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Modalities of Social Change Lawyering

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by
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The last decade has seen the rise of new kinds of grassroots social movements. Movements including Occupy Wall Street, Black Lives Matter, Sunrise, and #MeToo pushed back against long-standing political, economic, and social crises, including income inequality, racial inequality, police violence, climate change, and the widespread culture of sexual abuse and harassment. As these social change efforts evolve, a growing body of scholarship has begun to theorize the role of lawyers within these new social movements and to identify lawyering characteristics that contribute to sustaining social movements over time. This Article surveys this body of literature and proposes a typology of terminology that names, identifies, and distinguishes the underlying characteristics and principles of prominent models of social change lawyering. Our typology is intended to create common conceptual ground in the field. The Article then applies this typology to the case study of one social change campaign to illustrate the ways scholars and advocates can use the framework to think strategically about tailoring goals and strategies to various sociological and theoretical factors. By mapping advocacy to theories of social change lawyering and tailoring such work to socio–legal factors, our goals are several. We hope our typology will launch a conversation that enables scholars and lawyers to evaluate diverse lawyering modalities in light of lawyers' conception of their roles, their theory of social change, and the contexts in which they work. We also hope that our

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typology provokes engagement and correction, in the spirit of collectively imagining new ways of inhabiting the lawyering role that support critical social change efforts.

INTRODUCTION

The study of progressive social change lawyering has increasingly become a central concern of scholarship in constitutional law, lawyering, legal ethics, and clinical legal studies.[1] But much remains unanswered. Little is known about the efficacy of progressive social change lawyering in sustaining its promised change in institutions.[2] Even less studied are progressive social change lawyering's effects on diffuse

[1] *See* Scott L. Cummings, *The Puzzle of Social Movements in American Legal Theory*, 64 UCLA L. REV. 1554, 1556–57 (2017).

[2] For two exceptions that prove the rule and make out the complaint that the relationships of U.S. presidents and social movements are rarely studied phenomena, see SIDNEY M. MILKIS & DANIEL J. TICHENOR, RIVALRY AND REFORM: PRESIDENTS, SOCIAL MOVEMENTS, AND THE TRANSFORMATION OF AMERICAN POLITICS (2019), and DOUG MCADAM & KARINA KLOOS, DEEPLY DIVIDED: RACIAL POLITICS AND SOCIAL MOVEMENTS IN POST-WAR AMERICA (2014).

administrative states that depend, for enforcement, on state and local administrations[3] and local cultures.[4]

Progressive social change lawyering is "remarkably complex and enigmatic work—with multiple and even elusive dimensions, presenting massive conceptual and empirical challenges, and cultural and interpersonal dynamics more daunting and even more self-defining than we are accustomed to handling."[5] Scholars are tackling some of these perplexing questions through a growing body of scholarship that theorizes about the relationship of progressive lawyering within social movements and identifies lawyering characteristics that contribute to sustaining social movements over time.[6]

This Article offers two main contributions to this body of work. Our first contribution is to clarify some of the "elusive dimensions" of progressive social change lawyering. Relying upon our recent detailed case study,[7] we create an analytical framework that documents the essential features of lawyers' work within a successful campaign to abolish the immigration enforcement program known as Secure Communities (S-Comm). We identify four features that, when combined, appeared to contribute significantly to achieving the articulated goals of the campaign. These features supported the overall goals of the movement while remarkably sustaining

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[3] Very few studies address the effects of progressive social change lawyering on presidential administrations. *See* ADAM COX & CRISTINA M. RODRÍGUEZ, THE PRESIDENT AND IMMIGRATION LAW (2020); ADAM GOODMAN, THE DEPORTATION MACHINE: AMERICA'S LONG HISTORY OF EXPELLING IMMIGRANTS (2020).

[4] *See* GOODMAN, *supra* note 3. One example is what Mitt Romney famously called "self-deportation." Lucy Madison, *Romney on Immigration: I'm for "Self-Deportation,"* CBS NEWS (Jan. 24, 2012), https://www.cbsnews.com/news/romney-on-immigration-im-for-self-deportation/. *See also* Nadine Naber, *The Rules of Forced Engagement: Race, Gender, and the Culture of Fear Among Arab Immigrants in San Francisco Post-9/11*, 18 CULTURAL DYNAMICS 235 (2006) (describing internment of the psyche).

[5] Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 10 (1989).

[6] *See, e.g.*, Edwin Amenta, Kenneth T. Andrews & Neal Caren, *The Political Institutions, Processes, and Outcomes Movements Seek to Influence*, *in* THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS 449 (David A. Snow, Sarah A. Soule, Hanspeter Kriesi & Holly J. McCammon eds., 2d ed. 2019); Edwin Amenta & Francesca Polletta, *The Cultural Impacts of Social Movements*, 45 ANN. REV. SOCIO. 279 (2019); Marco G. Giugni, *Was It Worth the Effort? The Outcomes and Consequences of Social Movements*, 24 ANN. REV. SOCIO. 371 (1998); Randolph C.H. Chan, Winnie W.S. Mak, Wing-Yi Chan & Wan-Ying Lin, *Effects of Social Movement Participation on Political Efficacy and Well-Being: A Longitudinal Study of Civically Engaged Youth*, 22 J. HAPPINESS STUD., 1981 (2021). Further, see generally the entries in THE CONSEQUENCES OF SOCIAL MOVEMENTS (Lorenzo Bosi, Marco Giugni & Katrin Uba eds., 2016). Some scholars find that additional narratives that examine the role of lawyering in social movements are needed to further assess efficacy. *See, e.g.*, Edwin Amenta, Neal Caren, Elizabeth Chiarello & Yang Su, *The Political Consequences of Social Movements*, 36 ANN. REV. SOCIO. 287, 302 (2010).

[7] *See* Christine Cimini & Doug Smith, *An Innovative Approach to Movement Lawyering: An Immigrant Rights Case Study*, 35 GEO. IMMIGR. L.J. 431 (2021).

leadership in impacted communities and member autonomy. Central to the campaign's effectiveness was the identification of power structures and the creative methods used to deal with dynamic, cocreated power structures. Power, in this context, is defined as a complex adaptive system that is continually co-constructed through the interactions of ideology, institutions, and roles, including those of the cluster of movements supporting the Abolish S-Comm Campaign.[8] The campaign operated as a three-dimensional network that included an overarching fractal structure, a trans(local) organizing model, and a unifying narrative. The fractal structure of the campaign was comprised of many nodes, all operating from the same ground-up model, though implemented at different scales depending upon the unique features of each locality. These nodes were linked using a trans(local) organizing strategy. Through coordinated, intentional communication and sharing of ideas and resources, localities across the country were able to scale up to their shared goal. All components were joined by means of unifying identity-building narratives that were specific enough to create a shared identity, yet indeterminate enough that differences in interests, means, or goals did not fracture the movement. These narratives held the campaign together and helped avoid free-rider problems, interpersonal conflicts, or turf-guarding.

Our second contribution to the literature is the creation of a typology that names, compares, and distinguishes some of the most discussed lawyering models' underlying characteristics and principles. We then apply that typology to the Abolish S-Comm Campaign to evaluate whether the model of lawyering we observed warrants a different label.[9] Initially hesitant to offer yet another label, we decided that clarity in naming our observations was critical. Naming is important because a name can suggest a whole new way of seeing, or seeing for the first time, a phenomenon that had not been previously noticed.[10] Indeed, naming is crucial to social movements themselves: garnering attention to an underlying metaphor can name

[8] This definition of emergent power informed the campaign and differed from more common static visions of power which conceive of power as the product of resources or the oppositional response dependent on political opportunity windows. *Compare* MICHAEL W. MCCANN WITH GEORGE I. LOVELL, UNION BY LAW: FILIPINO AMERICAN LABOR ACTIVISTS, RIGHTS RADICALISM, AND RACIAL CAPITALISM 15–16 (2020), *with* Steven Lukes, *Introduction*, *in* POWER 1, 5 (Steven Lukes ed., 1986), *and* JULIE BATTILANA & TIZIANA CASCIARO, POWER, FOR ALL: HOW IT REALLY WORKS AND WHY IT'S EVERYONE'S BUSINESS, at xii–xv (2021).

[9] Readers of our earlier article might experience some dissonance here. In our first article, we posited that law and social movements, lawyers, activists, and entrenched power were a single complex adaptive system—a system in which outcomes could not be discerned by picking among its components: the whole is greater than, or different from, the sum of its parts. Analytically, however, our typology suffices to assess whether and where a proposed model diverges from the models of lawyering that are, by now, familiar and frequently applied.

[10] JAMES M. JASPER, PROTEST: A CULTURAL INTRODUCTION TO SOCIAL MOVEMENTS 43 (2014) (explaining that "[n]aming a social problem is an important step toward addressing it").

and diagnose a problem, suggest solutions, and inspire action.[11] Through such frames, social movements attempt to change how we think about the world, prompting us to observe different things in the world and to see the world overall in new ways.[12] The labels aid in considering ourselves and the work we do in other ways, especially as part of a new collective identity, and in identifying opportunities for collaboration that cultivates convergent identities, interests, and actions.[13]

To be sure, theories of lawyering provide scholars with a shared vocabulary in order to describe lawyers' work and offer lawyers a mental model to guide their work. As one scholar noted, progressive lawyers who find solace only in critiques of traditional lawyering roles are lost at sea,[14] forced to make on-the-fly judgments too novel and numerous to be scripted and too consequential to be left to chance.[15]

> [T]he disciplinary knowledge that grows out of theories of empowerment, autonomy, and collaboration . . . leave[s] lawyers with a set of tools and a disciplinary language that inform their practice. However, when this language and the concepts it embodies fails to provide guidelines, or provides guidelines that contradict with other, unarticulated values, lawyers are confused.[16]

The enterprise of carrying out social change requires a mental model of how power exerts itself and how change happens. These theories are critical as they ultimately define professional identities and their relationships to the identities of the social movements they represent.[17]

We create a visual typology also to incite the creation of a shared vocabulary and to distinguish between prominent progressive models of social change lawyering. We recognize that significant limitations exist in the creation of a typology to examine such a complex, evolving topic. The effort to closely study and articulate labels for lawyering roles is somewhat premature as the models themselves need time to develop. Furthermore, what we identify as defining characteristics are not exact. Labels have never been static or uncontested, and we anticipate that they will continue to develop and differentiate themselves as new models and ideas are tried,

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[11] *Id.* at 50, 175.

[12] *Id.* at 175 ("With a label, [social dynamics] can be recognized, measured, and perhaps monitored."); *see also* López, *supra* note 5.

[13] JASPER, *supra* note 10, at 50; López, *supra* note 5, at 10 (putting labels on effects can change our emotions, feelings, assessment of strategies, and our way of being in the world).

[14] COREY S. SHDAIMAH, NEGOTIATING JUSTICE: PROGRESSIVE LAWYERING, LOW-INCOME CLIENTS, AND THE QUEST FOR SOCIAL CHANGE 19 (2009).

[15] *Id.* at 16.

[16] *Id.* at 23.

[17] *See* GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978).

tested, and adjusted.[18] Finally, this typology draws simplistic caricatures of complex and impressionistic models of lawyering. Lawyers may move among categories depending on a number of variables and can situate themselves largely within one model, while embodying the spirit of another.

Despite these limitations, important reasons compelled us to move forward with the project. After a review of the literature, we failed to find a shared common vocabulary. Originally, we set out to align our observations of the Abolish S-Comm Campaign with previously described theories of the relationships of progressive lawyering within social movements. What we thought would be a rather straightforward literature review proved to be daunting. Terms are often used interchangeably and are vaguely described.[19] The categories in the typology allow us to draw into stark relief the differences we observed in lawyers' roles in the Abolish S-Comm Campaign.[20] In the end, we identified noteworthy nuances between the Abolish S-Comm Campaign lawyers and the core conceptualizations of lawyering, as we understand others to have described them. Those differences seemed significant enough to warrant adding a new category, "catalytic lawyering," to the already-crowded typology.

We hope that this typology we propose creates a framework for discussion or provocations to encourage more in-depth conversation. In addition, we hope to provide scholars and advocates a preliminary framework to think strategically about which lawyering modalities will best fit their conception of their roles, their theory of social change, and the contexts in which they work. This type of lawyering is complex and challenging. Ideally, the typology will provide progressive social change lawyers and advocates a new level of understanding and a greater ability to choose intentionally among modalities.

This Article proceeds in four parts. In Part I, we survey the literature to identify the array of labels and corresponding characteristics that scholars use to describe the

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[18] *See infra* Part I (describing in detail the categories of progressive social change lawyering that we use in the typology). For a discussion of traditional public interest (i.e., regnant) lawyering, see López, *supra* note 5. For a discussion of cause lawyering, see Thomas M. Hilbink, *You Know the Type. . . : Categories of Cause Lawyering*, 29 LAW & SOC. INQUIRY 657 (2004) (dividing cause lawyers into proceduralists (i.e., traditional legal services lawyers), vanguard (i.e., issue-based, judicially centered change lawyers), and grassroots (i.e., community lawyers)). For a detailed exploration of rebellious lawyering, see generally GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992). For an overview of many of the terms used in the typology, see generally Cimini & Smith, *supra* note 7 (providing in-depth details of the campaign and the various campaign actors).

[19] After our initial review of the literature, we found the ground so murky that we questioned whether what we observed was a new model of lawyering or a more granular description of models that had been previously described and which by now are widely accepted.

[20] Cimini & Smith, *supra* note 7 (providing in-depth details of the campaign and the various campaign actors).

lawyer's role in progressive social change efforts. In Part II, we examine one instance of progressive social change lawyering—the campaign to abolish the immigration enforcement program known as Secure Communities (S-Comm). We begin with a brief overview of the Abolish S-Comm Campaign and then name and describe four key components of the campaign: (1) the identification of power dynamics; (2) the fractal structure of the campaign; (3) the reliance upon trans(local) organizing; and (4) the use of identity narrative as a strategic tool and transcendent goal. We treat these four factors as analytically separate, albeit functionally inseparable. Identity narrative is both a result of and a response to the confluence of emergent power dynamics, fractal structures, and trans(local) networks. The interplay among these factors emerged from the necessity of negotiating the ever-changing, emergent, and extremely hostile terrain. Simply assessing current resources or searching for political opportunity spaces trivializes the challenge of the Abolish S-Comm effort. Law and identity are similarly merged into a dynamic process of co-adaptation in which the indeterminacy of law and story creates space to locate interest convergence and dissipate ego threats and purity contests.[21] In Part III, we create a visual typology that places the prominent progressive social change lawyering models in a chart with various distinguishing strands. These strands include: ideas about how to effectuate social change; conceptualizations of power; attitudes toward law and legal practice; lawyers' understanding of their role; lawyers' relation to clients and impacted communities; decision-making processes employed; and the goals and skills used. Our typology attempts to specify how each lawyering model addresses these notions, understandings, roles, and relations. It is not meant, however, to definitively describe all iterations and meanings associated with these labels. At this time, we believe that task to be impossible given the rapid development of the subject. Nor is the typology intended to guide movements in choosing a particular lawyering model in response to a particular challenge. It would be a fool's errand to do so, as the problem spaces in which law and social movements operate are complex dynamic systems composed of too many parts, relationships, and contexts to be predictable, even in theory. Instead, we offer the typology to foster common ground for meaningful discussion. Part III concludes by engaging in just such a discussion and applying our observations of the Abolish S-Comm Campaign to the typology. We proceed to propose another model that we call "catalytic lawyering."[22] This model resulted from our

[21] MCCANN & LOVELL, *supra* note 8, at 15.

[22] A deep-dive case study into a single campaign is appropriate to, "identify complex relationships, which is especially useful at the theory-building and exploratory stages where multiple causal influences might be involved." David L. Trowbridge, *Beyond Litigation: Policy Work Within Cause Lawyering Organizations*, 56 LAW & SOC'Y REV. 286, 288 (2022). Whether catalytic lawyering endures as a core model for progressive lawyering, rather than our own idiosyncratic observations of the moves and relationships of the lawyers in the peculiar context of the Abolish S-Comm Campaign, will have to be fleshed out and tested by its application to other

discovery that there was no easy fit in the literature for the lawyering model we observed in the Abolish S-Comm Campaign.

Why add to the overfull and undetermined portfolio of terms describing legal mobilization for progressive change? Shared terminology builds bridges that allow communication and effective strategies, and nowhere is this goal of promoting discourse through shared language more important than in social change lawyering. Our goal is to establish what we mean when we reference progressive lawyering for social change and how that might differ from other terminology.[23] We encourage different interpretations of the narrative we present and the documentation of narratives of social change lawyering in other contexts, so that we can compare and contrast visions via a shared vocabulary.[24] We hope that our attempt to solidify the terms surrounding theories of progressive social change lawyering will give lawyers some solace in recognizing themselves, or the lawyer or activist they want to be. At the very least, we hope that what we present offers an entry point from which to join in the conversation, to inform us where we have gone off track, and to suggest new ways of inhabiting the lawyering role that better fit objectives of efficacy and autonomy ideals.

