; and hybrid-sector enterprising (worker-owned enterprises, shared equity housing or other community-held land arrangements). The Collective accomplished such a strategy in part, by taking charge of the multifamily building where some Ninth Ward neighbors had found shelter.[24] Implementation of that tactic fell apart in ways that might have been prevented had the Collective been willing or able to make tactical choices to use extant legal structures for transfer of title to real estate and protect its self-help operations, prior to the landlord's about-face—legally assailable under prevailing property laws and principles.[25]

   The loss of that housing underscores the utility that CED lawyering can have in supporting activists in a "practice of organization." I mean much more than formation and use by a legal entity. I mean to claim the potential of people's use of available legal forms as tools that sustain the power of organized people into the future. This requires a structure that enables repli-

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   24. Common Ground assumed management in May 2006 of the 350 unit housing complex known as the Woodlands, with the understanding that its owner would sell to them. Common Ground froze the rents at the Woodlands to pre-Katrina levels, helped create a tenants' union and ran a workers' cooperative with paid skills training. It had rehabilitated 150 units before the owner reneged on the verbal agreement and sold the building to Johnson Properties Group LLC. More than 100 families were evicted from the property. *See Hundreds Face Eviction in New Orleans*, DEMOCRACY NOW! (Nov. 27, 2006) https://www.democracynow.org/2006/11/27/hundreds_face_eviction_in_new_orleans. The land grab that began in New Orleans before the water receded is recounted in sources too many to cite here. The Common Ground Collective's housing responses, part of a larger antieviction coalition, included legal defense clinics, as well as opening shelters and gutting houses so they could be restored. CROW, *supra* note 14 at 160–62.

   25. There are several exceptions and workarounds to the statute of frauds ground rule that, to be enforceable, a contract for the sale of an interest in real estate must be in writing. A CED lawyer would have evaluated ways that the verbal deal might be inadequate and disproportionate to the Collective's substantial investments of labor, fisc and solidarity in the Woodlands, and could support the Collective's interest to 'trust but verify' without becoming a player in the HUD administered system of housing for poor people. Equity sometimes induces courts to find a contract on far less than a fully articulated contract, and surely in 2006, law practice had not returned to pre-Hurricane normalcy in New Orleans. The doctrine of part performance, and simpler agreements such as letters of intent and option to purchase agreements, would have been presented to the Collective by the hypothetical community economic development lawyer on hand. Each of these appear to be part of Louisiana state law. *See, e.g.*, SAMUEL A. BACOT & KATHRYN E. BELANGER, LOUISIANA REAL   ESTATE   CONTRACTS   (2012), http://www.nwlar.org/files/2013%20LREC%20Mandatory%20course.pdf. The substantial investment of over $750,000 in the property might have been asserted through claims for *quantum meruit*, or unjust enrichment. "The five elements of a claim for unjust enrichment under La. C.C. art. 2298 are (1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) an absence of cause or justification for the enrichment and impoverishment; and (5) no other remedy at law." USA Disaster Recovery, Inc. v. St. Tammany Parish Gov't, 145 So. 3d 235, 235 n.2 (2013) (per curiam); *see id*. at 235–36 (reinstating the decision of the district court to compensate the plaintiff for emergency road cleaning work for St. Tammany Parish in the immediate chaos following Hurricanes Katrina and Rita).

cated action—i.e., organization: the structure through which individuals relate and exercise their collective power beyond the horizon of a single issue or individual.[26]

A fourth identifiable level of change features in contemporary theory and praxis: effecting change in the *values or ideology* held by a people, incorporated and featured in *public narratives*. The 99%. Black Lives Matter. Marriage Equality. Obamacare. President Trump. Change theory is: change the mindset—win the hearts and minds of the people, and they will starve the dominating pillars of extant arrangements of their controlling power.[27]

B. Social Justice Synergies of CED and Movement Lawyering

My reflection on the 'CED after #OWS' theorem surfaces four points, design considerations if you will, for CED practitioners within law schools considering how to apply its prescriptions. What aspects of CED and movement lawyering can be taught effectively, together, and experientially, in a course of one or two semesters? How is the core commitment to community power a feature of this CED experience, for students and clients? Is the CED toolkit being deployed in ways that augment community clients' social change strategies? Can/should this CED practice select clients based on their degree of engagement, or capacity, for transformative social change?

1. Law Teaching vs Lawyering

Law schools continue to produce lawyers trained to think rather narrowly in terms of legal rights, redress and policy, and to consider reform as chiefly a matter of modifying the rules of substance or procedure. Few lawyers have been prepared as part of their formal legal education to meaningfully address deeply-entrenched systemic injustice, within the systems of education, criminal justice, juvenile justice, economic relationships (work, housing, and credit), health care, public transit, voting rights, and political voice.[28] Thus there is a tremendous amount of critical theory, including lawyering theory, of which law students are likely ignorant when they begin

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26. Michael Grinthal uses a similar concept of groups "practicing organization." Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 47 (2011).

27. For introduction to the social change literature on the five pillars of social power, see, for example, ENGLER & LASOFF, *supra* note 23, at 17; DANIEL HUNTER, BUILDING A MOVEMENT TO END THE NEW JIM CROW: AN ORGANIZING GUIDE (2015); BILL MOYER ET AL., DOING DEMOCRACY: THE MAP MODEL FOR ORGANIZING SOCIAL MOVEMENTS (2001).

28. Clinics, which do expect students to operate the law, face a myriad of choices in situating students so as to equip them to see, dissect, and reassemble the parts of the clients' situation, to produce a more just result. A number of CED clinics require their students to become attuned to the client community's political and social as well as legal situations, instructing them to prepare a comprehensive client profile memorandum. *See, e.g.*, Brian Glick, *Two, Three, Many Rosas! Rebellious Lawyers and Progressive Activist Organizations*, 23 CLINICAL L. REV. 611 (2017).

clinic practice. While some number of law schools offer courses in critical jurisprudence, their approach is primarily academic rather than operational. Some portion of these classroom courses are informed by the turn to study social movements in constitutional theory, and in lawyering theory.[29] Faculty members can of course share ideas, syllabi and insights of implementation, through listservs and online exchange.[30]

It bears remembering that 'social change' has more than one political dimension, in classrooms, and in experiential settings. For example, since the late 1990s and 2000s, a number of CED programs have embraced market-based CED work, expanding into additional sectors in microenterprise and social enterprise development.[31] These approaches can be presented as cool millennial gig-economy adaptations of conventional business planning courses, on the one hand, or as theoretically coherent and pragmatic challenges to regnant economic and legal arrangements. It is important to grapple with the fact that 'movement lawyering' is not monopolized by the Left,[32] and the creation of an infrastructure to purposefully advance conservatism through advocacy poses a significant challenge to progressive legal educators about impactful responses from within legal education.

2. Community Power in Lawyering Theory: Ideation Paired with Implementation

Among lawyering theorists, a core contribution of the last twenty years has been to approach social change by de-centering law, and decentering lawyers as uniquely qualified champions of social change. Lawyers striving to advance social justice, in communities as in movements, need to appreciate the subservient role of law and legal change in advancing social change, because the aim is transformation beyond the 'wins' that law practice yields. Most of the harms experienced by poor and working people in this country are not illegal and are not remedied by lawsuits or legal enactments. Wins in court must reverberate beyond the courtroom. Lawyers promoting social change—and our students—need to comprehend the arenas in which the

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29. Scott Cummings has recently offered an original account of this rise in interest in social movements among legal scholars as a response to the age-old problem: how to harness law as a force for social change within American democracy, while still maintaining a distinction between law and politics. Scott L. Cummings, *The Puzzle of Social Movements in American Legal Theory*, 64 UCLA L. REV. (forthcoming 2018).

