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## Foreword - Alinsky Conference, 42 J. Marshall L. Rev. xxv (2009)

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# FOREWORD – ALINSKY CONFERENCE

WALTER J. KENDALL III\*

Thurgood Marshall criticized his colleagues on the Court for basing interpretations of the law “upon unfounded assumptions about how people live.”<sup>1</sup> He was also troubled that their interpretation of the facts manifested a “callous indifference to the realities of life.”<sup>2</sup> Saul Alinsky, whose life’s work models a method for political economic change that has come to be known as “organizing,” shared Justice Marshall’s insistence that the world be seen as it is. Together, they have alerted lawyers and organizers of the need to be realists and to see the world as “an arena of power politics moved primarily by perceived immediate self-interests [where] laws are written for the lofty aim of the ‘common good’ and then acted out in life on the basis of the common greed . . . where [people] speak of moral principles but act on power principles. . . .”<sup>3</sup>

One of the realities of life and the place of power in it, recognized by both Marshall and Alinsky, is captured in a quote from Frederick Douglass:

If there is no struggle there is no progress. Those who profess to favor freedom and yet depreciate agitation . . . want crops without plowing up the ground, they want rain without thunder and lightning. They want the ocean without the awful roar of its many waters. This struggle may be a moral one; or it may be a physical one; or it may be both moral and physical; but it must be a struggle. Power concedes nothing without demand. It never did and it never will.”<sup>4</sup>

Most recognize that the world as it is must be made better if there is to be human flourishing, freedom if you prefer. In other words, there must be changes in the relationships of power. In a

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1. *United States v. Kras*, 409 U.S. 434, 460 (1973).
2. *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 471 (1988).
3. SAUL D. ALINSKY, *RULES FOR RADICALS* 12-13 (Vintage 1971) (1989).
4. Sheryll D. Cashin, *The Civil Rights Act of 1964 and the Coalition Politics*, 49 ST. LOUIS U. L.J. 1029, 1042 n.67 (2005).

democratic society, relationships of power are created, sustained, and changed by organizing and by the law. Thus, the April 24, 2009, Conference “Organizing Law in the Obama Era: Commemorating the 100th Anniversary of Saul Alinsky’s Birth” and this symposium were created.

Sandy Horwitt, Alinsky’s biographer,<sup>5</sup> and Bruce Orenstein, producer of a video on Alinsky’s life, introduced Alinsky as an organizer, both verbally and visually, to the conference attendees. The conference consisted of panels organized around four themes: what it is that lawyers can do to help people’s organizations and the resulting tension; the relevance of Alinsky’s thought and work to legal education; the limits of using litigation as a method of social change; and, finally, the challenges and opportunities for Alinsky-inspired organizing in the Obama era. The conference was organized into four panels with a formal paper on a specific theme followed by written, or less formal, commentary from an organizing, lawyering, and academic perspective.

The featured panelists were Dr. Corey Shdaimah, Professor Scott Cummings, Professor Michael Seng, Mr. Michael Kruglik, Professor Barbara Bezdek, Professor Steven Schwinn, Mr. Gabe Gonzalez, Dr. Peter Dreier, Ms. Jackie Kendall, Mr. Barry Taylor, Mr. Gerald Taylor, Professor Gerald Rosenberg, Professor Laura Beth Nielsen, Mr. William McNary, Mr. Robert T. Gannett Jr., and Mr. Howard A. Learner. The symposium also featured two presentations: one by Mr. Sanford Horwitt and another by Mr. Bruce Orenstein.

### *Lawyers and Organizers*

Corey Shdaimah is a widely published scholar on social movements and the role of lawyers and researchers in these movements.<sup>6</sup> Her article began as a review of empirical research, but it was transformed when she became involved in a local school boundary dispute in her hometown. She opens with a quote from Paulo Freire, imposing on academics the same commitment to realism that Justice Marshall and Alinsky demanded.<sup>7</sup>

Despite this shared commitment, Alinsky had little patience for and was suspicious of both academics and lawyers. Shdaimah summarizes the literature on organizers’ views of working with lawyers.<sup>8</sup> In brief, organizers found that lawyers seize control, diminish citizen participation, inhibit alternative tactics, and

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5. SANFORD D. HORWITT, *LET THEM CALL ME REBEL* (Knopf Doubleday Publishing Group 1992).