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law-and-social-movements campaigns and its utility to activists engaged in future experiments in social change.

[23] Susan D. Carle & Scott L. Cummings, *A Reflection on the Ethics of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 447, 452 (2018) ("At a basic level, the project of naming a distinctive approach to practice, like movement lawyering, requires identifying something to define it *against*—an alternative mirror held up to reflect what is different and unique about the new model. This definitional project always raises questions about whether the new model is really new or rather repackages old concepts and practices.").

[24] Kim Lane Scheppele, Foreword, *Telling Stories*, 87 MICH. L. REV. 2073 (1989) (introducing a seminal symposium on clinical legal storytelling and encouraging further development of a corpus of lawyering stories to pick apart and refer back to in the construction of models for lawyering). For additional examples, see Anthony V. Alfieri, *Speaking Out of Turn: The Story of Josephine V.*, 4 GEO. J. LEGAL ETHICS 619 (1991); Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 MICH. L. REV. 2459 (1989); Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43 HASTINGS L.J. 971 (1992); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFFALO L. REV. 1 (1990); Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994); *see also* ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW: HOW COURTS RELY ON STORYTELLING, AND HOW THEIR STORIES CHANGE THE WAYS WE UNDERSTAND THE LAW—AND OURSELVES (2000); López, *supra* note 5.

I. PROGRESSIVE SOCIAL CHANGE LAWYERING TERMINOLOGY

While there exists a historically deep and broad body of literature exploring the role of lawyers in effectuating social change,[25] this Part focuses on recent scholarly attempts to label and define the various roles lawyers play in supporting (or thwarting) social movements. Between the late 1980s and the present, scholars used different terms to describe nontraditional lawyer engagement with clients. There have been efforts over the years to "rename and reclaim" the role of lawyers committed to progressive change.[26] Much of the law and social change legal literature uses the myriad of terms interchangeably, or lists numerous expressions as supposed synonymous practices.[27] Others define their meaning by reference to what "it" is not. As we dove deeper into the terminology, we wondered if differences existed, and if so, were they big or small, and did these distinctions even matter? This Part identifies and summarizes several of the most frequently used terms to describe the role of lawyers in effectuating social change.[28]

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[25] Cimini & Smith, *supra* note 7, at 442–54 (providing a detailed description of literature exploring the question of lawyers and social change).

[26] Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645, 1660 (2017) ("Ever since the advent of the term 'public interest law' in the 1970s, there have been ongoing efforts to rename and thus reclaim the role of lawyers in progressive social change. Each of these branding efforts is fundamentally an ideological exercise in defining the relation of law to politics. In this sense, branding is inherently a normative project that simplifies complex reality, identifies problems with a stylized version of conventional practice, and then posits the newly branded model as an appealing solution.").

[27] SHDAIMAH, *supra* note 14, at 21–23.

[28] We recognize that the terms we choose to examine in this Part are not exhaustive, and others could have been named. However, we decided to select a number of prominent models in an effort to critique the subtle, but meaningful, distinctions among these models and our interpretation of lawyering roles in the Abolish S-Comm Campaign.

A. Early Scholarship on Collaborative and Client-Centered Lawyering

In the late 1980s and early 1990s, scholars Lucie White[29] and Anthony Alfieri[30] developed a body of work exploring the lawyering relationship with low-income or marginalized communities. White explained that lawyering can be a catalyst for progressive social change if advocacy is focused on poor people's own political consciousness. This vision redefined lawyering as a "collaborative" communicative practice through which marginalized people "see themselves and their social situation in ways that enhance their world-changing powers."[31] No longer reliant upon a "unidirectional professional service," lawyers in this circumstance are encouraged to engage in critical reflection about what causes subordination and to strategically resist and redirect such forces.[32]

Alfieri described collaboration as a practice in which lawyers and clients are "co-equal" participants in the telling of clients' stories.[33] Alfieri's model relied on "transformational dialogue . . . a relational process of mutual unfolding between the attorney and client in direct and open meeting" in order to affirm the client's voice

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[29] *See generally* Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1988) [hereinafter White, *Mobilization on the Margins*]; Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (1988) [hereinafter White, *To Learn and Teach*]; White, *supra* note 24; Lucie E. White, Goldberg v. Kelly *on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861 (1990) [hereinafter White, *Paradox of Lawyering*]; Lucie White, *Representing "The Real Deal,"* 45 U. MIA. L. REV. 271 (1991); Lucie E. White, *Seeking ". . . The Faces of Otherness . . .": A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499 (1992); Lucie White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853 (1992); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994) [hereinafter White, *Collaborative Lawyering*].

[30] *See generally* Anthony V. Alfieri, Comment, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1988) [hereinafter Alfieri, *Antinomies of Poverty Law*]; Anthony V. Alfieri, *The Politics of Clinical Knowledge*, 35 N.Y. L. SCH. L. REV. 7 (1990) [hereinafter Alfieri, *Politics of Clinical Knowledge*]; Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991) [hereinafter Alfieri, *Reconstructive Poverty Law Practice*]; Alfieri, *supra* note 24; Anthony V. Alfieri, *Stances*, 77 CORNELL L. REV. 1233 (1992) [hereinafter Alfieri, *Stances*]; Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769 (1992); Anthony V. Alfieri, *Impoverished Practices*, 81 GEO. L.J. 2567 (1993) [hereinafter Alfieri, *Impoverished Practices*]; Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994) (review of LÓPEZ, *supra* note 18).

[31] White, *Collaborative Lawyering*, *supra* note 29, at 157–58; *see also* White, *Mobilization on the Margins*, *supra* note 29, at 546 (explaining that lawyers must recognize how the "discourse and culture of formal litigation" can isolate clients, and then look for spaces where clients can find moments of engagement—i.e., where clients could speak "in their own terms").

[32] White, *Collaborative Lawyering*, *supra* note 29, at 158.

[33] Alfieri, *Reconstructive Poverty Law Practice*, *supra* note 30, at 2140.

and narrative.[34] White and Alfieri each made important contributions to a new conceptualization of the lawyer–client relationship that involved clients as partners in problem solving and encouraged clients' participation in individual and collective efforts to improve their situation.[35]

Louise Trubek articulated another variation on these underlying themes.[36] According to Trubek, "critical lawyering" is rooted in empowerment and transformation and provides that "[l]awyers should encourage participation, personalize the issues, be skeptical of bureaucracy, be unbiased in approach to advocacy arenas, organize with other lawyers and apply feminist and anti-racist analyses."[37] The work of these scholars laid the foundation for the subsequent identification and labeling of different models of lawyering for social change, which are described below.

B. Traditional Public Interest Lawyering

There are many public interest lawyers who work with disadvantaged, marginalized communities. The demand for their services far exceeds their availability and creates tensions between individual service and long-term systemic reform.[38] Below we explore what the literature refers to as "regnant lawyering" and what we term "client-centered/moral realist lawyering."

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[34] Alfieri, *Antinomies of Poverty Law*, *supra* note 30, at 697–98.

[35] White, *Collaborative Lawyering*, *supra* note 29, at 762–65 (describing a model in which lawyers engage clients on equal, non-hierarchical, footing to subvert the dominant status quo and instead empower clients with decision-making power); White, *Paradox of Lawyering*, *supra* note 29, at 863–64 (focusing on a practice of lawyering that would, "continually cede to 'clients' the power to speak for themselves. Such a practice would transform 'lawyer' from a professional *service* that is imposed upon subordinated communities, to a political *project* in which the targets of the advocacy themselves take the lead."); *see also* Alfieri, *Antinomies of Poverty Law*, *supra* note 30, at 670 ("Seeing the poor as a class, perceiving class as an active human relationship involving everyday experience in society, and understanding class consciousness in cultural terms of domination and liberation are together the essence of critical consciousness."); Alfieri, *Politics of Clinical Knowledge*, *supra* note 30, at 9 ("Imposing lawyer defined values and truths on a world where meaning is constructed, not found, privileges lawyer voice and story telling. Because this interpretive privilege is usually exclusive, the alternative voices and stories spoken by clients are often silenced."); Alfieri, *Reconstructive Poverty Law Practice*, *supra* note 30, at 2135–37 (explaining that the lawyer can reinforce the client's lived experiences through narrative because "the lawyer is keenly aware of the falsifications inflicted by the courts and welfare bureaucracies . . . [and] helps correct false images of client dependency and incompetence.").

[36] *See* Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice*, 1 B.U. PUB. INT. L.J. 49 (1991).

[37] *Id.* at 49–50.

[38] *See* Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 950 (1992) (examining "the notions of rebellious lawyering and 'regnant' lawyering as affected by the daily triage obligations of legal services offices").

1. Regnant Lawyering

The term "regnant lawyering" was first used by Gerald López to describe a "set of practices employed by progressive lawyers that filter the struggles of subordinated people through the lens of professional ideologies and understandings."[39] According to López, regnant lawyers elevate remedies and actions connected to courts and stemming from legal theories over those emerging organically from the lived experiences of subordinated people.[40] They might ascribe to "service" work for individual clients or "impact" work by changing precedent or policy.[41] But regnant lawyers decenter community organizing and popular education, if they think of such practices at all, and consider the lawyer's work as a technical pursuit left to lawyers who alone hold esoteric knowledge and hard-won institutional legitimacy.[42] One scholar described regnant lawyers as those who mostly adhere to the values of the extant legal system and seek only to make sure that each cause is adequately represented and that the law is applied equally to all.[43]

Regnant lawyers often work alone and consider problems as solved best through legal doctrine, the courts, and judicial orders.[44] Regnant lawyers use their professional training to devise technical and strategically complex approaches to client work. In the process, lawyers move further away from their clients and lose the empathy and connection through which they connect.[45] López argues that this approach to lawyering leads to "impoverished practices,"[46] often becoming bureaucratic and rigid in order to somehow meet the increasing need and demand.[47] This process isolates clients from one another and disempowers clients, leaving them alienated and unsatisfied. At the core of López's objections to regnant lawyering is the concern that lawyers will dominate the client relationship,[48] take control of problem

[39] Paul R. Tremblay, *Rebellious Strains in Transactional Lawyering for Underserved Entrepreneurs and Community Groups*, 23 CLINICAL L. REV. 311, 319 (2016) (citing LÓPEZ, *supra* note 18, at 23–24).

[40] LÓPEZ, *supra* note 18, at 23–24.

[41] *Id.* at 24; *see also* SHDAIMAH, *supra* note 14, at 11.

[42] LÓPEZ, *supra* note 18, at 24.

[43] *See* Hilbink, *supra* note 18, at 664 tbl.1 (dividing cause lawyers into three types: proceduralist, elite/vanguard, and grassroots, with the proceduralist category most closely hewing to regnant lawyering).

[44] LÓPEZ, *supra* note 18, at 24, 70–71.

[45] *Id.* at 87–102.

[46] *See* Alfieri, *Impoverished Practices*, *supra* note 30.

[47] LÓPEZ, *supra* note 18, at 87–102.

[48] Tremblay, *supra* note 39, at 330 ("López's deeper objection to regnant lawyering is that the enterprise will, in essence, become the lawyer's enterprise, without genuine direction from or collaboration with the client or her community." (citing LÓPEZ, *supra* note 18, at 28–29)).

solving,[49] and use litigation as the only solution.[50] The result of such practices is to disempower clients and the community.[51]

2. Client-Centered (Moral Realist) Lawyering

In between the regnant lawyers, who focus on the technical aspects of lawyering, and the cause lawyers, who rely upon large-scale litigation to force shifts in the law, is the spirit, messaging, and identities of many legal services lawyers, clinical law teachers, and lawyers in small public interest law firms that are consumed by individual casework. We label this category the "client-centered/moral realist lawyer" and find that these lawyers are aptly described in Corey Shdaimah's ethnography of lawyers and clients in a representative (but unnamed) legal services office.[52]

Shdaimah portrays both legal services lawyers and their clients as engaged in a kind of realistic radicalism informed by an ethic of risk acknowledging societal indignities and oppression.[53] Neither suffers a mystification of law or faith in its ability to address societal wrongs; instead, together they recognize that they are engaged in a process that legitimizes an unfair system while wringing out all the relief it will allow a marginalized person.[54] Legal services lawyers versed in critical legal studies and movement lawyering literature strive to create nonhierarchical relationships of equality and mutual respect. Like Paul Tremblay, Shdaimah finds that the legal services lawyers who were studied did not lack radical imagination or hold dismissive attitudes about their clients and the communities in which they worked; rather, they were products of the conditions of their work and the exigencies of their clients'

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[49] LÓPEZ, *supra* note 18, at 24, 27–29.

[50] *Id.* (explaining that regnant lawyers tend to view clients' problems through the lens of legal doctrine and use litigation as the solution). As one scholar summarized:

> López writes, speaking for progressive lawyers working within the struggle for social justice, that '[w]e simply can't be effective if we see people's problems through cramped legal doctrine.' Regnant lawyers use the law instrumentally, and doctrinally. Rebellious lawyers will resist that conventional orientation, pursue solutions that are grounded in community norms and responsive to long-term community needs, and nurture the rewards of lay lawyering tactics.

Tremblay, *supra* note 39, at 327 (quoting LÓPEZ, *supra* note 18, at 109).

[51] *See also* Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195, 197–98 (2002) ("A lawyer in the traditional mode—one who takes charge, applies legal doctrine, and uses conventional legal avenues for redress—may bring conventional legal tools to a progressive cause, but the lawyering itself may add to the disempowerment of the group represented. In the words of Ron Chisom, a community organizer, conventional lawyers 'have killed off more groups by helping them than ever would have died if the lawyers had never showed up.'" (citing William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 457 (1994))).

[52] *See generally* SHDAIMAH, *supra* note 14.

[53] *Id.* at xii.

[54] *Id.* at 13.

demands.[55] Lawyers identified and exploited opportunities for broader change when they arose, sometimes subversively leveraging resources and windows of opportunity despite limitations imposed by funders, courts, and/or government regulations. But primarily, they developed and considered critiques of social systems with clients by pointing out contradictions between legal systems' ideals and operations.[56]

While the limitations of roles, responsibilities, and clients' urgent needs often limited concerted action, lawyers developed relationships that mirror democratic ideals and horizontal egalitarian relationships of trust[57] and found social change in the structuring of their relationships in the community. They did so on the run and in the course of emergency triage, often feeling confused and cast aside by accepted theories of lawyering.[58]

C. Cause Lawyering

Pioneering "cause lawyering," scholars Austin Sarat and Stuart Scheingold first defined cause lawyering as lawyering that "is frequently directed at altering some aspect of the social, economic, and political status quo."[59] Cause lawyers "are usually swimming against the prevailing political tide."[60] Thomas Hilbink, in *You Know the Type. . . : Categories of Cause Lawyering*, divides cause lawyers into three types: proceduralist (regnant), elite/vanguard (vanguard/cause), and grassroots (mixture of moral realist and movement law).[61]

Hilbink differentiates categories along axes identifying each type's view of the legal system, the cause each represents, and each one's role as a lawyer within a legal system and for a cause so defined.[62] According to Hilbink, vanguard lawyers seek to change policy through the law by bringing precedent-setting, issue-based cases on the implied assumptions that changes in legal doctrine will accordingly change conditions for marginalized people on the ground.[63] The assumption is that cause lawyers know which changes would most benefit people on the ground and focus on those challenges that seem most amenable to change through the judicial process.[64]

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[55] *Id.* at 46–47 (citing Tremblay, *supra* note 38, at 949–50).

[56] *Id.* at 55–60.

[57] *See infra* notes 72–80 and accompanying text.

[58] SHDAIMAH, *supra* note 14, at 149–65; Paul R. Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475 (1999).

[59] Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority: An Introduction*, *in* CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 3, 4 (Austin Sarat & Stuart Scheingold eds., 1998).

[60] *Id.* at 8.

[61] *See* Hilbink, *supra* note 18.

[62] *Id.* at 663–64 tbl.1.

[63] *Id.* at 673.

[64] *Id.*

Hilbink's seminal typology remains a vibrant and useful articulation of the forms and incidents of the progressive lawyering he describes. But over the years, commentators have proposed new terminology—offering alternative progressive lawyering models and/or redescribing existing models in more differentiated terms. We hope to augment Hilbink's typology with the addition of alternative lawyering models and additional axes of differentiation among them.