30. *See e.g.*, GUERILLA GUIDES TO LAW TEACHING, https://guerrillaguides.wordpress.com/ (last visited Jan. 22, 2018).

31. *See* Lynnise E. Phillips Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 VILL. L. REV. 175, 188–89 (2017).

32. *See* ANN SOUTHWORTH, LAWYERS OF THE RIGHT: PROFESSIONALIZING THE CONSERVATIVE COALITION (2008) (detailing the coalescence of social conservatives, libertarians, and business advocates, and the creation of an infrastructure for conservative legal advocacy).

meanings and modes of justice arise. This is a larger endeavor than developing the ability to deploy multiple modes of advocacy, strategy, and professional skill. Clinics, which do expect students to operate the law, face a myriad of choices in situating students so as to equip them to see, dissect, and reassemble the parts of the clients' situation, to produce a more just result. CED clinics are a natural site for this endeavor, and can teach students to undertake it.

CED lawyers, ordinarily operating not in court but rather in framing and forging agreements, find opportunities to express community visions through agreements and adaptations of the full range of private law devices. Making agreements—(and what is a people's organization but a large multi-party agreement to work collectively to identified ends?)—is one setting in which law and lawyers can help people to transform their circumstances, by identifying intended outcomes and substituting very different norms for producing them. To manage these transformations effectively, lawyers must be willing and able to work with community clients to investigate their contexts. This includes the web of structural and institutional networks of power relations that enmesh unjustly burdened communities.

Collaborative community lawyering. Lucie White's important contributions to collaborative social justice sought to integrate the theory and sociology of poor peoples' organizing into lawyering theory.[33] White described the social change lawyer-client relationship in a three-dimensional matrix.[34] In the first dimension, the lawyer uses law and legal process to secure change, i.e., that which responds to the needs of socially disempowered groups. In the second dimension, the lawyer's advocacy aims to transform dominant structures in ways that recognize social injustices and mobilize public resources to provide the needed redress. In each of these dimensions the lawyer deploys customary legal capabilities, informed by her clients' social/political/legal position. Both exemplify the utility of formal legal contests in courts and legislatures, to leverage the communicative power of law practice

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33. White drew upon STEVEN LUKES, POWER: A RADICAL VIEW 10 (1974), and JOHN GAVENTA, POWER AND POWERLESSNESS: QUIESCENCE AND REBELLION IN AN APPALACHIAN VALLEY 1 (1980). *See supra* note 7 (discussing three dimensions of poor people's subordination) in *To Learn and Teach*).

34. White, *supra* note 7, at 755–66. The first steps in any attorney-client relationship are determining the client's goals, aspirations, and needs, then altogether gauging the strengths and vulnerabilities of the client's position to achieve their goals. Only then can lawyers be useful to clients in developing strategies to effectuate the client's interests. The "client-centered" approach to lawyering is a mindful professional discipline to avoid domination by the attorney to replace the client's goals or judgments, and is an essential predicate for development of a truly empowering relationship. White's framing repositions the conventional legal-profession norm of lawyer-agent serving client, and extends it beyond the client-centeredness of dominant clinical legal education, to incorporate the collective situatedness of poor people's legal dilemmas, and thus her work bridges the strands of lawyering theory characterized as 'collaborative lawyering' and 'community lawyering,' that contribute to the praxis of movement lawyering theory.

in order to surface justice issues, invoke justice norms, and deepen public debate. Examples are plentiful in litigation and legislative policy campaigns of private- and public-interest lawyering, of course. Ditto for numerous 'transaction' practices common to CED such as campaigns for community benefit agreements, public meetings over city development approvals, and referenda on housing or youth trust funds. Advocacy, articulation, and re-framing are similarly hallmark elements of social movement activism, which aim to lift up to public attention the submerged injustices that movement activists aim to change.

Drawing upon the popular education movement and writings of Paulo Freire and early feminist consciousness practices, White articulated a third dimension of lawyering as *the use of legal settings to effect a specific conception of social change*: to challenge the subordination that afflicts the client community *and* to change its effects on the consciousness of the client community *and* of their lawyers.[35] White's was an early call to lawyering *with* communities, and to describe lawyers' practices "focused on poor people's own political consciousness. Its goal is not to change either social policy or elite attitudes toward the poor. Rather, 'third dimensional' advocacy seeks to enable poor people to see themselves and their social situation in ways that enhance their world-changing powers."[36]

The third dimension simultaneously embraces the notion that lawyers as well as client communities are changed by centering clients' politico-legal consciousness. Lawyering on the third dimension seeks to change the attitudes and self-concepts of lawyers themselves, to work more effectively with historically subordinated groups to achieve social justice, in part by being "reflective—indeed humble—about their own pretentions to change the world."[37] Lawyering is not the "unidirectional 'professional service'" indicated by the conventions of the business-serving legal profession.[38] It is rather a collaborative of poor people and their lawyer-allies who work together, reflect critically about the forces that condition community members' lives, and explore the ways they might resist and redirect extant forces to identify innovative concrete actions and to take them, to achieve justice. This view directly confronts the dominant perspective of elite expert-lawyers dishing out dispassionate advice, prevalent across legal education, popular culture, and among organizers. Yet this is the foundational understanding of the collaborative lawyering correction that undergirds much CED law practice.[39]

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35. Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994).

36. White, *supra* note 35, at 157.

37. *Id.* at 159.

38. *Id.* at 158.

39. *Id.*

Fluency in the law "as a discourse for articulating norms of justice and an array of rituals for resolving social conflict" aids the effectiveness of this dimension of social change work, although one may not need a law license to practice this dimension of advocacy.[40]   Third-dimension lawyering requires a joint project of lawyers and community to translate the community's lived experience into comprehension that yields strategic actions that can increase community members' power to disrupt and to deliver.

Accomplishing this degree of client-lawyer collaboration is the beating heart of community lawyering in a CED practice. This is, I find, more than the familiar law clinic instruction emphasis on "active listening," from the field of psychology, requiring the listener to seek to understand the speaker's own understanding of an experience, without the intrusion or reinterpretation of the listener's own interpretive structures.[41]   Furthermore, the CED work of aiding clients to use or adapt legal rules for their own community structures requires still more attention to interpersonal collaboration between lawyer and client group: the sort of dialogic listening, where conversation is mutually understood to be a shared activity, the interplay among the listeners and speakers, seeking the relationship of shared meaning exchange, and meaning making.

The formal law school canon neither illuminates nor prepares law students to see or to address entrenched systems that create the cumulative disadvantages for which most CED clients seek lawyers. Nonetheless, the po-

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40. *See* White, *supra* note 7, at 765. Much CED clinic work has been a response to clients in Dimensions 1 and 2 in White's framework, rather than lawyers' disregard of social justice values. Examples are plentiful of CED legal projects directly connected to community organizing campaigns. Efforts around "accountable development;" connections with the environmental justice movement and grassroots organizing efforts aimed to change urban redevelopment practices; and organizing and negotiating community benefits agreements around mega projects are excellent loci for community education about public money and development approvals, and housing inequalities. Other CED lawyers collaborate with worker-centers; aiding the formation of worker-cooperatives as clients and through community workshops.