6. Corey S. Shdaimah, *Lawyers and the Power of Community: The Story of South Ardmore*, 42 J. MARSHALL L. REV. 595 (2009).

7. *Id.*

8. *Id.* at 598-607.

create false hopes.

Shdaimah focuses on reflecting back on her experience as an “indigenous organizer” (I suspect Alinsky would use the term “leader”) and determines how these negatives can be moderated and even reconceptualized, thereby turning the relationship into a more positive one. Scott Cummings, in his commentary on Shdaimah’s reflections, addresses two concerns about working with lawyers, especially when using litigation.<sup>9</sup> One concern is a fear that the people-empowering purpose behind organizing is lost when turning power over to an unaccountable professional. The other is an almost intuitive understanding of Gerald Rosenberg’s point about the ineffectiveness of litigation; as Cummings puts it, “a legal campaign may change law on the books, but not practice on the ground.”<sup>10</sup> Cummings presents a catalogue of twenty-eight factors that underlie the lawyer-organizer relationship. After considering these factors, there can be little doubt as to two things. First, there can be no general rules, as the organizer-lawyer-organization relationship is situation specific. Second, legal education, as currently configured, inadequately prepares law students to represent what Alinsky called people’s organizations.

### *Legal Education and Organizing*

In her article, Barbara Bezdek envisions the challenges facing law schools trying to develop curricula and pedagogies from an Alinsky perspective.<sup>11</sup> Specifically, Bezdek highlights Alinsky’s distinction between a people’s organization and a community organization.<sup>12</sup> Alinsky was concerned that a community organization was too locally focused on too narrow a range of issues to effect systemic change.

In contrast, people’s organizations operate across a broader range in order to achieve systemic change. Organizational actions are “heated, defiant, righteous, and (most importantly) intended to be empowering to those who engaged in” them.<sup>13</sup> It is this “iron rule” that distances organizers and lawyers. This distancing is reinforced by the inherent conservatism of the law itself and the abstracting, almost dehumanizing, nature of legal reasoning.

Bezdek sees Alinsky, if he had been a law student, as the one who would have perhaps sparked the transformative journey the legal academy has had since the late 1970s.<sup>14</sup> The Critical Legal

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9. Scott L. Cummings, *A Pragmatic Approach to Law and Organizing: A Comment on the “Story of South Ardmore,”* 42 J. MARSHALL L. REV. 631 (2009).

10. *Id.* at 633.

11. Barbara L. Bezdek, *Alinsky’s Prescription: Democracy Alongside Law,* 42 J. MARSHALL L. REV. 723 (2009).

12. *Id.* at 727.

13. *Id.* at 734.

14. *Id.* at 730.

Studies scholars sought to crash through the ossified Langdellian structures; later activists in the legal academy like Gerald Lopez more positively articulated a range of lawyering skills beyond the almost exclusive focus on litigation skills that still dominates most law schools.

Bezdek further argues that governance has fundamentally changed.<sup>15</sup> Centralized command and control approaches have been replaced by more flexible, local approaches. This, in turn, has led activists and their lawyer allies to emphasize collaboration and power sharing, a more “experimentalist approach.”<sup>16</sup> She also discusses the new structures and characteristics of poverty and the poor, including the significance of identity issues.<sup>17</sup>

Frankly, this notion of power sharing is the antithesis of the understanding of power relationships implicit in the quote from Frederick Douglass at the beginning of this essay review. Unless those challenging the powerful have power themselves, nothing will change. This is not to deny the necessity for compromise in a diverse society. But, as Alinsky asserted, compromise is possible only between the powerful.

One can applaud the insights for reforming legal education provided by the collaborative post-Katrina work between the Mississippi Center for Justice and Bezdek’s colleagues and students at the University of Maryland Law School. Her brief descriptions of “community lawyering” and the post-Katrina experiences of the lawyers and law students suggest that the basic law school goal of training students to think like a lawyer needs to be supplemented in two fundamental ways. First, students need to receive some real hands-on clinical experience with clients who are more or less marginalized. This is essential because most of the rules and procedures of the law assume a participating, consenting, and resourced individual sharing certain social values. This assumption obviously is not valid for many, perhaps an increasing number of people and communities today. Second, there is too little attention in the current curriculum to the actual power relationships operative in today’s society. Public power is presented as almost exclusively negative. Further, there is little recognition of the existence of private economic power, what Robert Hale referred to as coercion.<sup>18</sup>

This summary would be incomplete without an enthusiastic recommendation to read the endnotes to Bezdek’s article.<sup>19</sup> They are an invitation into the experience and deep reflections of

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15. *Id.* at 735-37.