D. Refined Visions of Collaborative Lawyering

The terminology used to describe progressive social change lawyering is most challenging to parse in the broad category that has been referred to as community lawyering. We grouped community and rebellious lawyering together under the broad heading of "Refined Visions of Collaborative Lawyering," despite some meaningful distinctions between the two terms. We did so because we found more overlapping than distinguishing characteristics. Below we explain how these terms are described in the literature.

1. Community Lawyering

"Community lawyering" has been described by scholars as a "nuanced,"[65] "opaque and difficult concept,"[66] and a term that "has no exact definition."[67] Part of the definitional challenge stems from scholars using the term "community lawyering" as synonymous with other progressive lawyering models.[68]

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[65] Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333, 339 (2009) ("The term 'community lawyering' has been used for years to talk about a particular vision of poverty law practice. While nuanced differences can be identified, the term is largely used to identify a social justice lawyering practice that places commitment to something called 'community' (a term of course easy to contest) at its core.").

[66] Michael Diamond, *Community Lawyering: Introductory Thoughts on Theory and Practice*, 22 GEO. J. ON POVERTY L. & POL'Y 395, 395 (2015) ("As someone who has thought and written about community lawyering for many years, I am all too aware of how opaque and difficult the concept is. It has been used, often without critical thought, by a wide range of people—from practitioners to academics to politicians to critics. Rarely do users of the term consider its possible meanings."); Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 376 (2013) ("The term has come to be used very broadly with a myriad of individual descriptions, strains and tendencies, each with their own pedigree. The most unifying feature seems to be a deep unease with the degree to which the representation of poor and working people has been individualized, atomized, depoliticized and divorced from any leadership by real organized constituencies with their own substantive and political goals.").

[67] Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 24 AM. INDIAN L. REV. 229, 243 (2000) (stating that community lawyering has "no exact definition").

[68] Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 147 n.1 (2000) ("I refer to this style of practice as community lawyering; it is also known as 'rebellious' lawyering, a phrase used by one of the prominent scholars in the field, Gerald

In an effort to analyze the body of work on community lawyering, scholars explain that community lawyering has many variants[69] or incarnations,[70] or simply has many different labels.[71] Still other scholars propose new models of community lawyering,

López. I use the terms interchangeably throughout this article."); Angelo N. Ancheta, *Community Lawyering*, 81 CAL. L. REV. 1363 (1993) (reviewing LÓPEZ, *supra* note 18) (using the name "community lawyering" when reviewing López's *Rebellious Lawyering*); Judith Fox, *Consumer Law Clinics: Community-Based Lawyering—A Social Justice Response to the Financial Crisis*, 20 GEO. J. ON POVERTY L. & POL'Y 517, 518 (2013) ("Following the lead of Gerald Lopez who, in 1992, called the practice 'rebellious lawyering,' community lawyering is a theory of lawyering that attempts to use legal representation as a means to achieving social justice." (citing LÓPEZ, *supra* note 18)); Kelly McAnnany & Aditi Kothekar Shah, *With Their Own Hands: A Community Lawyering Approach to Improving Law Enforcement Practices in the Deaf Community*, 45 VAL. L. REV. 875, 889 (2011) ("The community lawyering model—also known as 'law and organizing,' 'rebellious lawyering,' and 'collaborative lawyering,' among other names—has been in a constant state of evolution since the middle of the twentieth century."); Theresa Zhen, *Community Lawyering: Direct Legal Services Centered Around Organizing*, 9 CAL. L. REV. ONLINE 29, 30, 32 (Nov. 2018), https://www.californialawreview.org/community-lawyering-direct-legal-services-centered-around-organizing/ (noting that some scholars have referred to community lawyering as "rebellious lawyering" or "empowerment lawyering," and describing the phrases as interchangeable).

[69] Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 404 (2019) (explaining that community lawyering's "many incarnations" include: "rebellious lawyering, cause lawyering, political lawyering, social change lawyering, third-dimensional lawyering, collaborative lawyering, revolutionary lawyering, and law and organizing").

[70] Imai, *supra* note 51, at 197 (identifying the following variants on community lawyering: rebellious lawyering, critical lawyering, activist lawyering, and long-haul lawyering).

[71] *See* Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 359, 365–67 (2008) (identifying the many names provided to community lawyering, including: "political lawyering," "rebellious lawyering," "collaborative lawyering," "poverty lawyering," "reconstructive poverty lawyering," "facilitative lawyering," "law in the service of organizing," "campaign-based lawyering," and "integrative lawyering." (citations omitted)).

such as activist lawyering[72] and empowerment lawyering.[73] One scholar uses the term "community lawyering" as a broad umbrella that includes collaborative lawyering,[74] client-centered lawyering,[75] and facilitative lawyering.[76]

Despite the varying ways that scholars use the term "community lawyering," identifiable overlapping themes emerge. Community lawyering is described as a collaborative endeavor through which lawyers partner with clients and community members.[77] The model relies upon building and maintaining relationships between

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[72] See, for example, the proposal of Michael Diamond:

> Thus, I propose another model: the activist lawyer. It includes several aspects of the collaborative and client-centered models but it goes further in describing the role of a community lawyer. The activist lawyer not only interacts with the client on a non-hierarchical basis, but also participates with the client in the planning and implementation of strategies that are designed to build power for the client and allow the client to be a repeat player at the political bargaining table. The activist lawyer views the client's world in broader terms than merely its legal implications. He or she not only considers the political, economic, and social factors of the client's problem, but assists the client in developing and implementing enduring solutions, legal and non-legal, to these problems and to similar problems that may arise in the future.

Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 109–10 (2000).

[73] Quigley, *supra* note 51, at 455–56 ("The purpose of empowerment lawyering with community organizations is to enable a group of people to gain control of the forces which affect their lives. The substance of this lawyering is primarily the representation of groups rather than individuals. This style calls for lawyering which joins, rather than leads, the persons represented. Community organizing is *the* essential element of empowering organizational advocacy. Unless the lawyer recognizes that advocacy with groups cannot proceed without community organizing, there can be no effective empowering advocacy.").

[74] Diamond, *supra* note 72, at 82–83 (identifying Lucie White and Gerald López as proponents of the "collaborative model," which posits that in order for a "community lawyer to be successful, he or she must interact with clients differently from what traditionally has been the norm. Lawyers in the collaborative mode must involve clients to a greater degree in planning strategies and in carrying out tasks previously carried out only by professionals. The model requires that attorneys understand a client's story in the client's terminology and with the client's sense of meaning and importance rather than automatically translating the story into the technical 'legal' jargon so familiar and comfortable to courts and lawyers.").

[75] *Id.* at 90 ("The essence of the model is that the client, rather than the lawyer, must make decisions concerning both the ends to be achieved by legal representation, and the means to be used to achieve them.").

[76] *Id.* at 101 (describing the "facilitative lawyer" as "'more the oiler of the social change machine than its motor.'. . . [Facilitative lawyers] provide only the specific legal assistance sought by the client without creating client dependency. By restricting the lawyer's activities to legal and indirect supportive tasks, the facilitative model purports to maintain client autonomy." (quoting Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative Lawyering?,"* 1 CLINICAL L. REV. 639, 658–60 (1995))).

[77] Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1079 (2007) (describing community lawyering as "a mode of lawyering that

lawyers and client communities over time.[78] The practice of the community lawyer is located in the impacted communities where clients live and engage.[79] Community lawyers share knowledge and power with communities and address both legal and non-legal issues.[80] In order to be effective, community lawyers must understand community beliefs, values, and concerns[81] and incorporate this understanding into the evaluation of legal strategies.[82]

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envisions communities and not merely individuals as vital in problem-solving for poor people, and that is committed to partnerships between lawyers, clients, and communities as a means of transcending individualized claims and achieving structural change."); Rose Cuison Villazor, *Community Lawyering: An Approach to Addressing Inequalities in Access to Health Care for Poor, of Color and Immigrant Communities*, 8 N.Y.U. J. LEGIS. & PUB. POL'Y 35, 37–38 (2004) ("Community lawyering can also be described as a more participatory process that fosters collaboration between attorneys and clients, rather than fostering—if not perpetuating—the dependency that most clients have on their lawyers to solve their legal problems in a conventional attorney-client relationship."); Tokarz et al., *supra* note 71, at 364 ("[T]he work of community lawyering clinics involves collaborative, and frequently interdisciplinary, practice."); Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLINICAL L. REV. 445, 451 (2002) ("Broadly speaking 'community lawyering,' refers to the activities and actions of lawyers working in and for communities.").

[78] Bonnie Allen, Barbara Bezdek & John Jopling, *Community Recovery Lawyering: Hard-Learned Lessons from Post-Katrina Mississippi*, 4 DEPAUL J. SOC. JUST. 97, 98 (2010) ("Community lawyering augments traditional lawyering models with an approach that features building and sustaining relationships with clients, over time and in conjunction with their communities.").

[79] Diamond, *supra* note 72, at 75 ("I use the term 'community lawyer' to describe a type of practice as well as a type of lawyer. The practice is located in poor, disempowered, and subordinated communities . . . ."); Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 315 n.52 (2001) ("We used the term community lawyering because of our relationship with community service sites and because we went out into the community to find our clients; we did not wait for them to come to us. I realize that 'community lawyering' has been used to describe representation of community groups and community organizing.").

[80] Villazor, *supra* note 77, at 37 ("Instead, community lawyering encourages lawyers to critically and creatively examine nontraditional forms of advocacy such as organizing and other grassroots actions as a way of addressing the legal and non-legal problems of their clients."); Courtney Lauren Anderson, *The Intersection of Bioethics and Community Lawyering*, 50 STETSON L. REV. 283, 287 (2021) ("Community lawyering aims to reduce the traditional role of the lawyer-client relationship and allows the lawyer and the client to share in knowledge and power. By disrupting the traditional power imbalance between lawyers and clients, community lawyering creates the formation of a partnership between the lawyer and the community while promoting social justice. Additionally, this type of lawyering encourages lawyers to act as advocates and help the community instill leadership and organizational power.").

[81] Tokarz et al., *supra* note 71, at 363 ("[C]ommunity lawyering involves formal or informal collaborations with client communities and community groups to identify and address client community issues. It assumes a community perspective in the consideration of legal problems.").

[82] In attempting to define "community lawyering," one scholar explained:

Unlike more traditional modes of lawyering, community lawyering seeks to represent communities, as well as individual clients.[83] It is rooted in the ideal that lawyers should empower clients and communities to advocate for themselves and engage in solving their own problems.[84] A critical component of community lawyering is the recognition that social change is only effective when people most impacted lead the change.[85] The work must be led and directed by those in the community who are most affected.[86] Community goals are defined with the community, not independent of the community, and lawyers are dedicated to serving these goals.[87]

> Community lawyering is a broad term. It describes a way of lawyering that includes much of traditional lawyering. Generally, community lawyering is a method of providing legal service, advice, and representation which approaches case work or legal issues with appropriate consideration and an understanding of community values, concerns, ideas or beliefs and their impact on the treatment of the client, the treatment of the legal issues, and the final legal solution crafted. Community lawyering seeks to approach individual clients and communities with an understanding of the community the client comes from and ever mindful of the impact of legal work on the community.

Zuni Cruz, *supra* note 67, at 243.

[83] Ahmad, *supra* note 77, at 1079.

[84] Allen et al., *supra* note 78, at 98–99 ("Community lawyering is based on a collaborative strategic vision of building community by developing client communities' ability to advocate for themselves. It requires lawyers and law students to confront the legitimate fear in many communities that attorneys will dominate the representation, replicating systems of subordination with which they already struggle, and derail community efforts to change those systems and gain greater social, economic and political equality."); Tokarz et al., *supra* note 71, at 364 ("In sum, community lawyering . . . incorporates a respect for clients that empowers them and assists them in the larger economic, political, and social contexts of their lives, beyond their immediate legal problems."); David Dominguez, *Community Lawyering*, UTAH BAR J., Jan.–Feb. 2004, at 31, 31 (defining "community lawyering," also referred to as "collaborative justice," as decreasing demand for legal services by increasing communities' abilities to solve their own problems).

[85] Marika Dias, *Stepping Aside, Standing Back, and Raising Up: Lawyering Within Grassroots Community Movements*, 22 GEO. J. ON POVERTY L. & POL'Y 405, 410–11 (2015) (describing the practice of community lawyers at Make The Road—a grassroots membership organization—who take an explicit back seat by limiting the number of legal staff that are allowed in staff meetings, restricting lawyers from speaking when deciding priorities, and leaving all major decisions regarding support campaigns to client groups).

[86] Elsesser, *supra* note 66, at 384 ("The central tenet of 'community lawyering' is that social change comes about when people without power, particularly poor people or oppressed people, organize and recognize common grievances. Social change can only be lasting when it is led and directed by the people most affected. . . . Community lawyering is supportive of this grassroots organizing and mobilization for social justice. Those involved in community lawyering understand that these organizing efforts may be the only real route to long-term social change. It follows then that community lawyers believe that leadership must come from within our client/partner organizations.").

[87] As one scholar explained:

2. Rebellious Lawyering

In the late 1980s and early 1990s, López refined the concepts of client-centered and collaborative lawyering and articulated a new concept he called "rebellious lawyering."[88] López conceptualized rebellious lawyering "as a way of empowering poor clients through grassroots, community-based advocacy facilitated by lawyers" in which they "attempt to pursue meaningful social change while . . . employing community activism to empower the subordinated who can serve as their own advocates in future struggles when the lawyers are long gone."[89] López explained that in order to do this effectively, rebellious lawyers had to "situate their work in the lives and in the communities of the subordinated themselves, constantly re-evaluating the likely interaction between legal and 'non-legal' approaches to problems."[90] The work of the rebellious lawyer includes the ability to immediately respond to particular problems and engage in the broader fight against social and political subordination.[91] At their core, rebellious lawyers must have the capacity to build coalitions and engage effectively with others in a collective fight for social change.[92] Rebellious lawyers are committed to mobilization and collective action to address the larger issues within

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> Community lawyering is working with communities and the individuals which comprise communities, not independent of them.
>
> Community lawyers do more than represent individual clients. They represent clients in definable communities. . . . They see problems of individual clients in the context of the community. Individuals in communities may face all sorts of problems, but lawyers engaged in community lawyering go beyond individual cases to develop and implement community-wide solutions that will benefit others in the community who may face similar problems.

Zuni Cruz, *supra* note 67, at 243–44; *see also* Diamond, *supra* note 72, at 75 ("The community lawyer is one whose commitment to this practice includes collaborative interaction with members of the community.").

[88] *See generally* López, *supra* note 24; Gerald P. López, *A Declaration of War by Other Means*, 98 HARV. L. REV. 1667 (1985) (book review); Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1989) [hereinafter López, *Reconceiving Civil Rights Practice*]; Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989) [hereinafter López, *Training Future Lawyers*]; López, *supra* note 5; LÓPEZ, *supra* note 18; Gerald P. López, *Economic Development in the "Murder Capital of the Nation,"* 60 TENN. L. REV. 685 (1993); Gerald P. López, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C.R.- C.L. L. REV. 315 (1996).

[89] Kevin R. Johnson, *How Racial Profiling in America Became the Law of the Land:* United States v. Brignoni-Ponce *and* Whren v. United States *and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005, 1008 (2010) (citing LÓPEZ, *supra* note 18, at 37–38); *see also What Is "Rebellious Lawyering"?*, REBELLIOUS LAWYERING INST., https://rebelliouslawyeringinstitute.org/what-is-rebellious-lawyering/ (last visited Dec. 26, 2022).

[90] López, *Reconceiving Civil Rights Practice*, *supra* note 88, at 1608.

[91] *Id.*

[92] *Id.*

a community, as opposed to addressing individual clients' legal issues in isolation.[93] The relationship between the lawyer and client is described by López as one in which lawyers treat clients with respect and compassion, and together they engage in the struggle against oppression and subordination, using whatever means seem most effective and aligned with clients' goals.[94]

Traditional (i.e., regnant) lawyers act as leaders of the work on behalf of their judgment of what is best for clients. In contrast, López argues that lawyers should step aside for community members and must include clients and community members in strategy development and advocacy efforts.[95] Rebellious lawyers understand the limits of their expertise, and share whatever limited knowledge they have of the rules and conventions of legal storying with the community, which becomes their metaphorical client.[96] In so doing, rebellious lawyers learn community problem-solving strategies, power structures, and subaltern views of hierarchies. Together, they create ways of relating to the community, careful not to replicate the disempowering hierarchies that construct the problems and challenges taken on with other community problem solvers, inside and outside of legal forums and policy arenas.[97] It is only by paying constant attention to the unfiltered lived experience of the community, and acting based on that grounded theory of oppression and opportunity, that the rebellious lawyer avoids the trap of regnancy.[98] The rebellious lawyer adapts to changing power structures and changing communities through praxis, theory-guided reflection on action, and ground-level experience.[99] In short, their work is hyper-local, and their ultimate "win" is tearing into lawyers' monopoly on access to justice, replacing it with trained lay advocates, community-based lawyers, and self-help initiatives that apply local solutions to local contexts.[100] At this juncture, rebellious lawyering is firmly entrenched in the scholarly canons of lawyering, with many branching applications and explications of the original theory in different contexts.[101]

One of those models hewing closest to López's initial provocation is Ascanio Piomelli's version of democratic lawyering, in which "lawyers consider clients not just sources of information on the problems they face, but active partners in working collectively to solve those problems. These lawyers work alongside individual clients,

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[93] LÓPEZ, *supra* note 18, at 24, 32.