Other explanations are available as well, not the least of which are law school's internal power arrangements of faculty status and clinic supports, and institutional pressures on clinic programs as law schools respond to ABA accreditation rules changes to expand experiential learning and "skills training" to all students.

41. *See* ALICIA ALVAREZ & PAUL R. TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING SKILLS (2013); GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978); STEFAN H. KRIEGER & RICHARD K NEUMANN JR., ESSENTIAL LAWYERING SKILLS (5th ed. 2015).

litical-legal consciousness fulcrum of White's three-dimensional approach has been taken up within multiple strands of critical lawyering theory, and it informs multiple efforts to relate law and organizing.[42]

This conversation is not new.

3. *CED Lawyering and The Toolkits for Social Change: Power, Organizing, Mobilizing, and Action Ability*

Contemporary critiques of lawyers' roles in social change campaigns incorporate three core viewpoints about law that de-center lawyers, and consequently, are not reliably part of legal education. These are the nature of *power*, *organizing* for power-building, and *mobilization*.[43] A CED perspective adds to these, the concern for *action ability*.

Haber expresses doubt about whether CED clinics have a discernible client or community 'empowerment' theory or practice,[44] suggesting an unarticulated hierarchy of what counts as social change, with an eye on a time horizon beyond the now. "Empowerment" pedagogy in law clinics habituates students to consider the importance of structural relations of privilege and oppression, and to be aware of and intentional about the layers of relationship with the client and situation involved. The approach typically incorporates (1) identification of the problems presented by clients in terms of the systemic dimensions and power imbalance of the problem that has propelled the client to enlist the aid of lawyers; and (2) assessment of problem-solving strategies in terms of empowerment potential for the client. Student attorneys are encouraged to seek to understand the connections among power, law, legal practice, the community's struggles, and possibilities for systemic change.[45] In my CED clinic, students work' with clients in their homes, streets and church basements can provide the opening to see the relationships between power, and law's role in structuring, community devastation, domination, and exploitation. Core elements in a clinic 'empowerment pedagogy'

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42. Arguing for clear-eye appreciation of the distinct roles and contributions of organizers and lawyers: Cummings & Eagly, *supra* note 7, at 452; William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1995); John Whitlow, *Community Law Clinics in the Neoliberal City: Assessing CUNY's Tenant Law and Organizing Project*, 20 CUNY L. REV. 351 (2017). Discussing possibilities for synthesis: Barbara L. Bezdek, *Alinksy's Prescription: Democracy Alongside Law,* 42 J. MARSHALL L. REV. 723 (2009); Grinthal, *supra* note 26; Ellen Hemley, *Supporting Local Communities Through Community Lawyering*, 45 CLEARINGHOUSE REV. 505 (2012); E. Tammy Kim, *Lawyers as Resource Allies in Workers' Struggles for Social Change*, 13 CUNY L. REV. 213 (2011).

43. Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 45 (2013).

44. Haber, *supra* note 1, at 313–14.

45. Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work's Empowerment Approach,* 13 CLINICAL L. REV. 459 (2006).

support that awareness, which is in tension with the message of much conventional legal education that, if there is to be change, lawyers must be on hand to establish or enforce rights, change the law, or negotiate a better outcome.

To envision their legal work as complementing the social change their clients seek, CED students need at least the following in a short-course on how *social* change is made.

An essential predicate is that the lawyer *respect the clients as persons who can have power*, not unfortunate victims, and yet strive to recognize the extent to which powerful forces outside the clients' control, may construct the problem situation and require creative response. This perception of the client as power-able is a predicate to the third-dimensional lawyering discussed above. Community lawyering, and much CED lawyering, is at heart a wide range of activities through which lawyers contribute their legal knowledge and tools to support the initiatives that the community has identified, that will return power to the community.

Power, defined neutrally, is the ability to act effectively in the world to attain one's own aims. Its Latin root means simply, "to be able."[46] A practice of "empowerment" (in law, as well as in social work and organizing) means enlarging the power of people who are powerless. The idea syncs with a power analysis: Power is relative. The notion is not that the person or community has a deficit of power, but rather, that others have more "power over" the client. The empowerment objective for lawyers working with oppressed communities is to use strategies and tactics that result in those communities acquiring more options, more power: political influence, communications/media control of the narrative, grassroots influence, or legal impact, relative to their opponents who constrain the communities' residents.

Simultaneously, justice lawyers strive to build the capacity of those communities so that they are able to assume increasingly more responsibility and centrality in these efforts. CED clients, rooted in a shared residential place, face the challenge of how to meaningfully alter the conditions on the ground, and to address the root causes of community oppression: garnering resources, gaining access to decision makers, reframing the choices.

Community organizing is a means to translate community concerns into collective action, forging relationships among individuals who share values so that they can act boldly together on their beliefs.[47] Organizing begins with

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46. Grinthal, *supra* note 26, at 35.

47. Organizers deploy a host of skills useful in social change work: Community & ally outreach, base-building, leadership development, constituent empowerment and decision making, popular education, root cause analysis, power analysis, mobilizing constituents and allies, coalition building, campaign strategy and implementation, and direct action. For an overview of organizing theory and practice, see, for example, Marshall Ganz, *Organizing: People, Power and Change*, HARVARD, https://projects.iq.harvard.edu/ganzorganizing (last visited Jan. 22, 2018).

the premise that the problems facing inner-city communities do not result from a lack of effective solutions, but from the lack of will to implement those solutions; that the only way for communities to build long-term power is by organizing people and their resources around a common vision; and that a viable organization can be achieved only if a broadly-based indigenous leadership can knit together the local interests of their local organizations.[48]

Robust forms of organizing ground their work in an understanding of systemic injustice, and seek to turn righteous indignation into transformative power. By long practice, a community organizer's theory of change is that building the collective power of the people who are most directly impacted by the problematic issue, and demonstrating that power through direct action in the public sphere, will create desired change. Organizers often say to lawyers, "*It's Power, not Policy*," meaning, the problem is not the lack of good policy ideas. The problem is the institutionalized resistance of people in power. The imbalances of wealth and wellbeing are so extreme that no amount of policy reform can restore a proper responsiveness to the rightful claims of the suppressed.[49]

Mobilizing. Community organizing is necessary to build power, albeit insufficient to deploy power in a sustained strategic way. The associations formed by organizing can be mobilized to act in concert to wrest local resources—social capital, solidarity, local-level political resources in a variety of forms such as community participation, local ownership, and control of natural resources. Where organizers focus on building trust, respect, and consensus, mobilizers focus on moving people to act. The resulting action steps attract engagement and demonstrate momentum and direction.[50]

Community development includes tools that are useful to keep the power and resources they wrest. Martin Luther King Jr. observed in 1967, that articulating demands for civil and political rights is just a preliminary stage of a long liberation journey: "Many civil rights organisations were born as specialists in agitation and dramatic projects; they attracted massive sympathy and support; but they did not assemble and unify the support for new stages of struggle . . . ."[51]

Action Ability: Envisioning the Change, Making it Stick. Thoughtful visionaries recognize that reversing social injustice requires creating alterna-

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48. Mike Miller, *Alinsky for the Left: The Politics of Organizing*, DISSENT, Winter 2010, https://www.dissentmagazine.org/article/alinsky-for-the-left-the-politics-of-community-organizing (quoting Barack Obama, *Why Organize? Problems and Promise in the Inner City*, ILLINOIS ISSUES, 1988–1989, http://www.lib.niu.edu/1988/ii880840.html).