16. *Id.* at 735.

17. *Id.* at 747.

18. Robert L. Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 POL. SCI. Q. 470, 470-78 (1923).

19. See Bezdek, *supra* note 11.

several generations of law professor-activists on how to train lawyers so they can effectively work with and for persons and organizations, seeking justice in our changing unstable world.

### *Limits of Litigation*

Earlier I mentioned Gerald Rosenberg's critique of litigation as an ineffective method of sustainable social change.<sup>20</sup> In his presentation and paper, he embraces Saul Alinsky and applies a Rosenberg-Alinsky approach to the campaign to win the right to same-sex marriage. He concludes that by failing to listen to Alinsky, the movement used "the wrong tactic at the wrong time."<sup>21</sup> In his view, the litigation strategy has resulted in an enormous backlash and little or no increase in public support for same-sex marriage. Additionally, he asserts that there was an alternative—less damaging approaches that comply with Alinsky's rules for successful social change.

In contrast, Laura Beth Nielsen in her commentary challenges Rosenberg in three fundamental ways. First, she argues that Rosenberg exaggerates the dependency of the movement on litigation.<sup>22</sup> She briefly describes the history of the gay rights movement pointing to a wide range of tactics used other than litigation.<sup>23</sup> Importantly, she points out that like all social movements, there are myriads of large and small goals being sought and supported by folks favoring different tactics.<sup>24</sup> Second, Nielson challenges Rosenberg's cramped view of the effectiveness of litigation.<sup>25</sup> Indeed, litigation is a claim of right. For people on the outside, the claim of right is to assert a presence and to demand a response from the powerful. Often, litigation assists in the survival of social change organizations.

### *Organizing in the Obama Era*

Finally, Peter Dreier offers some reflections on organizing in the Obama era.<sup>26</sup> Few doubt that the election of Barack Obama as President could be a transformative moment in American political and social history. But can the calls for change that resonated so powerfully with the electorate be transformed into policy and program? Certainly, the entire conference and all of its papers

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20. See *supra* pp. 102-03.

21. Gerald N. Rosenberg, *Saul Alinsky and the Litigation Campaign to Win the Right to Same-Sex Marriage*, 42 J. MARSHALL L. REV. 643, 653 (2009).

22. Laura Beth Nielsen, *Social Movements, Social Process: A Response to Gerald Rosenberg*, 42 J. MARSHALL L. REV. 671, 672 (2009).

23. *Id.* at 673-76.

24. *Id.* at 675-76.

25. *Id.* at 679-80.

26. Peter Dreier, *Organizing in the Obama Era: A Progressive Movement or a New Progressive Era?*, 42 J. MARSHALL L. REV. 685 (2009).

make it clear that organizers will be essential if change is to occur. Dreier alludes to the history of social change movements in America. He emphasizes that successful movements have always required both outside and inside strategies “to gain any significant reforms, activists and politicians need each other.”<sup>27</sup>

Dreier also offers a detailed critique of the current strengths and weaknesses of organizing as well as the various schools or networks. He describes them as a “fragmented mosaic.”<sup>28</sup> He sees the concept of organizing as still in recovery from the 1980s, with its attacks on government at all levels and its support for private economic power.

In Dreier’s view, the labor union movement was and continues to be the key social force for “progressive” change.<sup>29</sup> He sees it at the center of organizing and its empowerment as a precondition for the successful seizing of the Obama movement.

### *One Last Question*

Finally, this article raises a question not addressed in the conference or symposium. Specifically, is organizing a neutral method of social change independent of the changes sought? Or is it inherently “progressive” as that term is used today in political discussion and debate? Certainly, as Dreier points out, conservatives have used grassroots organizing to mobilize people and to support their agenda. He seems to assume that organizing as such is a neutral method that can be used to advance any agenda. I wonder.

Certainly, Alinsky was clear that organizing was about empowering people who otherwise did not have power. It was about changing relationships of power. Further, organizations’ goals, priorities, and actions were to be determined by the people in them. From that perspective, organizing as a method for achieving change is inherently reformist. The powerful can reach out to mobilize people at the grassroots, but such activity is not organizing in the Alinsky sense of changing relationships of power.

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27. *Id.* at 690.

28. *Id.* at 713.

29. *Id.* at 707.