[94] *Id.* at 109–26.

[95] Tremblay, *supra* note 39, at 319 (citing LÓPEZ, *supra* note 18, at 70–71).

[96] Marshall, *supra* note 68, at 147–48.

[97] LÓPEZ, *supra* note 18, at 53.

[98] *Id.* at 60–61.

[99] *Id.* at 69.

[100] *Id.* at 70–71.

[101] Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383, 1386 (2009).

organized and informal groups, and any allies they can enlist, in joint, multidimensional efforts to advocate for justice."[102]

They do not privilege individual litigation as the go-to remedy, but look to collaborative problem solving, community solutions, and concerted action for change.[103] By fostering sustainable equal relationships, Piomelli's democratic lawyer proposes a radical (in the sense Angela Davis expresses, meaning, "grasping at the roots"[104]) vision of democratic leadership in which lawyers' roles are decentered. Piomelli explains that democratic lawyers resist subordination by fostering individual and collective self-government while emphasizing equality and inclusion.[105] They respect the various voices, talents, intelligence, and agency of all those involved in the collective struggle. Democratic lawyers emphasize in-person, collective action where both sides (lawyers and community members) teach and learn from each other. Focused on enhancing individuals' and groups' self-expression and determination, democratic lawyers rely upon their partners' choice of strategy and reject paternalistic models of lawyering. Understanding that circumstances are not static, democratic lawyers are committed to iterative evaluation of their strategies.[106]

One distinction between rebellious and democratic lawyering might lie in rebellious lawyering's heavy weight on the humility of lawyers,[107] leading toward the facilitation of what López calls "lay lawyering" and lawyers' abstention.[108]

E. Movement Lawyering[109]

The term "movement lawyering" presents some definitional challenges. Some scholars situate movement lawyering under the broad category of "cause lawyering,"[110] finding that while movement lawyering builds upon public interest and

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[102] *Id.* at 1385.

[103] *Id.* at 1385–86.

[104] ANGELA Y. DAVIS, WOMEN, CULTURE, & POLITICS 14 (1990).

[105] Piomelli, *supra* note 101, at 1394.

[106] *Id.*

[107] The humility of lawyers is a trait shared by community lawyering and movement lawyering in most interpretations. *See, e.g.*, Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 CLINICAL L. REV. 663, 664–65 (2017).

[108] López, *supra* note 24.

[109] In addition to the terms discussed *infra*, we have seen this type of lawyering also referred to as "mobilization lawyers," "movement liberalism," "collective mobilization," and "critical lawyering."

[110] Cummings, *supra* note 26, at 1690 ("Movement lawyering is therefore a version of cause lawyering in which the cause is defined and advanced by social movement leaders and constituents in dynamic processes of grassroots organization building and community engagement.").

community lawyering models, it contains distinctive features.[111] Others describe movement lawyering as a type of rebellious lawyering.[112] In fact, we found a number of scholars who expressly define "movement lawyering"[113] but were unable to locate one agreed upon definition.[114] The conceptions of movement lawyering that we an-

[111] Carle & Cummings, *supra* note 23, at 454–57 (describing modern movement lawyering as built upon public interest, community, and cause lawyering, while also remaining a distinct category).

[112] Hung, *supra* note 107, at 663 ("This essay offers a reflection on how social movement lawyering is an essential paradigm within the larger framework of rebellious lawyering."); Alexi Freeman, *Teaching for Change: How the Legal Academy Can Prepare the Next Generation of Social Justice Movement Lawyers*, 59 HOW. L.J. 99, 107–08 n.22 (2015) (citing LÓPEZ, *supra* note 18, at 37) (reviewing the origins of the various definitions of progressive social movement lawyering, and identifying López's definition of rebellious lawyering as the first).

[113] Cummings, *supra* note 26, at 1690 (defining movement lawyering as "the mobilization of law through deliberately planned and interconnected advocacy strategies, inside and outside of formal law-making spaces, by lawyers who are accountable to politically marginalized constituencies to build the power of those constituencies to produce and sustain democratic social change goals that they define." (emphasis omitted)); Alexi Freeman & Lindsey Webb, *Yes, You Can Learn Movement Lawyering in Law School: Highlights from the Movement Lawyering Lab at Denver Law*, 5 HOW. HUM. & C.R. L. REV. 55, 57 (2020) ("Movement lawyers use their legal skills but are focused on and guided by the stated needs of impacted communities rather than on lawyer-led legal strategies; movement lawyers focus on shifting power rather than on policy change alone; movement lawyers work in service of, and in partnership with, social movements and do not pursue agendas that are contrary to or uninformed by the community's stated needs."); Hung, *supra* note 107, at 664 ("While there are varying definitions of movement lawyering, I have developed my own personal interpretation over the years: Lawyering that supports and advances social movements, defined as the building and exercise of collective power, led by the most directly impacted, to achieve systemic institutional and cultural change."); William P. Quigley, *Ten Ways of Looking at Movement Lawyering*, 5 HOW. HUM. & C.R. L. REV. 23, 24 (2020) ("Movement lawyering encompasses lawyers, law students, and legal workers working in respectful partnership with, and alongside, directly impacted communities who are fighting for justice. Movement lawyering is about being in a relationship with a community of people who are building power. It is law with, not law for, communities."); Carle & Cummings, *supra* note 23, at 452 (defining movement lawyering as "the use of integrated advocacy strategies, inside and outside of formal lawmaking spaces, by lawyers who are accountable to mobilized social movement groups to build the power of those groups to produce or oppose social change goals that they define."); Azadeh Shahshahani, *Movement Lawyering: A Case Study in the U.S. South*, 5 HOW. HUM. & C.R. L. REV. 45, 47–49 (2020) (identifying several principles of movement lawyering, including: decentering lawyers and centering movements; educating the citizenry and building the capacity of movements; pursuing advocacy outside of litigation; and questioning the profession and who the legal system was designed to help).

[114] Freeman, *supra* note 112, at 108 n.23 (explaining that a number of scholars have sought to define and re-define what this type of lawyering is. These discussions employ an array of terms and philosophies to encompass the work with substantial overlap but some distinctions in their definitions and terms).

alyzed routinely employed a number of discrete themes. Movement lawyering encourages lawyers to work collaboratively, or obediently, with low-income, marginalized, and of-color communities and clients.[115] The movement lawyer's role is rooted in long established and fostered relationships with movement actors.[116] Allowing impacted communities to lead, or at least decentering lawyers' work, avoids the type of subordinating relationships that clients are asking lawyers to help combat.[117] Movement lawyers are accountable to and focused on advancing social change for social movements.[118] Strategically, they use tools inside and outside of formal law-making spaces.[119] Traditional legal strategies are minimized and questioned.[120] Underlying each of the aspects of movement lawyering identified here is the idea

[115] Cummings, *supra* note 26, at 1690 (identifying a critical component of movement lawyering as building "the power of those constituencies to produce and sustain democratic social change goals that they define"); Freeman & Webb, *supra* note 113, at 57 (explaining that "[m]ovement lawyers focus on shifting power rather than on policy change alone"); Hung, *supra* note 107, at 664 (defining movement lawyering as focused on "building the exercise of collective power"); Quigley, *supra* note 113, at 24 (stressing the importance of "being in a relationship with a community of people who are building power").

[116] Carle & Cummings, *supra* note 23, at 458–59 (describing the movement lawyer's role as "anchored in relationships with extant social movement organizations that have ultimate decision-making authority and legitimate claims to represent the interests of movement constituencies." (citing David A. Snow, Sarah A. Soule, Hanspeter Kriesi & Holly J. McCammon, *Introduction: Mapping and Opening Up the Terrain*, *in* THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS, *supra* note 6, at 9–10 (discussing the key role of organizations in social movements)).

[117] *See* Freeman & Webb, *supra* note 113, at 58; Hung, *supra* note 107, at 664–65; Quigley, *supra* note 113, at 24–26; Carle & Cummings, *supra* note 23, at 457 (explaining that contemporary movement lawyers "follow the leadership of grassroots actors in designing social movement campaigns, often using multiple legal strategies consciously crafted to complement and advance political goals"); *see*, *e.g.*, Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5, 14 (2016); Jim Freeman, *Supporting Social Movements: A Brief Guide for Lawyers and Law Students*, 12 HASTINGS RACE & POVERTY L.J. 191, 202 (2015); Michael Grinthal, *Power with: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 58 (2011); Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 151 (2016).

[118] *See* Carle & Cummings, *supra* note 23, at 457 ("[M]ovement lawyering emphasize[s] lawyer accountability to *mobilized social movement organizations that have the resources and political power* to advance campaigns." (citing Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 1464, 1503–06 (2017))).

[119] Cummings, *supra* note 26, at 1690 (explaining that movement lawyers deliberately plan and use "interconnected advocacy strategies, inside and outside of formal law-making spaces").

[120] Freeman & Webb, *supra* note 113, at 60; Carle & Cummings, *supra* note 23, at 458 (explaining that movement lawyers bring a set of skills aside from litigation including, "educating community members about their rights, advising and defending protestors, researching and drafting policy language, writing legal opinions to support policy positions, counseling movement organizations on legal levers that may be pulled to exert pressure on policy makers or private actors in negotiating contexts, and devising mechanisms for monitoring the enforcement of policy").

that movement lawyers will focus on shifting and building power in marginalized communities and movement actors.[121] Diverging from other models, movement lawyers take direction from movements in and involving marginalized communities—often identifying as part of the movement itself and frequently building upon an identity as a member of an impacted community—and growing the power "of the people, not the power of the law."[122]

Movement lawyers use traditional legal tools sparingly and flexibly as part of a larger set of problem-solving approaches.[123] Responding to the legal liberalism critiques of accountability and efficacy, they align themselves with movement stakeholders and reframe traditional legal advocacy as more than advocacy within the formal legal or administrative frames.[124] Scott Cummings distinguishes movement lawyering from other post-civil rights progressive lawyering based on "the explicit adoption of social movements as the engines of ambitious, bottom-up political and cultural transformation, and the affirmation of a positive role for lawyers and legal expertise in support of movement-led campaigns."[125]

More recent movement lawyering scholars root the concept of movement lawyers in the underlying inequality of the legal system itself.[126] As Amna Akbar noted,

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[121] Carle & Cummings, *supra* note 23, at 457 ("Movement lawyers represent or collaborate with social movement organizations through collective processes of power mapping and campaign design in which movement stakeholders identify targets, tactics, and goals. Movement campaigns typically have multiple, interconnected purposes: achieving discrete policy wins, building public support, strengthening grassroots participation, reinforcing the organizational capacity of the movement itself, and striving for lasting, long-term results.").

[122] Freeman & Webb, *supra* note 113, at 59 (quoting *What We Can Do: Movement Lawyering in Moments of Crisis*, LAW FOR BLACK LIVES, http://www.law4blacklives.org/respond (last visited Dec. 26, 2022)).

[123] Cummings, *supra* note 26, at 1691 ("Because movements are generally characterized by collective challenges outside of institutionalized political channels, movement lawyers deploy law flexibly as part of problem-solving repertoires, in which legal 'skills' are construed broadly to include litigation competencies, like brief writing and oral advocacy, but also encompass educating community members about their rights, advising and defending protestors, researching and drafting policy language, writing legal opinions to support policy positions, counseling movement organizations on legal levers that may be pulled to exert pressure on policy makers or private actors in negotiating contexts, and devising mechanisms for monitoring the enforcement of policy.").

[124] *Id.* at 1695–96 (referring to the reframed advocacy as "integrated advocacy" in which lawyers build partnerships with social movement organizations, work within a larger overall strategy, and work across institutional domains).

[125] *Id.* at 1660.

[126] *See, e.g.*, Tifanei Ressl-Moyer, Pilar Gonzalez Morales & Jaqueline Aranda Osorno, *Movement Lawyering During a Crisis: How the Legal System Exploits the Labor of Activists and Undermines Movements*, 24 CUNY L. REV. 91, 95 (2021).

legal scholars sometimes mistake movements as advocating for a specific type of policy or social change, when in reality they are about shifting power.[127] Akbar explains: "Social movement imaginations create a benchmark other than the status quo, or law's current commitments, for measuring social change. Their visions for social change, the way they point to the limits of what formal legal channels can handle or hear, can be profound."[128] Given this premise, movement lawyers are called upon to sustain movements for change and to avoid using the legal system in ways that threaten to undermine movements or perpetuate harms on communities of color.[129]

Accordingly, Trubek and Luz Herrera repurposed Trubek's initial coinage of the term "critical lawyering," adding that many critical lawyers identify with impacted communities, and their commitment to causes arises out of their intersecting identities.[130] Their 21st-century mindset leads not to abstention from judicial process, but to a strategic melding of lobbying, social entrepreneurship, organizing, and other roles typically excluded from lawyers' training, with an intentional fostering of the network infrastructures that sustain this work.[131] Building on the work of these more recent interpretations of movement lawyering, it is expedient, at least, to distinguish movement lawyering by its commitment to the cause in which lawyers are adherents as well as representatives of movements who speak, if not from the position of authentic members of impacted communities, then at least as close listeners and allies.

As the literature survey above illustrates, these models of lawyering share some features but also retain some important distinctions. The similarities and differences are both big and small. In the next Part, we lay the foundation for the identification, and meaningful discussion, of the similarities and differences by detailing a specific example of one instance of progressive social change lawyering that we then apply to the typology in Part III of the Article.

II. THE CAMPAIGN TO ABOLISH S-COMM

S-Comm is an administrative creation of the U.S. Department of Homeland Security (DHS) that compels state and local law enforcement agencies to send the

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[127] Amna A. Akbar, *Toward a Radical Imagination of Law,* 93 N.Y.U. L. REV. 405, 408 (2018).

[128] *Id.* at 476.

[129] Ressl-Moyer et al., *supra* note 126, at 95 (questioning "the illusion of the impartiality of our legal systems, theory, or praxis, and build[ing] on activists' work toward a society with equitable distribution of resources and equal access to wellness and joy").

[130] Trubek, *supra* note 36, at 49; Luz Herrera & Louise G. Trubek, *The Emerging Legal Architecture for Social Justice*, 44 N.Y.U. REV. L. & SOC. CHANGE 355, 360–61 (2020).

[131] Herrera & Trubek, *supra* note 130, at 371–72.

fingerprints they collect to DHS, in order for DHS to identify persons with concerning immigration histories.[132] Prior to S-Comm, if local law enforcement collected fingerprints from an individual, the biometric data obtained was only used to conduct criminal background checks.[133] S-Comm extended the use of biometric data into the civil immigration enforcement realm, as fingerprints were checked against DHS databases to ascertain the immigration status of individuals, and where applicable, detain them.[134]

Although S-Comm was ostensibly designed to target "'criminal aliens' who have been convicted of serious offenses," in practice, the policy "applies to immigrants regardless of guilt or innocence, how or why they were arrested, and whether their arrests were based on racial or ethnic profiling or were just a pretext for checking immigration status."[135] Rationalized as a way to contain threats of criminal immigrants, S-Comm revolutionized the relationship between federal and local law enforcement agencies, conflating criminal and civil law enforcement and altering political debates about immigration.[136]

As originally designed, states and localities had to choose to participate in S-Comm by "opting in" to the program.[137] Without public announcement,[138] U.S. Immigration and Customs Enforcement (ICE) strategically worked to sign up states and localities to broaden the program's reach.[139] While S-Comm was launched by

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[132] Memorandum of Agreement Between Dep't of Homeland Sec., Immgr. & Customs Enf't, and Cal. Dep't of Just., Bureau of Crim. Identification & Info. 1–3 (Jan. 23, 2009), available at http://www.ice.gov/doclib/foia/secure_communities/securecommunities californiamoa10april2009.pdf [hereinafter ICE Memorandum of Agreement].