49. *See, e.g.*, Freeman & Freeman, *supra* note 13.

50. *See, e.g.*, Hunter, *supra* note 27, at 41–64.

51. AKWUGO EMEJULU, COMMUNITY DEVELOPMENT AS MICROPOLITICS: COMPARING THEORIES, POLICIES AND POLITICS IN AMERICA AND BRITAIN 17 (2015) (quoting MARTIN LUTHER KING, JR., WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY? 158–59 (Beacon Press 1967)).

tives, in thought and action. An extraordinary example is the visionary plat-
form released in 2016 by the Movement for Black Lives, with support from
dozens of related organizations—a vision of a transformed United States that
could realize racial justice. The document outlines a set of specific alterna-
tives to specific harmful practices. It is set forth with coherence and clarity,
and its discrete sections make powerful sense both on their own, and as they
interact with each other. This still young grassroots movement and its allies
have articulated a thoughtfully considered roadmap and a synergistic toolkit
to achieve profound change. Separate sections address Economic Justice,
Invest-Divest policies, and Reparations, and *in toto* construct a vision that
calls for using tax codes to re-order the distribution of surplus wealth, starting
jobs programs that pay a livable wage, providing training and education, and
allowing workers greater scope to organize unions. These several approaches
are synergistic, in that pursuing them in combination would reweave com-
munities and households battered by racism, mass incarceration, and jobless-
ness. As a platform for change, it contemplates a broad range of actions and
policy interventions, to occur at the intersection of poverty and disadvantage,
of race and place and public policy. It expresses powerful aspiration and
concretized, actionable vision. As a liberatory agenda it is both focused and
broadly encompassing, profoundly horizontal and decentralized.

All across the United States in dozens of cities and towns, self-identified
affiliates choose their specific actions in keeping with their localized assess-
ment of what they can implement.[52] CED tools can aid organized people to
sustain the power they build beyond the now, into the future, by instantiating
their ability to act. A group's structure is just that: the frame of relationships
that allow the organized to persist across time: to "practice organization."[53]

4. Choosing Clients Who Are Building Power for Transformative Change

Haber joins a handful of legal academics currently calling on lawyers,
including those in CED clinics, to work in and with activist organizations to
challenge injustice, and to do so by working with groups who are actively
building power and intending transformative change in extant arrange-
ments.[54] In fact this call is not entirely new, its modern history having begun

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52. Daniel Hunter illustrates with brief synopsis of hundreds of campaigns around the United States all chipping away at the system of mass incarceration, as part of the Movement for Black Lives. HUNTER, *supra* note 27.

53. *See supra* note 26 and accompanying text.

54. Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV 355 (2008); Ashar, *Public Interest*, *supra* note 5; Elsesser, *supra* note 43; *see also* Glick, *supra* note 28, at 624 (describing law school clinics working with "progressive activist organizations" at Fordham, the University of Michigan, City University of New York, Loyola-New Orleans, and welfare rights and immigrant workers' rights clinics at CUNY and UCLA).

with Edgar and Jean Cahn in the 1960s, rearticulated by Gerald López in the 1980s, and again in Bill Quigley's exhortation for "revolutionary lawyering."[55] CED lawyering is, by definition, well within the stream of "community lawyering"—but whether a community practice is rightly characterized as change-seeking turns on whether it genuinely collaborates with community groups who embrace organizing. In this strain of lawyering literature, the C in CED means work that is in support of, and is led by, an organizing effort.

On this pathway to change, it sounds like an injunction to eschew the less-empowered. This is not an easy injunction to heed.

Charles Elsesser has helpfully written about the lawyers' client selection challenge, in the context of the Community Justice Project of Florida Legal Services. That program like some others based in law schools, aims to work with "progressive activist organizations." He and his colleagues strive to work with community groups who are "committed to building power through collective action and strategic campaigns," because "[w]ithout an understanding of the development and implementation of organizing campaigns, it is difficult, if not impossible, to maximize the potential of our legal skills."[56] They have found that working with groups who are relatively sophisticated about organizing campaigns much more successfully withstand the pitfalls of working with lawyers, whereas new or less experienced groups tend to overvalue the lawyers' work at the expense of their own campaign leadership. They have worked with groups who lack organizing understanding or commitment, but while this has led to short-term outcomes, it has not led to systemic change, or increased organizational cohesion or strength.

Where White can be read to suggest that lawyers help to instigate as well as strengthen clients' political consciousness and power analysis within the lawyer-client collaboration, Elsesser is clear that their lawyering does not extend to 'organizing' itself. His office has no organizers on staff, and the lawyers avoid any dual role as lawyer/organizer, finding it virtually impossible to effectively de-emphasize the centrality of the work of the lawyer and emphasize the importance of organizing.

I can see the rationale for this practice choice, if I were in a place that offered it. Rather, community efforts that follow up with our school's clinic have been spread out on a broad spectrum, of internal organization, of action ability, of capacity and will for converting vision into doing the daily operations, as well as in the scale of the change they pursue, and political consciousness with which they pursue it. We have worked with groups whose

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55. *See* LÓPEZ, *supra* note 7; Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964); Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989); William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth,* 20 WASH. U. J.L. & POL'Y 101, 148–66 (2006).

56. Elsesser, *supra* note 43, at 56.

consciousness of the change they seek is well developed, political, systemic; but more commonly, our client communities' aims are more immediate and earth-bound, to address material needs now. We have worked with several organizations in between those poles—who in collaboration with others seek to create local systems change, to promote food equity, to garner community benefits from publicly subsidized development, and to establish an infrastructure to support community-led shared-equity housing. These efforts have some attributes of movement politics, benefit greatly from base-building tactics of old-fashioned organizing, and also bear hallmarks of start-up ventures. Whose change counts in the social justice colloquy?

Is converting vacant lots to urban farms 'change'? Does it turn on the political narrative, on the express advocacy of systems change, more than it does on the fresh produce and free distribution?[57]

II. FUNCTIONAL DEMOCRACY INSIDE, OR THE INTERIOR LIFE OF GROUPS

If we don't change direction, then we're likely to end up where we're headed.[58] (Graffito).

Despite taking care to situate CED in critical lawyering theory scholarship, Haber does not address role choices and functions for lawyers who would work in or with contemporary movements for a more just and democratic world. Instead the article provides a theoretical defense of the primary tools experimented with by anti-authoritarian groups, particularly the Occupy Movement. Drawing on press and participant accounts, readers gain insights into the foundations of experiments with direct democracy, consensus, the general assembly, modified consensus, affinity groups, spokes councils, and diversity of tactics.[59] It's an exciting call to principled action.

Yet it does not address the practical question of how to create structures that put those ideals into real-world practice. It is not particularly enlightening on the internal work for getting from networked expressions of collective outrage, to escape a tendency to theoretical purity and internal dysfunction, and instead to devise strategic interventions that aim to make change in an increasingly plutocratic order. Occupy Wall Street offered a beacon of hope

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57. Engler and Engler discuss the necessity of combining the talents it takes to challenge extant regimes with the skills and perspectives of additional organizing traditions, in order to protect the gains won by popular mobilization, so as to build structures that hold and operate from the activating values. The dramatic and cautionary example they give for institutionalizing, as well as uprising, is the Tahrir Square protest movement that toppled Mubarak in Egypt in 2011. After years of building resistance, and eighteen days of public revolt, the thirty-year dictatorship fell; disruptive protest was overtaken in the next two years by the only resistance force with sufficient organizational capacity: the Muslim Brotherhood. MARK ENGLER & PAUL ENGLER, THIS IS AN UPRISING: HOW NONVIOLENT REVOLT IS SHAPING THE TWENTY-FIRST CENTURY 251–58 (2016).