[133] The somewhat similar predecessor immigrant enforcement program, known as the 287(g) program, also utilized fingerprint sharing to check immigration status. The 287(g) program differed in a number of ways, from S-Comm, but most importantly for this Article, the selected law enforcement agencies who voluntarily engaged in the 287(g) program were "deputized" and trained by DHS to act as immigration enforcement personnel. S-Comm erased this link, as local law enforcement simply became enforcement arms of ICE without training, with questionable authority, and largely without their knowledge or assent. MICHELE WASLIN, IMMIGR. POL'Y CTR., THE SECURE COMMUNITIES PROGRAM: UNANSWERED QUESTIONS AND CONTINUING CONCERNS 8 (Nov. 2011).

[134] U.S. IMMIGR. & CUSTOMS ENF'T, SECURE COMMUNITIES: QUARTERLY REPORT 2010 (Fourth Quarter) (Jan. 3, 2011), at 2–3, https://www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportfy104thquarter.pdf.

[135] *DHS's "Secure Communities": No Rules of the Road*, NAT'L IMMIGR. L. CTR. (Mar. 2011), https://www.nilc.org/issues/immigration-enforcement/scomm-no-rules-of-road-2011-03-0/ (describing the underlying problems of S-Comm).

[136] Interior federal immigration enforcement, from its beginning, relied on referrals from local law enforcement agencies. *See* GOODMAN, *supra* note 3, at 28, 42–46. S-Comm's revolutionary innovation was to make those referrals universal, mandatory, and automatic.

[137] *See* NAT'L IMMIGR. L. CTR., *supra* note 135.

[138] *See* ICE Memorandum of Agreement, *supra* note 132, at 5, 10 app. D.

[139] *Id.* at 1–2.

President George W. Bush, the program expanded exponentially during President Barack Obama's two terms in office. The expansion under the first African American president, who spoke from a pro-immigration stance and offered hope of Comprehensive Immigration Reform (CIR), created a challenge for the immigrant rights community. The "national beltway" advocates who supported Obama's approach were pitted against the "field" advocates who believed an approach that sacrificed "undesirable" immigrants would weaken the larger immigrant rights movement.[140] It was during the summer of 2009 that a group of the field advocates gathered and decided to challenge S-Comm.[141]

The campaign to dismantle S-Comm grew from an alliance between immigrant rights organizers on the ground and organizations including the National Day Laborer Organizing Network (NDLON), the Center for Constitutional Rights (CCR), and the Benjamin Cardozo School of Law Immigration Justice Clinic

[140] Locally focused organizers recall that there was "a little bit of pushback" from national organizations concerned that local fights against S-Comm would be a distraction from the larger CIR efforts. Interview with Sydney, Cmty. Organizer (Oct. 21, 2019) (transcript on file with authors). As one advocate recalled:

> We were told that S-Comm was going to be untouchable. That it would be a waste of time to advocate around it, and that [we] would be causing problems for the president and problems for the larger project of CIR. . . . Like you have Luis Gutierrez calling undocumented youth and berating them on the phone. And we're going to need to trade S-Comm for legalization. So, it really countered to more vibrant grassroots active in the field, segments of the movement.

Interview with Blake, Immigrant Rts. Cmty. Organizer (Nov. 4, 2019) (transcript on file with authors).

[141] Cimini & Smith, *supra* note 7, at 468–70.

(IJC).[142] Building upon the 1980s sanctuary movement,[143] organizers created a broad coalition of labor unions and traditional civil rights organizations to boost advocacy efforts in specific localities.[144] The organizers relied upon a trans(local) organizing strategy, conceived at a national level, but implemented largely autonomously by local activists and organizations. The model created resistance at local and state levels and then translated those gains back to the federal level.[145] To maximize limited resources, the organizers connected local groups and created systems that enabled organizers from different cities and localities to share time, resources, knowledge, and experiences.[146]

Narrative was central to the campaign's success on small- and large-scale levels. Advocates renamed the program S-Comm, instead of Secure Communities, so that "the words 'secure' and 'communities' would not be uttered in the same sentence."[147] Initial advocacy was designed around a narrative theme of transparency;[148] the campaign was titled "Uncover the Truth," mirroring hopes that the ideas of truth and

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[142] The CCR had a track record of engaging in Freedom of Information Act (FOIA) litigation, was looking to do more work at the intersection of mass incarceration and immigration enforcement, and sought a community-based client. Interview with Jamie, Att'y (Nov. 19, 2019) (transcript on file with authors). Jamie, one of the attorneys working on the case, *NDLON v. ICE* (*NDLON FOIA Case*), 811 F. Supp. 2d 713 (S.D.N.Y. 2011), explained:

> [W]e have a history and a track record of doing FOIA litigation. And there were a lot of internal conversations about how to do more or more at the intersection of mass incarceration and immigration enforcement since …that's also a core area that we had been litigating for a long time . . . . It felt like it was important to work on something that not that many . . . folks were looking at, at the time and also squarely within other areas of interest and engagement, where we have a history and some, you know, some track record.

Interview with Jamie, *supra*. The IJC was looking to collaborate with exciting people or groups as a way to build out their docket and was connected to NDLON through a mentor. Interview with Taylor, Att'y on *NDLON FOIA Case* (Dec. 10, 2019) (transcript on file with authors) (explaining that, in talking to a clinical mentor, NDLON was mentioned as an exciting group to work with). CCR and the IJC worked together previously and were familiar with each other. Interview with Jamie, *supra*.

[143] *See* Cimini & Smith, *supra* note 7, at 470–71 n.227 (identifying the cities that were active in the 1980s sanctuary movement as: Washington, D.C.; Cambridge, Massachusetts; San Francisco, California; Los Angeles, California; and Seattle, Washington).

[144] *Id.* at 471.

[145] *Id.*

[146] *Id.*

[147] Interview 4 with Jordan, Att'y, Immigrant Rts. Org. (Sept. 17, 2019) (transcript on file with authors) (explaining that the advocates instead decided upon S-Comm as an "Orwellian" title that sounded futuristic).

[148] Interview with Blake, *supra* note 140 ("I think that's where you saw the incremental approach of well, if it was going to be the flagship project, shouldn't we know what it is? Shouldn't we understand what S-Comm is? And so that's why the first round of advocacy was about transparency. Because if organizers are there to expand the political will and expand what's possible, in that initial moment, just condemning S-Comm was a bridge too far for where a lot of

transparency would be hard to oppose.[149] The advocates used their connections with academics and policy centers to design objective, scientific studies to rebut the government's narrative. Their efforts resulted in support for two critical claims: first, the immigrants most subjected to S-Comm were not, in fact, serious offenders, but instead, innocent immigrants or even U.S. citizens;[150] and second, that S-Comm decreased community safety because the immigrant community was less likely to seek police assistance for fear of immigration repercussions.[151] These concerted efforts culminated in a clear and consistent message that never wavered. This consistency contrasted starkly with the shifting nature of the government's message, and that distinction played into the underlying anti-S-Comm narrative that the government was at least hypocritical, and perhaps even intentionally misleading.[152]

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that advocacy community was in the Beltway—because the Beltway always lags behind where people are actually having to deal with the impact of enforcement. Yeah. . . . So we said we need to uncover the truth about what is S-Comm.").

[149] Interview with Jamie, *supra* note 142.

[150] AARTI KOHLI, PETER L. MARKOWITZ & LISA CHAVEZ, C.J. EARL WARREN INST. ON L. & SOC. POL'Y, U.C. BERKELEY, SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS AND DUE PROCESS (RESEARCH REPORT) 3 (Oct. 2011) (citing U.S. IMMIGR. & CUSTOMS ENF'T, SECURE COMMUNITIES: IDENT/IAFIS INTEROPERABILITY MONTHLY STATISTICS THROUGH SEPTEMBER 30, 2011, at 2 (Oct. 14, 2011)); *see also* Interview with Taylor, *supra* note 142 (explaining that the data was used to work with social scientists to create support for advocacy).

[151] *See* NIK THEODORE, DEP'T OF URBAN PLAN. & POL'Y, U. ILL. CHI., INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT (May 2013) (establishing that "the survey was designed to assess the impact of police involvement in immigration enforcement on Latinos' perceptions of public safety and their willingness to contact the police when crimes have been committed," and that "[t]he survey was conducted in English and Spanish by professional interviewers during the period November 17 to December 10, 2012."); *see also* Interview 2 with Jordan, Att'y, Immigrant Rts. Org. (Sept. 10, 2019) (transcript on file with authors) (identifying Linda Lake from Policy Link and Nik Theodore, Professor of Urban Planning & Policy at the University of Illinois Chicago, as critical collaborators; the Co-Executive Director of NDLON, Pablo Alvarado, had met Linda Lake at a previous conference and talked about the possibility of future collaboration—the S-Comm study made that collaboration possible).

[152] Interview with Kai, Att'y on *NDLON FOIA Case* (Nov. 4, 2019) (transcript on file with authors) ("[T]he Obama administration [sic] trying to be friendly and appear like they were doing the right thing sometimes made them appear hypocritical."); *see also* Interview with Sydney, *supra* note 140; Letter from Zoe Lofgren, Subcomm. on Immgr. Pol'y & Enf't, to Charles K. Edwards, Acting Inspector Gen., U.S. Dep't of Homeland Sec., and Timothy Moynihan, Assistant Dir. Off. of Pro. Resp., Immigr. & Customs Enf't 1 (Apr. 28, 2011), available at http://uncoverthetruth.org/wp-content/uploads/2011/04/Letter-to-DHS-OIG-and-ICE-OPR-re-SComm-Opt-Out-Investigation-4.28.11.pdf [hereinafter Lofgren Letter] ("Having conducted with my legal staff an initial review of the documents [related to the deployment of S-Comm] that have been made public, I believe that some of these false and misleading statements may have been

The central team created "Grupo Duro," a crew of approximately eight organizers and lawyers spread across the country who volunteered to support what was labeled "advocacy through inquiry."[153] Organizers and lawyers worked in concert to quickly review, annotate, post, and disperse key FOIA documents to the *Uncover the Truth* website.[154] The national lead organizer connected with organizers in localities all across the country through weekly conference calls so that information and resources were shared efficiently.[155] The release of documents was strategically timed, pitched to identified reporters, and supported by talking points distributed to all localities.[156]

After failing to convince a sufficient number of states and localities to opt in to S-Comm voluntarily, the government went searching for "statutory underpinnings" to shift the program compliance from optional to mandatory.[157] The campaign leaders relied upon relationships they nurtured over the life of the campaign to create

made intentionally, while others were made recklessly, knowing that the statements were ambiguous and likely to create confusion.").

[153] A lawyer joining the team in 2010 saw the "advocacy through inquiry" approach as very successful in slowing down the program implementation and revealing more information about the program. Interview with Josh, Att'y on *NDLON FOIA Case* (Nov. 19, 2019) (transcript on file with authors).

[154] Interview 5 with Jordan, Att'y, Immigrant Rts. Org. (Oct. 17, 2019) (transcript on file with authors); Interview with Sydney, *supra* note 140; Interview 2 with Jordan, *supra* note 151.

[155] As one lawyer explained:

> Well the cool thing I remember about that campaign, or one of the cool things about that campaign, was that there was like a million different local campaigns but people are all collaborating, so there were meetings with local police and local sheriffs at which people would use ICE [inaudible] so if you would meet with the sheriff and you would say, look, you know, "ICE sold this program to you as a program to get at convicted criminals but we have this FOIA and we're still getting information, . . . but from what we know, 50% of the people who are arrested from your jurisdiction have never been convicted with anything more serious than a traffic offense." . . . [I]t sort of set up some antagonism with ICE and ICE had misrepresented the program to them.

Interview with Josh, *supra* note 153; s*ee also* Interview with Sydney, *supra* note 140.

[156] Describing how organizers just do whatever it is that needs to be done, one organizer explained, "At times I am a communications person, other times I get supplies, other times I am on the group, other times doing mailings—whatever is needed." Interview with Blake, *supra* note 140; *see also* Interview with Sydney, *supra* note 140.

[157] ICE FOIA 10-2674.0176067–69, E-mail from Riah Ramlogan, Deputy Principal Legal Advisor, Immgr. & Customs Enf't, to Bill Orrick, Peter S. Vincent & Kuyomars Q. Golparvar, Dep't of Just. (May 9, 2011, 10:22 AM) (redacted) (on file with authors) (requesting a meeting between DOJ and ICE to clear up continued questions on the mandatory or opt-out nature of S-Comm). The communications indicate that the agencies were looking to find the "statutory underpinnings" to support the assertions provided to Beth Gibson in an October 2010 memorandum. *See* E-mail from Beth N. Gibson, Assistant Deputy Dir., Immigr. & Customs Enf't, to David J. Venturella, Assistant Dir., Secure Cmtys. (Sept. 9, 2010, 7:40 AM)

successful "inside/outside" state and local legislative campaigns designed to combat the mandatory nature of S-Comm.[158] Advocates also enlisted the help of supportive congressional leaders[159] that culminated in the investigation of the government's management of S-Comm and the issuance of two reports critical of the program.[160]

(redacted), available at http://uncoverthetruth.org/wp-content/uploads/2011/02/ICE-FOIA-10-2674.0002997-0003001.pdf.

[158] For example, ordinances in Washington, D.C., Cook County, Illinois, and Santa Clara, California, declared that their respective law enforcement officers shall not enforce any immigration detainers without first obtaining a written agreement from the federal government promising to pay the full cost of the detainer. COUNCIL OF D.C. COMM. ON THE JUDICIARY, REPORT ON BILL 19-585, A19-0442, at 6, 11–12 (report of Phil Mendelson, Chairman, Comm. on the Judiciary) (noting that the Washington, D.C., Bill 19-585 only authorizes the Department of Corrections to hold inmates pursuant to ICE detainers where ICE has agreed to reimburse the department); COOK COUNTY, ILL., CODE § 46-37(a) (2011) (same); Santa Clara County, Cal., Pol'y Res. 2011-504, Resolution Adding Board Policy 3.54 Relating to Civil Immigration Detainer Requests (Oct. 18, 2011) (resolving to comply with ICE immigration detainer requests only if the federal government agrees to pay the costs of detention, and then only if the prisoner was convicted of a serious crime and was not a juvenile). Chicago passed a "Welcoming City" anti-detainer ordinance that barred compliance with detainers, except in cases involving major crimes, outstanding criminal warrants, or gang members. CHI., ILL., MUN. CODE § 2-173-042(c) (2012); *see* Press Release, Off. of the Mayor, Mayor Emanuel Introduces Welcoming City Ordinance (July 10, 2012), https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2012/July/7.10.12Welcoming.pdf (claiming that it would "prevent law abiding Chicagoans from being unfairly detained and deported").

States such as California and Connecticut enacted legislation that limited state obligations to comply with federal immigration detainers. California's Transparency and Responsibility Using State Tools (TRUST) Act, which was aimed at limiting state and local law enforcement's compliance with federal immigration detainers, was signed into law on October 5, 2013. Assemb. B. 4, 2013-2014 Leg., Reg. Sess., ch. 570 (Cal. 2013) (codified at CAL. GOV'T CODE §§ 7282–7282.5 (West 2022)); *see also AB-4 State Government: Federal Immigration Policy Enforcement (2013-2014)*, CAL. LEG. INFO, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB4 (last visited Dec. 26, 2022) (providing the Bill's history). In June 2013, the Connecticut legislature passed a bill to expand the limitations on detainer compliance, which previously only applied to the Department of Corrections, to other state and local law enforcement agencies. H.B. 6659, 2013 Gen. Assemb., Reg. Sess. (Conn. 2013) (codified at CONN. GEN. STAT. ANN. § 54-192h (West 2022)).

[159] In support of her request, Congresswoman Zoe Lofgren cited a letter from a former contractor who served as an ICE Regional Coordinator within the S-Comm program. The prior letter raised questions about staff responsibility for misleading statements. Letter from Zoe Lofgren, Subcomm. on Immgr. Pol'y & Enf't, to Charles K. Edwards, U.S. Dep't of Homeland Sec. (May 17, 2011), available at http://big.assets.huffingtonpost.com/LofgrenFollowUp.pdf.

[160] *See, e.g.*, OFF. OF INSPECTOR GEN., DEP'T OF HOMELAND SEC., OIG-12-66 (Revised), COMMUNICATION REGARDING PARTICIPATION IN SECURE COMMUNITIES (June 2014) (one of two Office of Inspector General reviews initiated in response to Lofgren's request).