58. RANDY SCHMUTT, INCITING DEMOCRACY: A PRACTICAL PROPOSAL FOR CREATING A GOOD SOCIETY (2001).

59. Haber, *supra* note 1, at 298–99.

because its counter-narrative was powerfully appealing, and connected with far more popular audiences and broader social bases across the United States than its initiators could have imagined. Yes, it may have planted many seeds, yet seizing the national narrative did not send the Wall Street bankers into exile.

The questions elided by this approach are organizational functionality and efficacy, both of which were important to the Common Ground Collective and the other community counter-institutions he lifts up. From my inner-city CED perspective, I'll briefly comment on efficacy and functionality of community activist organizations, in two steps. First, ideation is not efficacy: Groups need to organize themselves internally to effectively deploy their human and other resources to achieve their aims. Second, there remains much work to do to flesh out practices of 'leaderful' learning-and-doing organizations, some of which is embedded in CED work and can be more intentionally shared. The interior life of the group IS an aspect where longtime CED practitioners may have light to share. It turns out to be a critical dimension of action ability. CED organizations must navigate the cultural, group, and interpersonal dynamics of self-governance, as a critical component of becoming an effective organization. It takes nothing from the thirst for change to acknowledge that, movements also need the many regular folk who persist, in the present, striving to make immediate material gains in marginalized peoples' lives, in neighborhoods battered by cumulative structural disadvantage: racism, job loss, deindustrialization, mass incarceration, disinvestment, environmental degradation, and more. CED practitioners work with an astonishing array of group types, and have found themselves midwifing the birth of emergent bodies with scant skill in collective decision making. (This lack is hardly surprising and is no more a criticism of our clients than it is of lawyers and law students: Most of us do not group up in communities that teach us to cooperate well.) New groups can expend a lot of time and energy reinventing the wheel, or alternatively, adopting fine-sound principles of consensus decision making without learning how to apply them together. To the extent CED practitioners have experience in mentoring or learning from groups in collective action, this is experience we should share with intentionality.

Both movement lawyers and CED lawyers—and the broader community-based social justice sector to which they link—surely can benefit from deeper study of the arts of collective action, in collaboration with the communities with whom we work. While the impetus to essentialist democratic inclusion propounded by #OWS may be widely shared in much movement activism just now, it does not appear to be universal; and—more centrally—

the idea of radical democracy is not self-executing.[60] Doing democracy takes discipline. Collective efficacy requires strategy and implementation.

My clients, my city, our nation, the world—all face mounting social, economic, and ecological predicaments. The world we have is the product of hoarding, by a very few, of the vastly disproportionate share of wealth, power, and privilege. Jonathan Smucker, an Occupy insider, addresses the imperative question: How can people build enough collective power to not only demand a better world, but to create one? He makes the sharp conceptual distinction between the knowledge of *what* is wrong with a social system, and the knowledge of *how* to change it.[61] To paraphrase Pierre Bourdieu, it is a mistake to uncritically attribute political efficacy to one's critique of the status quo.[62]

Smucker's book is a must-read for social justice advocates and organizers, because unlike most of the early handbooks for civil disobedience, the online guides to organizing and movement-building, and the contemporary surge in movement histories and how-to's, Smucker's book pays special attention to *the interior life of the group*.[63] He speaks to dynamics in many pockets of his terrain, the social justice left, that I recognize in the inner workings of community action and activist groups also, and relates the interior psychological micro-dynamics and interpersonal positioning within political and social action groups, which can substitute for or morph into impediments for strategic action. Smucker also digs into the deep ambivalence toward power within left social change groups that, at least rhetorically, rejects all forms of leadership, and the tension between such ideological stance and evolving understandings of 'leadership' and the importance of building leadership skills.[64]

This leads me to consider divergences between 'movements' and organizations, particularly with respect to their *interior* lives. (Recognized legal forms are specified in each state's statutes, with rights, powers, duties and obligations elaborated by regulation and case law.) Movements, communities, and groups, may to some extent become 'organized' and yet opt not to

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60. See, for example, the ongoing corrections about intersectionality in the founding of and continuing of BLM/MBL. *See* Alicia Garza, *A Herstory of the #BlackLivesMatter Movement*, FEMINIST WIRE (Oct. 7, 2014), http://www.thefeministwire.com/2014/10/blacklivesmatter-2/.

61. JONATHAN MATTHEW SMUCKER, HEGEMONY HOW-TO: A ROADMAP FOR RADICALS 43 (2017). Smucker advises that the book is for people who have a pretty good idea about the *why,* and who are concerned about *how* and *what holds us back. Id.* at 45.

62. *See* PIERRE BOURDIEU, PRACTICAL REASON: ON THE THEORY OF ACTION 96 (1998).

63. SMUCKER, *supra* note 61   The book is written to be a practical guide to political struggle intended to address the recurring tendency to take deep ambivalence about questions of power, leadership and strategy, into internal dysfunction through self-defeating insularity and paralyzing purism. Smucker, a longtime grassroots organizer, has published in *The Sociological Quarterly*, *The Nation*, and *The Guardian*.

64. *Id.*

formalize.   Formalized or not, organizations can be remarkably dysfunc-
tional. Just what do 'movements', groups, and organizations do? A few ob-
servations are worth sharing with inquiring clinic students.

    1.Ideation is Not Efficacy

    Efficacy demands that any group intending to act together will need to
determine *how* the group's members will act together. This seems like a no-
brainer—collective action requires more discipline than the freedom (and
curse) of endless unproductive meetings. Meetings can descend into quite
different circles of hell: poor structure and bad acting—either of which un-
dermine the group's cohesion and mutual commitments. #OWS made much-
publicized efforts to function in a prefigurative politics,[65] to enact the egali-
tarian future it forecast, in which all participants sought to live a new world
order, consciously shed of the privileges powerfully associated with race,
gender, and class. The encampments were more than a protest, more than a
tactic, they were a conscious attempt by participants to model the society they
wanted to build.

    Haber provides a cogent distillation of ideation among #OWS about
how to do democracy authentically, and preliminary descriptions of some of
the tools experimented with by anti-authoritarian groups, including the Oc-
cupy Movement. Such a robust 'direct democracy' in which everyone inter-
ested in speaking to the matter at hand is permitted to do so: consensus, the
General Assembly, affinity groups, and spokes councils. Action steps were
taken by affinity groups of five to fifteen people, to maximize individual au-
tonomy without prior approval or direct control from a higher body. A great
deal was considered together, but the structure selected also elided the need,
capacity, or mutual responsibility to determine *collective* actions. A range of
anti-authoritarian tools were also used to promote horizontalist ideals, i.e., to
consciously act to reverse common communication patterns reflecting dom-
ination, oppression, and privilege.[66]

    #OWS came in for extended critique that its efforts to live a utopian
form of "direct democracy" marked by crowd-sized consensus-based pro-
cesses and accompanying rituals (mic-check, sparkle fingers) tended to stand

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    65. SMUCKER, *supra* note 61, at 43. Smucker discusses #OWS' prefigurative politics at length,
as an anarchist philosophy that is "archetypal of a much larger social movement trend in the United
States over the past half century." *Id.* at 103. He argues that "even leftist idealists" must strategi-
cally engage with power politics, "if they hope to build anything bigger than a radical clubhouse."
Id.