When leadership at DHS and ICE changed in 2013,[161] criticism of Obama's record on immigration enforcement continued, and there was mounting pressure on the administration to deal with S-Comm. In November 2014, in what advocates believe was an intentional move designed to quiet the sanctuary city revolt,[162] DHS Secretary Jeh Johnson issued a memorandum ending S-Comm and creating the Priority Enforcement Program (PEP).[163] In January 2017, newly inaugurated President Donald Trump announced the resurrection of S-Comm in an early executive order restricting immigrants' rights and increasing migrants' vulnerability to punitive detention in, and removal from, the United States.[164] On the afternoon of the January 20, 2021, inauguration, President Joe Biden issued an executive order terminating S-Comm once again and promising a reevaluation of ICE enforcement priorities.[165]

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[161] Seung Min Kim, *Johnson OK'd for Homeland Security*, POLITICO (Dec. 16, 2013, 6:49 PM), https://www.politico.com/story/2013/12/jeh-johnson-department-of-homeland-security-senate-101213.

[162] Interview 3 with Jordan, Att'y, Immigrant Rts. Org. (Sept. 12, 2019) (transcript on file with authors).

[163] Memorandum from Jeh Charles Johnson, Sec'y, Dep't of Homeland Sec., on Policies for Apprehension, Detention and Removal of Undocumented Immigrants (Nov. 20, 2014), available at https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf. PEP differs from S-Comm in that:

> PEP focuses on targeting individuals convicted of significant criminal offenses or who otherwise pose a threat to public safety. Under prior policy, detainers could be issued when an immigration officer had reason to believe the individual was removable and fell within one or more enumerated priorities, which included immigration-related categories and having been convicted of or charged with certain crimes.
>
> Under PEP, ICE will only seek transfer of individuals in state and local custody in specific, limited circumstances. ICE will only issue a detainer where an individual fits within DHS's narrower enforcement priorities and ICE has probable cause that the individual is removable. In many cases, rather than issue a detainer, ICE will instead request notification (at least 48 hours, if possible) of when an individual is to be released. ICE will use this time to determine whether there is probable cause to conclude that the individual is removable.

Priority Enforcement Program, U.S IMMIGR. & CUSTOMS ENF'T, https://www.ice.gov/pep (July 21, 2022); *see also* Interview 3 with Jordan, *supra* note 162 (explaining that "Secretary Johnson wanted to implement it himself when he became Secretary . . . I think [he] wanted to . . . try to reset Secure Communities himself thinking [that] the brand was so ruined. And [we] came up with the . . . Priority Enforcement Program").

[164] Exec. Order No. 13,768, 82 Fed. Reg. 8799, 8801 (Jan. 30, 2017) (stating, inter alia, "The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as 'Secure Communities' referenced in that memorandum.").

[165] Exec. Order No. 13,993, 86 Fed. Reg. 7051 (Jan. 25, 2021).

A. Critical Components of Abolish S-Comm Lawyering

The remarkable campaign to abolish S-Comm exposed a modality of lawyering that resulted in transformative change in the face of many obstacles. We overlaid interviews, research, and extensive document review to identify a number of crucial components, intricately tied to one another, that rooted the campaign and its success.[166] These components include: the identification of power structures and methods used to shift power; the fractal framework/structure underlying the entire effort; the trans(local), yet nationally coordinated, organizing design of the campaign; and the use of unifying identity narrative as a strategic tool.[167]

The campaign identified power structures and strategized effective methods to shift power dynamics. Other aspects of the campaign derived from the campaign's base view of nonlinear emergent power structures. The advocates' view of power influenced their view of social change and led to the campaign's multi-faceted, distributed, and flexible structure. To bind the organizing efforts in trust and sustain grassroots buy-in, the campaign relied upon an underlying fractal structure.[168] The fractal structure can be visualized as separate nodes built up from the same foundational principles, though operating in different places, at different scales. This structural bind allowed the campaign to adapt to radically uncertain challenges, local idiosyncrasies, and uneven commitments from participants. The lawyers we spoke to scoped out different roles, with different concepts of who, or what, filled in the client role. The deep trust and role redundancy engendered in the fractal structure of the campaign led lawyers to discount fears of client domination or issue diversion. This allowed for greater agency in lawyers' dealings with movement leadership. Lawyers feeling relatively free to share their own narratives contributed welcomed diversity, as well as an establishment voice (not likely to be heeded, but often folded into the discourse) to the assessment, selection, and reengagement process. Advocates designed a trans(local), nationally coordinated organizing campaign that leveraged hyper-local knowledge and experimental energy. Trans(local) coordination is the tool used to connect the fractal structure together. Relationships with networks of regional, national, and cross-movement structures brought resources and legitimacy, allowing successful strategies and narratives to be replicated at different scales. Finally, as diverse, distributed, and emergent as the Abolish S-Comm Campaign was, it could not have thrived without unifying identity narratives to hold the whole enterprise together and avoid free-rider problems or devolutions into purity splits, interpersonal conflicts, or turf-guarding. Binding (within the campaign) and bridg-

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[166] *See* Cimini & Smith, *supra* note 7 (providing a more detailed account of interviews with lawyers, activists, organizers, government officials, and clients who were either involved in the campaign or impacted by the campaign's effects).

[167] *See* discussion *infra* Sections II.B–II.E.

[168] *See infra* notes 183–205 and accompanying text; *infra* Section III.C.

ing (across coalitions) identity narratives could be maintained through the indeterminacy of story. In the campaign we observed, each of these features worked synergistically in a continuous feedback loop. Below, we describe each component and then examine its impact on the Abolish S-Comm Campaign.

B. Power

If you ask self-identifying movement lawyers about what impact movement organizers imbue on them, you might find that many speak to the primacy of power and the explicit use of power mapping. It might strike those organizers as surprising that legal education, unlike other studies in the social sciences, is not largely concerned with empirical identification of the sources and supports for power.[169] This appreciation for power, and how to oppose or incorporate it, is shared by the most incisive lawyer–activist academics' writing on the relative detriments and aids that lawyers contribute to social movements.[170] Indeed, the nagging suspicion that our informants in the anti-S-Comm movement might be engaged in something different enough to warrant a new label[171] grew from their perspectives on power. Our informants did not just see power as central; they saw it from a different point of view.[172]

Lawyers working with social movement organizations learn to appreciate power. But the literature describing their work generally treats powers as fixed, unitary, and stationary.[173] What if, in practice, power is fluid, rests in different places,

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[169] BERTRAND RUSSELL, POWER: A NEW SOCIAL ANALYSIS 10–11 (Routledge Classics ed., 2004) (1938) (explaining that the study of power is to the social sciences as energy is to the study of physics: the core of the discipline and practice).

[170] *See* Freeman, *supra* note 117; Grinthal, *supra* note 117; Freeman & Freeman, *supra* note 117; LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY 109–15 (2002); Herrera & Trubek, *supra* note 130; Ashar, *supra* note 118**;** Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 351–54 (1997); López, *Training Future Lawyers*, *supra* note 88, at 353; Richard Delgado, *Shadowboxing: An Essay on Power*, 77 CORNELL L. REV. 813 (1992); Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 846–60 (2021).

[171] This Article stemmed from a wavering over whether to name the products of our investigation something like "catalytic lawyering" or to instead describe it as merely the peculiar brand of lawyering in the context of the Abolish S-Comm Campaign, and leave the label, if any, to later commentators.

[172] *See* MANUEL CASTELLS, NETWORKS OF OUTRAGE AND HOPE: SOCIAL MOVEMENTS IN THE INTERNET AGE 5–7 (2d ed. 2015); Steven M. Buechler, *New Social Movement Theories*, 36 SOCIO. Q. 441, 442–46, 454–58 tbl.1 (1995) (acknowledging that the difference in viewpoint might more appropriately be attributed to the development of "New Social Movements'" and a changing depiction of power relations).

[173] Legal scholars tend to treat social movement goals as predetermined and uncontested, unable to learn or adapt, while social movement scholars largely treat law as a fixed feature of

and takes on different forms?[174] When power plays out in this way, those without the traditional resources supporting power in capitalist legal systems cannot easily overcome it. There is no single target, meaning removal of any target can cause the target to reappear elsewhere.[175] In response to such strictures, activists explore the contours of power through experimentation, selection, and reiteration. They either learn to dance with power through the system, or construct alternative sources of power as the contexts recommend.[176]

Social change takes place in a cauldron of radical uncertainty in which outcomes are unpredictable.[177] Initial conditions cannot be described with any degree of precision, much less with reliable predictions as to how the relationships within

topography of oppression, and a foil against which to construct social movements. As a result, little attention has been paid to the complex role that lawyers play in social movement processes and dynamics. Scholars might more productively attend to the ways in which lawyers and social movements are actively engaged in a co-creative exchange in which neither legal systems nor social movements exist apart from the influence of the space created by the other. *See* Scott Barclay, Lynn C. Jones & Anna-Maria Marshall, *Two Spinning Wheels: Studying Law and Social Movements*, 54 STUD. L., POL. & SOC'Y (SPECIAL ISSUE) 1, 1–2, 13–14 (2011).

[174] *See* MCCANN & LOVELL, *supra* note 8, at 573, 576 (explaining that power, and hence social change, is nonlinear). Nonlinear means phenomena are more than, or different from, the sum of their component and contributing parts, so that outcomes cannot be predicted by knowledge of institutions, roles and rules alone: attention must be paid to their relationships and interactions in context. JOHN HOLLAND, HIDDEN ORDER: HOW ADAPTATION BUILDS COMPLEXITY 15 (1995); *see* Randolph Roth, *Nonlinearity, Revitalization Theory and the Central Metaphor of Social Science History,* 16 SOC. SCI. HIST. 197, 203–04 (1992); Karmeshu, V.P. Jain & A.K. Mahajan, *A Dynamic Model of Domestic Political Conflict Process,* 34 J. CONFLICT RESOL. 252 (1990); *see also* Karen J. Pita Loor, *A Study on Immigrant Activism, Secure Communities, and Rawlsian Civil Disobedience*, 100 MARQ. L. REV. 565, 605–08 (2016) (describing the nonlinear relationships between social movement organizations' actions and institutional change in Abolish S-Comm movements); Susan Bennet, *On Long-Haul Lawyering,* 25 FORDHAM L.J. 771, 782–85 (1998) (describing the difficulties of teaching what the author calls "nonlinear lawyering" in a community practice law school clinic). These forms are constrained by path dependence, material sources of power, and coevolution, as they adjust to opposing and collaborative forces. These opposing and collaborative forces even include the social movement infrastructures of which the observer is a part. *See* Marshall Ganz, *Leading Change, Leadership, Organization, and Social Movements, in* HANDBOOK OF LEADERSHIP THEORY AND PRACTICE 527, 546 (Nitin Nohria & Rakesh Khurana eds., 2010); MARSHALL GANZ, WHY DAVID SOMETIMES WINS: LEADERSHIP, ORGANIZATION, AND STRATEGY IN THE CALIFORNIA FARM WORKER MOVEMENT 14-19 (2009) [hereinafter GANZ, WHY DAVID SOMETIMES WINS].

[175] Meeting with Cassandra Baker, Rsch. Assistant, University of Washington School of Law (Aug. 26, 2021) (notes on file with authors) (one of our research assistants, we assume in a nightmare occasioned by work on this project, imagined power as a multi-headed hydra, whereby cutting off its head just occasioned a toothier skull growing elsewhere).

[176] DUNCAN GREEN, HOW CHANGE HAPPENS 38–39 (2016); *see also* ADRIENNE MAREE BROWN, EMERGENT STRATEGY: SHAPING CHANGE, CHANGING WORLDS (2017).

[177] One might say that the only real predictable thing is that efforts on behalf of the marginalized are mostly going to lead to disappointment, if not deterrence.

all those initial conditions will unfold. So how do advocates engage? Focused on grassroots leadership inspired by César Chávez and Dolores Huerta, United Farm Worker (UFW) organizer Marshall Ganz explains that making hard strategic decisions under uncertainty requires an energized, committed, and aware membership; they must be ready to experiment, reflect on experience, and dive into the next experiment.[178] At broader levels, decision-makers need this information and energy to resource experiments, select successful archetypes, and replicate what works.[179] While terminology was largely absent, Ganz is describing a complex adaptive system. This system, he devised, is made up of multiple interacting parts, or agents, without effective central control, but which produce a type of order nevertheless. This order can neither be predicted, nor controlled, by even dense knowledge of the system's parts or its apparent mechanisms of control.[180] The only dynamic that can be predicted with any degree of confidence is that order will arise, greater than, or at least different from, the sum of the system's parts.[181] A movement's best shot at navigating uncertain problem spaces maximizes diverse experiences and viewpoints in imagining options, following through on possible narrative trajectories, and choosing strategies, tactics, and logistics. Social movements' power, and the opposing systems of power they subvert, co-evolve together and continue to reconfigure and renew themselves as the struggle continues. The engagement itself supplies the order that results.[182] Powerholders and those who challenge power cocreate the terms on which the struggle will be waged.

The Abolish S-Comm Campaign advocates understood that in order to be successful, power needed to be addressed on a variety of levels. Organizers articulated that power was a fundamental "anchor" to all of their work[183] and that "using power shifting tactics to improve the standards for the most vulnerable communities, and the most vulnerable members of our society, would automatically improve the

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[178] *See* GANZ, WHY DAVID SOMETIMES WINS, *supra* note 174, at 252.

[179] *Id.*

[180] *Id.* at 18–21 fig.1.1.

[181] The resulting order is co-constructed by the system from coupling (i.e., the relationships among parts) and path dependence (bottomed on the history of coevolution of the system in relation to its near adjacents). *See generally id.*

[182] *See* THE *NEW* HUEY P. NEWTON READER 193–212 (David Hilliard & Donald Weise eds., 2d ed. 2019) (describing Huey Newton's "intercommunalism" as the Black Panther movement's operational schema in similar terms: that established power systems are constantly in flux, and actively recreating themselves, so that the Black Panthers had to act and organize and reinforce relationships in anticipation of ever-changing, self-organizing, emergent power structures).

[183] Interview with Blake, *supra* note 140.

standards for everybody else."[184] In order to benefit the communities they were trying to organize, they wielded many tools to "repair the relationships of power."[185] These tools included: humanizing the impacted community by forging personal relationships; strategically using institutional players to their advantage; and shaping a narrative, supported by publicity, to highlight the damage wrought by S-Comm and the government's duplicity.

Advocates understood that the "[p]ower of the police to act as immigration officers" gave them incredible control to "disappear" immigrant worker communities.[186] Using immigrant workers as their base, advocates decided to showcase the "humanity"[187] of these immigrants to change the power dynamics.[188] They designed park clean up sessions, offered workers to fix neighborhood houses, and organized soccer tournaments to create community and keep immigrant workers engaged. Advocates also educated the immigrant community on relevant political forces. Meanwhile, immigrants shared stories with the police to gain their support and publicized law enforcement's lack of engagement if they failed. Above all, the efforts were designed to create sympathy for immigrant workers.[189]

Advocates strategically used institutional players, both inside and outside the movement, to create power.[190] As one organizer explained: "The goal was to speak not only from outside of the government institutions, but also from within, and make sure [advocates] identified the best messenger in each instance [to] legitimate

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[184] *Id.* (explaining that, as one organizer described, "[t]he question is, how do we increase the power of [immigrant workers] so they can negotiate at an equal level?").

[185] Interview with Pablo Alvarado, Co-Exec. Dir., NDLON (Feb. 23, 2020) (transcript on file with authors) (explaining the ways that relationships were built to increase membership, such as soccer tournaments, and to further involve membership (i.e., low-income immigrant worker groups), giving them agency and leadership roles, and then having the binding narrative to keep everyone involved so that they were engaged in something bigger than simply stopping S-Comm—and then moving to fold everything into the larger identity narrative); *see infra* Section II.D.

[186] Interview with Blake, *supra* note 140; *see also* Interview with Sydney, *supra* note 140 (explaining that the organizers viewed power as coming from the local level, in movements built from the ground up, and they understood that if the movement sacrificed "undesirable" immigrants (or any part of impacted communities), the movement itself would be weaker).

[187] Interview with Pablo Alvarado, *supra* note 185 ("This country wants the hands of immigrants, but it doesn't want the humanity of them.").

[188] *Id.* (recognizing that the issues faced by immigrant workers were simply a microcosm of what was happening throughout society).

[189] *Id.*

[190] *See infra* notes 227–241 and accompanying text (explaining that the Abolish S-Comm advocates focused on getting direct access to those who had the power to make changes for the community and in this context, the organizers utilized the trans(local) framework to maximize return on their efforts).

the underlying concerns."[191] Having local law enforcement officials speak authoritatively about community policing and public safety proved to be a particularly effective example of the campaign's use of "insiders."[192] Organizers explained that they were always aware of and strategic about selecting the "best messenger" to legitimize the issues.[193] Lawyers with immigration expertise also were brought into various localities to support local efforts to opt out of S-Comm. Local lawyers, in particular, had credibility and understood the local terrain.[194] Organizers coined the term "trophy lawyers" to refer to lawyers who moved in and out of local campaigns to lend expertise and use their local connections to address a specific issue.[195]

Insiders were also critical as the FOIA litigation commenced. Novel issues around electronic-discovery (e-discovery), as well as large document production, led the team to seek pro bono assistance from a private firm.[196] The organizers and clients saw the private firm lawyers as facilitators to leverage those within the establishment to support the movement.[197] The private lawyers were specifically selected for their expertise with e-discovery.[198] At first glance, the case appeared to present a dry FOIA issue. Yet the judge assigned to the case was "the preeminent judge in the country on e-discovery" and the private lawyers knew that the judge "would not be afraid to issue groundbreaking rulings."[199] The possibility of "moving the law on

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[191] Interview with Sydney, *supra* note 140.

[192] *Id.* (explaining that Sheriff Michael Hennessey of San Francisco, California, was a critical partner in the fight against S-Comm. He participated in a briefing hosted by Cardozo Law School, but the organizers strategically did not put NDLON's name on the event, because the briefing was directed at state and local elected officials, and the organizers thought that delivery of the message from the sheriff was more effective).

[193] *Id.* ("And I remember [Sheriff Hennessey] and Commissioner Garcia and some other local elected officials from Santa Clara speaking on [calls]. . . . I think we were always aware of . . . what [and who] helped legitimize some of these concerns.").

[194] *Id.* (citing the opt-out campaign in Washington, D.C., which was the first city to opt out of S-Comm, "lawyering was key in [meetings with the city council] . . . [and the] local coalitions that formed all over the country would always have a [local] lawyer at these meetings to explain to the council members and elected officials how [things] worked").

[195] *Id.* ("[A]t the local level . . . local groups would often have an attorney that was part of the coalition. . . . [These lawyers] were not involved in the litigation of the FOIA.").

[196] Interview with Kai, *supra* note 152; Interview with Jamie, *supra* note 142.

[197] Interview 3 with Jordan, *supra* note 162.

[198] Interview with Parker, Att'y on *NDLON FOIA Case* (Dec. 10, 2019) (transcript on file with authors).

[199] *Id.* (explaining that "having the case assigned to Judge Scheindlin was the trigger." The lawyers knew "based on the judge's writings that she would be much more hands on, and she might be willing to make groundbreaking rulings." This presented the opportunity to create law that was much broader than the disclosure issues required in this case).

FOIA" was enough to motivate the private lawyers to commit.[200] In service of the organizing campaign, these lawyers were able to leverage relationships, networks, and credibility advantages. In so doing, they transformed technical FOIA litigation into a power-shifting tool that strategically used the private firm pro bono attorneys' connections and expertise to vitalize the campaign.

As the controversy over S-Comm became public, the government attempted to reframe the debate by holding meetings in key communities to explain the program and attempt to garner support. As one advocate explained, "when S-Comm officials wanted to come out and explain the program," advocates effectively shifted the power by orchestrating a walkout of community members.[201] As people walked out they shared with the press that, "we know [about S-Comm] because we uncovered the truth and we don't want to hear your propaganda."[202] These strategic walkouts were followed by civil disobedience undertaken by undocumented youth.[203] Centering on undocumented youth, who are often regarded as less culpable, was deliberate, as it illuminated S-Comm's distinct problems. As one organizer explained, if you "arrest me for civil disobedience . . . you're also turning me over to ICE and that's exactly what we're protesting here."[204]

Humanizing the impacted community, strategically using institutional players, and shaping the narrative allowed advocates to negotiate power relations in their collaborative fight for justice. Typically, lawyers leave this work to organizers and play only a supportive and, at times, secondary role.[205] In this campaign, while organizers taught lawyers about power mapping and how to affect power relations, lawyers were vital in identifying institutions and roles that had prevented change, and they were adept at mapping the institutional history of what kept a dysfunctional power structure in place.[206] The lawyers we met, for instance, added value to the campaign through their understanding of the language of, and the threats to,

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[200] Interview with Emerson, Att'y on *NDLON FOIA Case* (Dec. 10, 2019) (transcript on file with authors) (explaining that there was a conflation of what had been happening to data and information—which had been percolating in not only the FOIA space, but in the ability to get the information to advocates and to have the open information that was necessary to challenge the program, whatever it may be). It turned out that getting the information in this case was what changed things. Interview with Parker, *supra* note 198.

[201] Interview with Blake, *supra* note 140.

[202] *Id.*

[203] *Id.* (explaining that the walkouts and subsequent organizing efforts took place in Los Angeles, California, Chicago, Illinois, and Northern Virginia).

[204] *Id.*

[205] *Id.*

[206] Perhaps lawyers have peculiar insight into resistance to change due to their origin stories in two of the more robust, entrenched, and dysfunctional institutions in society today: the bar exam and U.S. legal education. These origins, along with lawyers' socialization in the legal profession—which is itself concerned with dealing with entrenched historical contingencies—has left lawyers uniquely well qualified to identify these power dynamics.

entrenched power structures. Together they drew a more complete picture of the power structures the campaign sought to change. This approach allowed lawyers a more substantive role, along with organizers and activists, in envisioning power structures, imagining ways to affect power relations, identifying leverage points, and selecting the most effective levers to pull from their collection of possible moves or legal strategies.[207] Lawyers in our small sample negotiated this divide between law and politics, and legitimacy and insurrection, by sharing a vision of how power is exercised with the organizers and the affected communities they worked with. This construct of lawyering envisions lawyers' engagement with activists and movement actors as collaboratively and synergistically exploiting the advantages of various social-change strategies, producing strengthened relationships and lasting investments in organized resistance.

C. Fractal Structure

The fractal structure of the Abolish S-Comm Campaign was related to, but distinct from, the trans(local) organizing model used by advocates. This structure provided the underlying foundation from which the trans(local) organizing was effectuated.[208] In this Section we explain the meaning of fractal structure, explore how academics have applied concepts of fractal structure to social movements, and finally, identify examples of the fractal framework that were used in the Abolish S-Comm Campaign. Much as our informants did, we lay the trans(local) organizing model over the fractal structure to illustrate the combined impact.

In this Article, we use the term "fractal" to refer to a way of thinking about the collective behavior of basic but interacting units that evolve together over time. Theoretically, "[a] fractal is a never-ending pattern. Fractals are infinitely complex patterns that are self-similar across different scales. They are created by repeating a simple process over and over in an ongoing feedback loop."[209] Driven by recursion,

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[207] *See* CHARLES TILLY & SIDNEY TARROW, CONTENTIOUS POLITICS (2d ed. 2015); DONATELLA DELLA PORTA & MARIO DIANI, SOCIAL MOVEMENTS: AN INTRODUCTION (3d ed. 2020).

[208] *See supra* notes 169–182 and accompanying text (finding that many so-called "new social movements" emerge from dispersed, fractally self-similar nodes, which are organized, or organize themselves, into trans(local) networks).

[209] BROWN, *supra* note 176, at 51. The term fractal is the invention of polymath Benoit Mandelbrot, who found that plotting the outcomes of even very simple algebraic equations, generated by recursively inputting the outcome of the equation as the input in its next iteration, generated elegant patterns of infinite regress in repeating similar geometric patterns within patterns. This phenomenon became known as The Mandelbrot Set. For an interactive rendering that lets you play with a Mandelbrot Set, see MANDELBROT SET EXPLORER (interactive), http://mandel.gart.nz (last visited Dec. 26, 2022). The idea of fractals is itself an example of the significance of terminology in allowing witnesses to observe phenomena; after Mandelbrot's discovery, fractals were observed everywhere in nature, in cultures, and in the arrangements of

fractals are the product of dynamic systems. In the social movement context, fractal structures often develop from a hyper-local focus on the immediate needs of the community. This pattern of hyper-local focus is then replicated in different places, at different scales. Because fractals are dynamic, meaning in this case that what happens in one locality cannot be replicated exactly in another locality, uncertainty is inevitable.[210] Even so, confidence arises from the belief that an effective larger purpose will emerge from the replication of meaningful, responsive local action. Social movements structured on this adaptation of fractal geometry allow for democratic integrity at a distance. Loosely-coupled, member-led, egalitarian, open, and "leaderfull" structures operating at different scales can affect regional, national, and international institutions, cultures, and roles, while sustaining grassroots buy-in and member autonomy.[211]

Advocates and academics in the social movement context have relied on and explored fractal structures and their attendant benefits. The late Nobel laureate Elinor Ostrom relied upon trust-building structures that developed more easily in localized homogenous communities.[212] Extending trust out to broader, more heterogeneous communities is possible, according to Ostrom, only if people in the communities buy into the system. For Ostrom, buy-in is internalized when people have a say in democratically organized enterprises that grow organically out of local structures, maintain democratic ideals (or appearances thereof), and provide ways for resolving disputes among the disgruntled.[213] Ostrom identified these localized communities as "nested enterprises."[214] That is, she found that communities can avoid the fractionalization, turf protection, and tragedy of the commons that eventually seem to tear at the fabric of the many integrated social movements.[215]

UFW organizer Ganz identifies autonomy-enhancing local activism that is then generalized across geography and identity.[216] Because local actions attend to local constituent needs and the local environment, they dampen the uncertainty that

human enterprises. *See* 2 ROBERT R. PRECHTER, JR., *The Fractal Design of Social Progress*, *in* PIONEERING STUDIES IN SOCIONOMICS 269, 270–71 (2003) (explaining that the Mandelbrot Set is found widely in nature and it explains much of the evolutionarily-generated structures in the world).

[210] BROWN, *supra* note 176, at 35–36.

[211] PORTA & DIANI, *supra* note 207, at 143.

[212] *See* ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION 88–102 (1990).

[213] *Id.* at 90 tbl.3.1, 92–93, 100–02.

[214] *Id.* at 90.

[215] *Id.* at 88, 101–02; *see also* JASPER, *supra* note 10, at 50. For a haunting example of the conflicts within Abolish S-Comm movements in Los Angeles, California, see WALTER J. NICHOLLS, THE IMMIGRANT RIGHTS MOVEMENT: THE BATTLE OVER NATIONAL CITIZENSHIP (2019).

[216] *See* GANZ, WHY DAVID SOMETIMES WINS, *supra* note 174.

often accompanies social change efforts in support of marginalized groups.[217] In particular, grassroots local organizing provokes deep commitments and interpersonal trust that help secure members' buy-in at all levels. Strong local organizations also offer authentic problem identification and problem-solving, and encourage radical experimentation to explore uncertain terrain.[218] Likewise, Ray Brescia finds that successful social movements utilize nested networks of ever more local and issue- or identity-specific community groups to mutually empower regional, national, supranational, and supra-movement (movement-of-movement, or MOM) networks.[219] He identifies success when local affiliations involve activists in dynamic grassroots movements and sustain persistent networks that maintain influential relationships with local powerholders.[220] Brescia distinguishes "binding networks" (i.e., silos of shared identity that tie membership together to motivate and sustain movements in the face of hostile terrain), from "bridging networks," or weaker ties connecting such silos, perhaps on a more fleeting basis.[221]

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[217] *Id.* (tracing the rise and fall (and hinting at the reemergence) of UFW in organizing dispersed and diverse farm workers against entrenched growers' power, and crediting organizers' leveraging local, identity-based commitment with supporting its famously charismatic leadership to sustain power and effect change).

[218] MCCANN & LOVELL, *supra* note 8, at 284–86. *Compare* JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS 286 (2005) (discussing how shared experience, disillusionment, and identity united the movement at the start, moved tightly bound members to action, and sustained the movement through defeats), *with* Derrick A. Bell, Jr., Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524–25 (1980) (demonstrating that even briefly shared issue interests across radically different identities, predictions of outcomes, and access to power and privilege create conditions for social change).

[219] *See* RAY BRESCIA, THE FUTURE OF CHANGE: HOW TECHNOLOGY SHAPES SOCIAL REVOLUTIONS (2020) (writing from his experience as a legal services lawyer and organizer, and his review of a number of archetypal social movements). Jennifer Gordon advocates for nested trans(local) hometown associations that network across borders based on shared identities. *See* GORDON, *supra* note 218, at 286–87; Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503, 579, 579 n.254 (2007) (advocating for nested trans(local) hometown associations that network across borders based on shared identities).

[220] BRESCIA, *supra* note 219, at 178, 183 (expressing doubts about the efficacy, much less autonomy-enhancing effects, of national organizations that rely on direct mail campaigns or engage in so-called online "slacktivism," as such efforts demand no more of local membership than sending the occasional check to national headquarters or helping the overarching entity to accumulate "likes"); *see also* FRANCESCA POLLETTA, FREEDOM IS AN ENDLESS MEETING: DEMOCRACY IN AMERICAN SOCIAL MOVEMENTS (2002); ZEYNEP TUFEKCI, TWITTER AND TEAR GAS: THE POWER AND FRAGILITY OF NETWORKED PROTEST (2017).

[221] BRESCIA, *supra* note 219, at 171–78 (defining binding ties as the strong, deep ties within organizations, and bridging ties as the weaker ties across organizations). On why weak, bridging ties exert outsized influence, see ELI REVELLE YANO WILSON, FRONT OF THE HOUSE, BACK OF THE HOUSE: RACE AND INEQUALITY IN THE LIVES OF RESTAURANT WORKERS 144–47 (2021); Mark S. Granovetter, *The Strength of Weak Ties*, 78 AM. J. SOCIO. 1360 (1973). One way of relating to the power of weak ties is through Charles Tilly's core, if contested, WUNC theory of

Huey Newton ascribed a similar structural logic to the Black Panthers.[222] Newton's "intercommunalism" demands that organizing efforts focus sustained attention on intensely local and material consequences at hyper-local sites. The hyper-local focus is critical in sustaining engagement with the movement over time through shared interests and actions.[223] More recently, Alicia Garza has described #BlackLivesMatter's (BLM) continuities with Newton's vision of intercommunalism. Strands of the BLM movement arose simultaneously as social media inspired analogous mobilizations.[224] Once the BLM hashtag circulated, local organizations grabbed ahold and applied it to their own localities. For example, if there was a police shooting in one locality, advocates could freely invoke #BLM, without consulting with others on a macro level. In this way, newer social movements may look and feel radically different in local incarnations.[225] Similarly, diverse hometown associations might operate in corresponding ways without any bridging or binding structures tying them together.[226] Trans(local) organizing linked loosely-coupled fractal structures into a sustainable movement, while indeterminate identity narratives bound trans(local) fractal structures and prevented them from splintering.

We identified the following features of the fractal structure at play in the Abolish S-Comm Campaign: groups were united by shared values and purpose; groups operated within their own system as well as took part in the larger connected system resulting in a co-evolving, iterative operation; self-similar organizations at multiple levels led to creative ideas; variety of approach was viewed positively; and actors in the fractal structure viewed the model as leader-full, as opposed to leaderless.

First, the organizations that made up the campaign's fractal system shared common purpose and values. The campaign relied upon locally autonomous workers'

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the power of social movements to effect social change: WUNC stands for worthiness (or narrative power), unity, numbers, and commitment (of adherents and allies). CHARLES TILLY, FROM MOBILIZATION TO REVOLUTION 95, 167 (1978). In this view, binding, or strong, ties supply the unity and commitment; bridging ties supply the numbers and contribute, through their diversity and collaboration, to the worthiness of the movements' storying. *See infra* note 235 and accompanying text.

[222] *See* THE HUEY P. NEWTON READER, *supra* note 182, at 193–212.

[223] *Id.* at 193–95; *see also* Rua Williams, *Six Ways of Looking at Fractal Mechanics*, 7 CATALYST, no. 2, 2021, at 1, 13 (explaining that intercommunalism can be understood as the emergent residue of dispersed, self-similar, entangled communities engaged in a shared struggle).

[224] *See* ALICIA GARZA, THE PURPOSE OF POWER: HOW WE COME TOGETHER WHEN WE FALL APART 259–60 (2020) (describing the redundant, analog logic of different strands of emergent Black Lives Matter movement(s)).

[225] *Id.*

[226] Jennifer Gordon & R.A. Lenhardt, *Rethinking Work and Citizenship*, 55 UCLA L. REV. 1161, 1216–17 (2008).

centers and other similarly constructed collectives, each of which featured membership-led, radically democratic, and shared problem-solving cultures.[227] These cultures sustained collective action over time as advocates searched for information, collaborators, and effective tools. The fact that each local entity was similarly shaped fostered mutual trust, effective communication, and transfers of personnel and ideas. Communication and trust among local, regional, national, and MOM collectives encouraged the replication of ideas and information. In turn, locally effective structures were able to adjust replicable strategies, tactics, and logistics to match local peculiarities and personalities.