    66. These tools included Anti-Oppression Trainings, and operational practices such as the Pro-
gressive Stack which grants speaking priority to participants from traditionally marginalized groups.
Given the core commitment to avoid any sort of hierarchy, relational organizing might replace more
common organizing models (in which one or more experienced organizers or an established com-
munity organization sets an issue agenda and rallies people to their cause), to turn instead to building
relationships, networks, and new forms of organization with and within low-income communities
and communities of color. *See* Haber, *supra* note 1, at 345.

in for world-altering strategy. Its form heralded its marked difficulty to move into plans for action. Leading to this key question: *How do we formulate the ideas that actualize that vision?* Smucker observes, "If our intention is to change the world—not just prefigure a utopian vision, with no idea about how to actualize it—then these collective rituals must take their place within a larger strategic framework."[67]

#OWS adopted an anti-leader stance, describing itself as "leaderful" rather than leaderless. Its anti-authoritarian spirit embraced this ideology to express its deep critique and resulting ambivalence about power. Its practice signified the #OWS commitment to resist social hierarchies and to establish horizontal power relations and deeply participatory democracy. This de-valuing of leadership was "in some ways a beautiful thing"—and also self-sabotaging.[68] Consequences of this #OWS culture included a toxic response for many who stepped up to take initiative, and hostility toward needed skills and resources.[69] Smucker explains the group culture as one training members to hesitate to be seen as moving something forward—because one's peers would see them as trying to be "leaders"—a bad thing.

Absent a praxis to make "leaderful" serve the action needs of a group, the notion collapses from leaderful into leaderless—a fundamental key in failure to launch into action, at least as significant as forms of facilitation or meeting structure (for which the organizing handbooks and online guides provide many aids to participants).[70]

The cost, for people's organizations, is the failure to cultivate leadership. An alternative, action-capable organizational culture builds power inside. It invites and teaches its participants to step-up. Such a collective-action group culture reconstructs leadership as a shared and essential function—not an ultimate (or merely necessary) evil.

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67. SMUCKER, *supra* note 61, at 105. Consensus has important value and utility, although it is often used ineptly, learned too thinly as a rejection of majoritarian voting, even though it is, in my observation, perhaps more effective in compelling go-along dynamics rather than functional democratic deliberation.

68. *Id.* at 184.

69. *Id.* Smucker's long experience in movement organizing has led him to witness this sort of "leadership allergy" over the years, and cites #OWS as the most extreme. *Id.* at 185.

70. Familiar dynamics of anti-democratic behaviors that may impede effective action altogether: the unassailably, passionately committed, member who cannot let other participants finish a sentence; silent worriers who accede to the views of the most insistent; and hesitators with needed skills. Dynamics like these occur whether an action-intending group means to formalize as a state-chartered corporation, or proceeds as a coalition or as loose networks of affinity groups as in #OWS, BLM and similar contemporary social change movements. Decisions to skip the meeting, volunteer episodically, refrain from collectively defining expectations of commitment or of membership, silent concessions to the most insistent, are but a few of the manifestations of collective action problems within groups. The classic work on the coherence and effectiveness of groups is MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION (1965). Meeting rules can be crafted as democracy-enhancers, and committed to as such—to lay out inclusive procedures, share information, distinguish discussion items from action items; and constrain bad acting.

2. *Toward a Praxis of Leaderful Collective Action Ability*

Rather than insist that none of us are leaders, the alternative is to affirm that there can be many leaders, that all of us can be leaders. Leadership in a community-led *organization* must function to engage with the existing infrastructure, rather than always re-invent the wheel. To do so it must learn to be self-sustaining, and leadership-renewing. Internally a capable community organization needs to build a culture and a system for bringing in new members, so as to plug them into meaningful and capacity-building roles. To pursue change on the ground it must assemble the skills of investigation, reflection, strategic thinking and decision making, necessary to effect their aims—to have the power-tools to effect the change it wants to see, where it is planted in the world.

Getting to effective collective leadership in this model will include systems for re-socializing its participants so as to leave behind prior conditioning related to social identities (age, class, gender, race) and opportunities and predispositions to exercise visible roles. It also entails identifying the features of 'good' leadership. Some behaviors are readily observable: making space for others to step up, inviting others, listening and learning from others, looking for strengths, and helping them to feel confident and to prepare to take initiative. Intentional leadership development is one of the tools in the community-institution toolkit as well: providing the right opportunity at the right time to activate others' latent contributions, rather than assuming that 'stepping back' will be sufficient to enable others to step up.

A common puzzle for emerging grassroots groups is explicating both responsibility and accountability, in ways that express and preserve the group's values, and advance its objectives. As CED practitioners well know, the extant off-the-rack model of the non-profit membership organization does not deliver robust democracy. It does however permit variations in designing the internal deliberation and decisional processes to instantiate those values. But to work, the words on the page must be embraced; the group must both commit and acculturate itself to its stated principles. To be effective *outside* the group—to act on its vision of material changes in the community where it aims to make a difference—often requires access to particular skills of doing democracy *inside* the group.

Collective decision making can be darned hard—and its difficulty does not necessarily turn on the form of the group. Learning the arts of internal democracy should be a rigorous action step in community work. For example, it is entirely possible as a formal matter to use consensus, horizontalism, and affinity groups, within the not-for-profit corporation—if the participants learn and use the tools. We have several times assisted client groups to consider and adopt stepped consensus methods. Those discussions can be deeply engaging and generate group commitment; but that does turn on the degree of interest, concern, and consequence the participants attach to the process

and the outcome. Moreover, for a number of people, having written the rules does not solve the problem of invoking them in the breach; or address the difficulty of determining the sense of the meeting—testing for consensus in a genuine way.

In fact, much organizing literature recommends that groups assign and define roles in the group, defined for functionality, rather than assigned as durable positions of authority. Examples are meeting facilitator, note taker, or media spokesperson. They help spread the work around, create clarity about responsibility, and it should be a short step for the individuals so delegated to check in with the larger group to prepare, review, or correct for performance. But some functions do entail duties, made easier by skills/experience/time. And, sometimes incomprehensibly, individuals are given roles for which they have neither talent nor willingness to learn. These choices within a group are likely to promote dysfunction, unless the members recognize the situation and re-set.[71] Internal dysfunction, and failure by the group to address it, is effectively a choice of counterproductive strategies to avoid thinking about power internally.

Thus, an essential aspect of a group's 'practice of organization' is to develop and train its leaders, so that each can be disciplined in standing together in their work. The group's members must be equally disciplined in holding leaders accountable. All benefit by understanding themselves in relation to the group's action aims. This means changing the embedded notion from 'leaders' who dominate, to persons given express permission by the group to move the work forward—i.e., to lead.

The #OWS account is a stimulating glimpse of tools used to address internal group dynamics of the massing participants. The mass-implementation of open participation that #OWS called consensus[72] is a very distant relation of deliberative democracy theory. We don't learn from Haber's piece how Occupiers learned the #OWS practices, but evidently learning and norming occurred. Newcomers to community organizations also need to learn a culture of responsible/responsive collaboration upon joining. The Common Ground Collective established Guidelines of Respect and internal decision processes, as well as volunteer orientation and a committee roster, in part to deal with the constant stream of new arrivals, and to root its work in a "thoughtful culture" of community collaboration.[73] For parallel reasons,

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71. A group might be helped to see this as a flaw in its mobilization effort or strategy, particularly by a lawyer who appreciates the roles of resource mobilization and people mobilization in effecting grass roots change.

72. *See* Meerkatmedia, *Consensus (Direct Democracy @ Occupy Wall Street)*, YOUTUBE (Oct. 13, 2011), https://www.youtube.com/watch?v=6dtD8RnGaRQ (explaining the concept of "consensus").

73. CROW, *supra* note 14, at 118–19. Crow explains that horizontal decision making required: trust building, shared goals, clarity about membership (who is in the collective and what its effort

NPO board training and refreshers are a common element of CED clinic services to their organizational clients. Housing and worker cooperatives function in a corporate form, with a robust reflection of democratic control. Co-ops generally require express training as a predicate for formation or admission to membership. In each of these forms—anarchist collective, 501c(3), or cooperative—the group's life is benefited by rules that provide a roadmap for the group's collective action, and a values-vetted framework to fall back on when informality fails, relationships fray, conflicts arise, or membership changes.

Nonetheless there are groups that fail to use their value-based principles they've asserted or fail to develop norms of deliberation and decision, even after crafting and adopting rules for their work together. This lapse can threaten the functionality and existence of the organization, as well as create crises of legitimacy (legal or relational). CED clinics frequently consider issues of the legitimacy of group action through the frame provided by the group's own commitments. For groups that formalize under state corporation law, there is a well-developed body of doctrine governing the duties and liabilities of entities and their agents. But for both formal entities and less choate organizations, there is great utility in understanding 'the organization' as an agreement—a covenant, if you will—between the participants. Written bylaws may have a ring of coercion in their name, but properly understood they are instruments of equality, transparency, and accountability. They express the group members' agreements for sharing information, sharing decisions, sharing work, and sharing risks and benefits. The governing values are those chosen and articulated by the organization itself: Together the participants generate a living purpose and strive to create new, more just conditions pursuant to the participants' shared social vision.

"Democracy" and Deflection: Let me observe here that few community groups with whom our clinic has worked have stated 'democracy' among their core values for how they will work together *inside* the group. I take this to reflect the very vagueness of the concept in American civic and political imagery and practice. 'Democracy' fails to signify the meaningful dimensions of collective action that our clients aim to establish. 'Community' or 'the members' are used with more passion, and invested with greater meaning. I think that generally the aim to step up and take action to address a community need—for the purpose of collective action and self-governance among equals in solving a problem of concern to a community of persons—sounds in democracy: *demos* (the people) and *kratos* (rule), in the original Greek. Who are the people, and how do those people organize themselves, and which problems do they address are perennial matters of debate among

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is), and means of communication between all of those involved, so that people could make informed decisions. *Id.* at 136–37.

democratic theorists, but clearly the resonances of this community can-do impetus verify that democracy is more than a form of government: It is also a way of life, a refusal to leave matters that profoundly affect one's community to the realm of politics. Democracy in the community group is an ideal, a process, and an attitude: *an idea that wants action.*

Our clients do typically speak of taking responsibility together, the importance of working with mutual respect and thus with accountability and transparency, and assuring egalitarian and engaged participation by all their members. Some community groups maximize the value of 'every voice', others, the value of all hands on deck. Others arrive at a choice to form a more leanly effective organization in a conventional corporate model—delegating powers and decisional authority broadly to specific others, with reporting-back duties—rather than enacting an intensely egalitarian model of collective decision making, and implementation. The point of any of these internal arrangements can be to change the idea of 'leaders' who dominate to persons given permission by the group to lead—i.e., to move the work forward.

Backbone for Action Ability: Effective Commitments Among Collaborators

Many community organizations need a map for effective team work. With the same degree of care that educators have drawn from the social sciences to understand facilitators and inhibitors in communication between lawyer and client, we and our community clients need mental maps to deepen awareness of the processes and skills required to build strong organizations. For time-strapped, working, overcommitted people volunteering their evenings and weekends—meetings can't be timewasters. Collective focus and forward motion are important *facilitators* of sustainable commitment. The best-intentioned dithering or other common dysfunctions of human groups are *inhibitors* of effective work. These skills do not arise naturally in every group. CED clients can founder—and little of the collegial academic literature parses what can be learned from clients who succeed, and who fail.[74]

CED practice presents the recurring opportunity for law school clinics, professors, community lawyers, and organizers to aid our community clients to build internal democratic practices that are more real than ritual. Surface the choice points to operate from their deep values as they choose their own rules for internal functionality. "Bylaws" may be the result of a key process to embrace and operationalize principles for how the group members will

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74. This is an admittedly provisional assessment, based on my diligent but no doubt incomplete search of the not-insubstantial literatures of critical lawyering, clinical legal education, CED and movement-lawyering practice; organizers' training materials and modern social movement 'how to' literature, and not-for-profit organizational development guides; and works by proponents of 'deliberative democracy' and to a lesser extent, efforts of the above to draw expressly upon group psychology in collective action.

engage in deliberation and decision. To govern collective action a group's members need clarity as to its aims, decision rules, info flow, participation, task assignment, and accountability. To foster practices of 'democracy' within requires conscious commitment; clearer articulation; identifiable practices; and the collective 'backbone' to use them, to call the body back when it strays. In our practice, our effort has been to aid clients to practice collective backbone. This may require first surfacing, then redirecting, a fear and loathing of leadership in community change organizations.

Here is my short list for what I aim for my students and my clients to appreciate about being an internally effective, collectively-determined organization, retaining their agency and falling prey neither to existing cultural hierarchies nor to anti-authoritarian antipathy to some basic rules of collective commitment and conduct.

First. Power implies efficacy. This is a corollary to defining power as the ability to act effectively in the world, to attain one's aims. Power is what is needed to get things done—to stop discrimination, to end mass incarceration, to rebuild cities. In some settings, articulating alternative demands and narratives is the group's aim, although many community organizations aim to serve material concerns as a form of service as well as (or, on the road to) political agency. Power within the group must be stewarded; it can be used for good or ill. Lack of attention to the leadership patterns in a community organization will not make them go away. Whether formal or informal, submerged or expressly allocated, human groups need to address their ability to act together: co-unity, community. Avoiding the responsibilities of power is not innocence or equality per se; it is powerlessness.

Second. A genuinely democratic community organization holds its leaders accountable. Accountability is a popular term used with little specificity, so let me say what I mean. Political scientists distinguish two notions, both hierarchical. Forensic accountability is the notion that a person holding a position of authority to serve another (such as an elected official, or a nonprofit board member) is liable to be brought before a tribunal of some sort, where the person's performance of a duty can be assessed against a law or norm. A separable notion is agent accountability, by which a principal has granted powers to the agent to act for the principal, and the agent may literally be called to give an accounting of the agent's labors, subject to the principal's chosen assessment standard.[75] Both necessarily entail an asymmetry of

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75. *See* Jeremy Waldron, *Accountability: Fundamental to Democracy* 5 (N.Y. Univ. Sch. Law Pub. Law & Legal Theory Working Paper Series, Working Paper No. 14-13, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2410812 (observing further that, "Even if there is no reason for suspecting that political officials are abusing their authority, still if they are the agents of the people, going about the people's business not their own, then they owe an account of even their wisest and most impeccable behaviour. And it is not impertinent—rather it goes to the essence of the political relationship—for the people to demand an account.").

power in the relationship, and elements of both may be at the root of common usage.

Third. Managing asymmetries of power is the point of democratic governance. "Democratic accountability purports to confer authority on those who are otherwise powerless over those who are well endowed with power."[76] It takes people who are, factually speaking, among the least powerful members of society, and empowers them (in theory) to make the powerful vulnerable, to the verdicts and assessments of the people.

Fourth. Democratic corporate-governance models and concepts can be reframed to work in non-hierarchically organized and acculturated organizations. Working together in an egalitarian structure, the 'power' granted to any assigned role (aka leader, such as a board or committee chairperson, work team leader) is a delegation of agency on behalf of the social justice mission. It is temporary, our consent provisional, with the proviso being, subject to the terms the group has agreed to, i.e., a full and fair accounting.

Fifth. A powerfully engaged group builds durability by developing everyone's capabilities to advance the work: to be 'leaderful'—not leaderless. It uses rules of delegation, reporting, decision and reflection to maintain cohesion, mutually assured direction, and forward momentum. Each member owes accountability to each other in the organization of mutuality. It distributes the many forms of the group's capabilities so as to empower others in the thorny struggle to achieve the group's justice aims.

This internal 'backbone' is the agreement forged by the group's participants. Rather than conceiving of a non-profit corporate board as imposing an inherently suspect hierarchy, coopted by a corporate master class ideology, the group can be assisted to find a suitable metaphor: consensual (and temporary) chain of command, or perhaps, a covenant relationship.

III. CONCLUSION: COMPLEMENTARITY OVER COMPLICITY

I conclude that the synergies of CED practice, at its best, offers important complementary tools for instantiating change that matters to subordinated communities. It is not at heart either passé or threadbare, nor necessarily complicit in maintaining the status quo.

Movement groups and community-based organizations both face the efficacy question: typically they have formed for the purpose of taking sustained action together. The work they have chosen then requires coordinated, structured, and disciplined activity to accomplish the shared purpose. Without organization, victories that are won cannot be enforced or leveraged.

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76. *Id.* at 26.

Melding the political and the pragmatic depends on the group's ability to define its purposes, its aims.[77]

Doing democracy is hard work. It is labor-intensive and relational. Community-based groups, engaged in a shared effort to create a blueprint for their collective future, build "social cohesion" through face-to-face communicative practices,[78] helping participants transform their conversations from "communities of memory" to future-oriented "communities of hope."[79] The qualities of that conversation are crucial to achieving significant and sustainable change: clear, trustworthy, face-to-face communication. CED practice is fertile ground for supporting clients in their visioning more just and inclusive arrangements in their communities. One of the great joys of working as a CED lawyer is to collaborate with clients to devise their organizations—non-profit, cooperative, land trust and other community-restorative ventures—to be strong, resilient, and as true as possible to their social-change visions.

It has been typical in American CED Clinics that law students provide legal counsel to neighborhood-based groups, perhaps citywide advocacy organizations, on a broad range of community development, land use, and policy issues impacting low- and moderate-income neighborhoods in the geopolitical area where the law school sits. Projects vary tremendously, but typically entail investigation, advocacy, options development, and counseling, related to the community clients' concerns to create or participate in initiatives of public or private actors. The community's concerns guarantee that CED clinics situate law students in the intersections of community, law, policy, and politics, and reveal the complex of structures that perpetuate the privations of the residents of persistently disinvested, disadvantaged commu-

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77. Thus Haber's frame needs to be augmented: There is a separable question of what objective(s) as well as what political consciousness guide the group that is forming. Even groups with clear external objectives may have need to traverse the prefigurative terrain to do social justice work as social justice makers. CED clinics in law schools surely have the experience we've had, of working with clients to clarify their true objectives, and assess whether their social justice goals necessitate formalized and potentially constraining structures such as an NPO; or whether they can do what they see as needed otherwise (fiscal sponsorship, anarchic outlaw). Groups of would-be neighborhood change agents come to clinic stating their aims to form an NPO, open a homeless shelter, run after-school tutoring, or change the way the city deals with us. We've had more than one self-described anarchist/anti-authoritarian group that wanted to enter a highly regulated form of enterprise.

78. Xavier de Souza Briggs, *Doing Democracy Up-Close: Culture, Power, and Communication in Community Building*, 18 J. PLANNING ED. & RES. 1, 3 (1998).

79. *Id.* at 4 (citing HOWELL S. BAUM, THE ORGANIZATION OF HOPE: COMMUNITIES PLANNING THEMSELVES 3 (1997)).

nities. Commonly clinical law students have a hand in producing transactional or litigation documents as an aspect of the community clients' relationships with other actors.[80]

Beyond the transactional legal work attributed to them, many CED programs also ground law students in a broad range of approaches to working as partners with community groups that are common to both CED and social change lawyers. This range of skills and strategies includes community legal education, community organizing/mobilizing, grassroots lobbying, citizen reports, and organizing public events and related media actions. These are bread-and-butter elements to working effectively as partners with activists in communities whose residents are low-income, low-wealth, working-class, minority, or otherwise marginalized, and who act together to foment change.

There is no ready prescription to aid law professors who are or would be movement lawyers, to engage law students clinically in the full kit of long-haul, multi-relational, multi-partnered, multi-fronted advocacy. Law school faculty members, and clinical programs, face variant constraints in their abilities within their institutional homes, to relate to movement activism as part of their teaching commitments. Few law school-based CED practices have the consistency of personnel or the normative framework to support such a practice with adequate institutional resources.[81] One adaptation then is for law school clinics and their faculty and students to function as loci in affinity circles. This *sub voce* form of collaboration can be supported by collateral courses or externships that (a) enable students to consider the wider array of social-justice lawyer paths; and (b) enable students to work with movements—local, issue based, national international—dependent on home institution norms, faculty connections to movements, or local ecosystems for change.

Many a CED course can truthfully state among its learning outcomes, that students will (1) be introduced to the knowledge, skills and aptitudes that

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80. Law schooling is itself a site of contest over which progressive and conservative forces struggle for change and stasis. Many (perhaps most) CED clinics engage students in some conventional forms of assistance to clients as they aid communities to navigate legal systems (for example, the use of formal documents such as contracts, bylaws, leases), whether the point is social change, client empowerment, lawyer-critical or lawyer-centric. Within legal education—law schools, and the wider system of preparation of lawyers—the dominant good has long been seen as training law students in skills transferable to conventional law practice settings—by students, deans, alumni and many faculty. *See* Jones, *supra* note 6.

81. Intentionality leads clinic course design, and that matrix encompasses community consultation, client selection, student recruitment, learning objectives, student instruction methods and materials, meshing expectations as between faculty, students and clients, and assessment of student performance. Necessarily, it is a significant undertaking of both teaching and learning for CED clinics to impart technical knowledge as well as performative skill in the deliverables of the legal settings in which they aid client communities (land use, transactions, small business formation, municipal services, local labor engagement, etc.), as well as to cue and coach students for movement-aware, culturally-attuned and competent association and communication within the lawyer-client collaboration.

make lawyers effective partners with activist community groups pushing for social change; and (2) gain experience with some of the range of skills and persuasive strategies that social change lawyers utilize in working as partners with community activists and groups. As the saying goes, *Even the longest journey begins with a single step*.