Second, in a fractal structure, "members share information iteratively, and make decisions collectively in response to constantly changing conditions."[228] In this way, interaction patterns emerged from often haphazard, on-the-fly relationships, affecting other actors in the system as well as the system itself. Each contained system operated in its own environment while at the same time being part of another larger one. Changes in the larger environment impacted the system, and changes in the system impacted the larger system, creating a co-evolutionary process.

In the context of the Abolish S-Comm Campaign, we previously deconstructed it to examine the work of lawyers and other activists at three levels.[229] At the micro level, lawyers met with clients, argued to judges and juries, lobbied legislators and administrative officials, sought funders, and stoked collaborations in mostly small face-to-face interactions. At the meso-level, this micro-level work translated into a campaign informed and energized by micro-level relationships. Macro-level movement activists benefited as witnesses, examining, and sometimes collaboratively planning.[230]

Third, connecting self-similar organizing at multiple scales allows the impacted hyper-local communities to share localized information, connections, and authentic commitment with those at regional, national, and MOM levels. This structure institutionalizes trust and builds on identity narratives to create strong- and weak-tie networks with multiple edges. Organized groups at other levels can re-source local entities and leverage local knowledge and connections in more comprehensive campaigns. These connections create effective learning environments, allowing for the spread of what works and encouraging reassessment of what does not.[231] Within the

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[227] These are all Ostrom-identified features. *See* OSTROM, *supra* note 212, at 88–102.

[228] David Coleman, *Collaboration and the Fractal Organization*, MEDIUM (Sept. 8, 2016), https://medium.com/@dcoleman100/collaboration-and-the-fractal-organization-ad7224183e8.

[229] *See* Tomar Pierson-Brown, *(Systems) Thinking Like a Lawyer*, 26 CLINICAL L. REV. 515 (2020). We acknowledge that this approach is simplified and shorn of the central dynamic that all the subversive and constructive action is within the relationships, rather than the parts or levels, and in process, rather than outcomes.

[230] *See* Cimini & Smith, *supra* note 7, at 490–512.

[231] The collective so constructed by identity narratives is described by John Ahlquist and Margaret Levi as "communities of fate," i.e., the idea of a community organized around a common

Abolish S-Comm Campaign, self-similar organizations at all levels helped to identify and incorporate ties to nonobvious allies as needed. For example, local groups' relations with county sheriffs became key to developing the "insecure communities" narrative that tied FOIA-derived national statistics to local law enforcement imperatives.[232] The FOIA action's success itself was the product of binding ties between local and national campaign actors. Specifically, a national campaign legal worker's summer internship at a private firm led to the recruitment of a partner who specializes in FOIA metadata.[233] When it was time to generate options for the campaign or to choose among possible campaign strategies, tactics, targets, or logistics, weak-tie allies (i.e., those who got involved in the campaign momentarily) were at the table. Their participation impacted workers and other down-for-the-movement campaign stalwarts. Decision-making was shared on a relatively equal basis.[234] As a result, they achieved the diverse decision-making required in the exploration of problem solving under uncertain, novel, and changing conditions.[235] Inviting outsiders in might seem like a threat to leadership by impacted communities. Ultimately, however, this approach respected and supported their autonomy and authenticity. It also forced those in power to respond to the needs of the very people it constrained.[236]

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ideal, a common threat, a common enemy, or a shared goal that comprehends a deeply-felt understanding that the community is bound by a common fate. JOHN S. AHLQUIST & MARGARET LEVI, IN THE INTEREST OF OTHERS: ORGANIZATIONS AND SOCIAL ACTIVISM 2 (2013). The historian James Green ties this same idea to Michael Walzer's notion of local insurgencies, "trying to 'connect the small event to a larger vision,' while, at the same time, 'holding the protagonists to their own idealism.'" JAMES GREEN, TAKING HISTORY TO HEART: THE POWER OF THE PAST IN BUILDING SOCIAL MOVEMENTS 3 (2000) (quoting MICHAEL WALZER, THE COMPANY OF CRITICS: SOCIAL CRITICISM AND POLITICAL COMMITMENT IN THE TWENTIETH CENTURY 228, 239, 240 (1988)).

[232] Interview 2 with Jordan, *supra* note 151.

[233] Interview with Kai, *supra* note 152.

[234] Interview with Sydney, *supra* note 140.

[235] Ross Ashby's law of requisite variety as applied to movement law practice encourages social movement leadership to include the maximum diversity of voices to imagine options, to decide upon reasonably optimal implementation plans in the face of perpetual systemic novelty, and to fill up problem space with possible interventions to attack overwhelmingly uncertain problems in changing terrain. W. Ross Ashby, *Requisite Variety and Its Implications for the Control of Complex Systems*, 1 CYBERNETICA 83, 97–99 (1958); *see also* STUART A. KAUFFMAN, A WORLD BEYOND PHYSICS: THE EMERGENCE AND EVOLUTION OF LIFE (2019) (asserting that we must fill up the problem space of big fuzzy indeterminate challenges with as many agents performing as wide a search as possible).

[236] Olúfémi O. Táíwò, Essay, *Being-in-the-Room Privilege: Elite Capture and Epistemic Deference,* PHILOSOPHER, https://www.thephilosopher1923.org/essay-taiwo (last visited Dec. 26, 2022) (explaining that impacted individuals are empowered to the extent they exercise their power, while impacted, with established powerholders in the spaces where power is recognized); OLÚFÉMI O. TÁÍWÒ, ELITE CAPTURE: HOW THE POWERFUL TOOK OVER IDENTITY POLITICS

Fourth, variety in the system was viewed positively. The inherent ambiguity and contradictions were viewed positively as a means to create new possibilities for adapting to a changing environment. The objective of the Abolish S-Comm Campaign was to "win."[237] The definition of victory, together with the process of the campaign, was determined by groundswell membership with an eye on overall movement goals. At the macro level, the movement examined and guided campaigns toward overall movement goals. In turn, these actions encouraged radical experimentation at the micro and meso levels, informed by goals derived from micro-level dreams and fears. The movement applied maximal diversity to test and select experiments worth reiterating, adjusting, or discarding. The campaign "wins" and "losses" alike served to further identity-based organizing and strengthen campaign networks in which micro-level agents operate.[238]

Finally, while some view nonhierarchical structures as leaderless, fractal structure actors view the model as leader-full. Unlike hierarchical structures, leadership in a fractal system is universal, or leader-full.[239] Such leadership pushes competition energy outward, against common challenges, as opposed to inward, against other members. Tying impacted workers' successes to identity narratives in leader-full organizations strengthened the binding ties within the core campaign.

As a metaphor—even as a metaphor with bite—the fractal dimension of social action explains much of what we observed as the efficacy and autonomy-enhancing dynamics of the Abolish S-Comm Campaign. As recounted above, the strong hyperlocal membership base of the immigrant rights movements first identified that workers were being taken by ICE at increasingly threatening levels.[240] When national

(AND EVERYTHING ELSE) 10–11 (2022) (demonstrating elite capture as a product of human interaction even in pristinely grassroots groups).

[237] Interview 2 with Jordan, *supra* note 151.

[238] What we find encouraging for progressive social change lawyering is that, once we acknowledge that change depends on relationships and "wins" are defined more by process than outcomes, working at any level provides the scaffolding for learning the work at any other level. One can develop a holistic understanding of the entire system by witnessing micro-level relationships as there is some type of approximate unified theory of social change that connects micro-level power relations to macro-level institutional outcomes.

[239] The term "leader-full" has been used by founders of the Black Lives Matter Movement in response to being labeled "leaderless." Alicia Garza, one of the founders of the movement, explained:

> [BLM] founders prefer to use the term "leader-full" to describe it. . . . "New leaders are possible. Everyday people—a Black single mother, a Black transgender woman, a Black immigrant, can do things to change our country, and can be empowered to provide vision, guidance, and other forms of leadership." [Garza] describes a leader as "ordinary people attempting to do extraordinary things."

Sharon Amoss, *Inspired By: A Leader-Full Movement*, INNERWILL (June 16, 2017), https://innerwill.org/inspired-by-a-leader-full-movement/.

[240] *See* Cimini & Smith, *supra* note 7, at 458–59, 505.

leaders met at a funder's conference, their conversations turned to a yet unrecognized "Secure Communities" program as a target for a shared identity-fostering campaign to be implemented with loosely-coupled local entities. Trial-and-error local campaigns struggled to find a coordinating message to leverage their "bridged networks" with local politicians, law enforcement officials, and especially county sheriffs, who, after all, are elected by mobilized communities. FOIA documents and metadata were the product of collaborations with unlikely allies, whose lawsuits were supported by local, impacted community members coming to New York for direct action and protests at even anodyne court docket events. This litigation produced data and metadata from which advocates created an identity story.[241] This story was turned around to effectively bind diverse day laborers, noncitizens, and their MOM allies together in a campaign. In the end, the campaign managed to change the narrative from arguing whether certain immigrants were deserving of community membership, to a shared interest in a community where everyone has a stake.

D. Trans(Local) Organizing

Trans(local) organizing "fosters the consolidation and diffusion of experiences, resources, and wisdom across a given set of geographic space."[242] Coordinated, intentional communication and sharing of ideas and resources across localities further a shared goal. One of the benefits of trans(local) campaigns is that communities are permitted to fight at the local level to address particular community needs.[243] At the same time, they are engaging with others within a larger geographic space. Thus, "[t]rans(local) organizing models provide communities with more power and greater ability to scale up and scale out their solutions while informing and influencing local and state governments, which can, in turn, leverage national transformations necessary to change the rules."[244]

Trans(local) organizing was critical to the Abolish S-Comm Campaign.[245] Layered on top of this, and supporting the larger movement, were open-source efforts

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[241] Nat'l Day Laborer Org. Network v. Immigr. & Customs Enf't, 811 F. Supp. 2nd 713 (S.D.N.Y. 2011); Nat'l Day Laborer Org., 877 F. Supp. 2nd 87 (S.D.N.Y. 2012); *see also* Interview 1 with Jordan, Att'y, Immigrant Rts. Org. (Sept. 4, 2019) (transcript on file with authors) ("[T]he campaign—intentionally or not—took on a 'trans(local)' approach—i.e. individual localities advocating for and passing sanctuary city ordinances—the conversation then shifts to constructing a narrative exposing the administration's misrepresentation of whether states could or could not opt out of S Comm . . . and from the ashes of these trans(local) efforts arose the Uncover the Truth Campaign.)

[242] *Translocal Organizing*, GRASSROOTS GLOB. JUST. ALL. (June 8, 2020), https://ggjalliance.org/program-activities/trans(local)-organizing/.

[243] BRESCIA, *supra* note 219, at 6.

[244] *See* GRASSROOTS GLOB. JUST. ALL., *supra* note 242.

[245] Interview with Sydney, *supra* note 140 ("[T]he theme across the board for [the S-Comm] campaign and this model was (trans)local organizing.").

through which advocates "share[ed] information, strategies, and when . . . possible, resources."[246] The documents obtained as a result of the FOIA litigation were shared so that all stakeholders "could participate in whatever way they could, and every group could use this information the way they thought it needed to be used."[247] As one organizer explained:

> At the national level, whenever there would be a major [document] release . . . our communications person would help get an exclusive and help draft press releases along with some talking points. . . . Then at the local level, every organization, every [autonomous] coalition [could use that information] and adapt it to [their] situation.[248]

The trans(local) strategy of connecting local groups and creating systems that enable organizers from different cities and localities to share time, resources, knowledge, and experiences was essential to success.[249] It allowed local organizers on the ground, moreover, to "feel[] as if they are part of something bigger."[250]

While the "beltway" advocates' strategy on CIR stalled, the "trans(local) campaign really breathed some life . . . into the immigrant rights movement."[251] On the ground, "local campaigns cropped up all over and really started to change things, and people were not just resisting—were not just protesting on the streets—[people] were actually talking to the local officials who had the power to make the decisions."[252] According to one organizer, "[t]hat's when . . . things started to shift."[253] Advocates needed to give communities an "actual [organizing] vehicle for that kind of organic impulse, desire and . . . [attach it to] a policy demand."[254] It was more effective for organizers to focus on "stopping deportations" than on the convoluted message underlying efforts at CIR, which sacrificed a class of immigrants so other

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[246] Interview with Pablo Alvarado, *supra* note 185 (explaining that while the term "trans(local)" or "open-source" may be new, the underlying concepts have been "done since the inception of humanity, there's the things that work and people adopt them. You know. Now, all that trans(local) . . . that's a tactic, you know?").

[247] *Id.*

[248] Interview with Sydney, *supra* note 140.

[249] *Id.*

[250] Interview with Miles, Immigrant Rts. Cmty. Organizer (Feb. 12, 2020) (transcript on file with authors) (explaining that organizers leveraged existing relationships from the sanctuary movement of the 1980s and coalitions with law enforcement agencies, labor unions, traditional civil rights organizations, community stakeholders, academics, and policymakers that were formed to fight against the 287(g) program).

[251] Interview with Sydney, *supra* note 140.

[252] *Id.*

[253] *Id.*

[254] Interview with Blake, *supra* note 140.

immigrants could stay.[255] As advocates racked up victories in localities that were historically pro-immigrant, the immigrant rights movement was able "to flex its muscle and actually have some concrete victories."[256]

The trans(local) strategy was designed to go on the offensive locally, build resistance, and then move to the state level. It further fostered the possibility that if there was sufficient pushback by the states, the federal government would have to act.[257] Functionally, a lead organizer at the national level coordinated the network of local groups through regular conference calls with up to 60 participants.[258] These calls provided advocates across the country an opportunity to share updates, issue warnings, and devise collaborative strategies.[259] In the face of DHS's assertion that S-Comm was mandatory, the trans(local) campaign capitalized on a strategically coordinated and timed local opt-out campaign. Washington, D.C., was the first locality to opt out of S-Comm.[260] Organizers then took what worked in Washington, D.C., and traveled across the country, providing training and tool kits to help other communities interested in opting out.[261] Information developed at the interpersonal, local, and regional levels, and was continuously shared across the country to educate others and to provide concrete ideas on how to build local campaigns.[262] National days of action and briefings were organized around strategic document distributions.[263] In addition, materials were prepared for local groups, including press conference information and strategy materials for lobbying days.[264]

This flexible, adaptive, and coordinated network of loosely-coupled organizations, bound by strong relationships and authentic communication, proved effective in the short-term goal of changing a pernicious federal government policy.[265] The

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[255] *Id.* (explaining the message on the national level as, "we're going to need to have deportations at some level and we're going to have to compromise so you might still be deported but your cousins can get to stay").

[256] Interview with Sydney, *supra* note 140 (recalling "a little bit of pushback about letting local groups attention at the time, like, you know, 'They should really be focused on comprehensive immigration reform and this fighting Secure Communities on the local level is a distraction' kind of attitude.").

[257] *Id.*

[258] *Id.*

[259] *Id.*

[260] WASLIN, *supra* note 133, at 11.

[261] Interview with Sydney, *supra* note 140.

[262] *Id.*

[263] *Id.*

[264] *Id.*

[265] Interview with Josh, *supra* note 153 ("[O]ne of the cool things about that campaign, was that there was like a million different local campaigns but people are all collaborating so there were meetings with local police and local sheriffs . . .").

approach also strengthened ties binding the network together, and individuals' ties to that network, by realizing the power of collective action around a shared identity.

E. Narrative

The power of narrative storytelling formed the core of the Abolish S-Comm Campaign.[266] Advocates deftly and strategically used storytelling to push the campaign forward from start to finish. While dismantling S-Comm was important in itself, a larger narrative encompassed more than this campaign.[267] The unifying narrative was that of a shared identity and struggle.[268] The slogan of that unifying narrative, "Desde abajo se defiende a todo el mundo," means that if we defend those most vulnerable and improve their standards, the standards for all improve.[269] This larger narrative was intended to connect the most alienated with larger impacted communities and movements.[270]

Advocates used a front-end narrative that was consistent throughout the campaign. The overarching campaign narrative shifted the conversation from the deportation of criminal aliens to government ineptitude and deception. Substantively, the Abolish S-Comm advocates flipped the public safety argument on its head.[271]

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[266] The power of narrative and storytelling also forms the core, and perhaps the periphery as well, of lawyering. *See* Martha Minow, *Stories in Law*, *in* TELLING STORIES TO CHANGE THE WORLD: GLOBAL VOICES ON THE POWER OF NARRATIVE TO BUILD COMMUNITY AND MAKE SOCIAL JUSTICE CLAIMS 249, 250, 255–57 (Rickie Solinger, Madeline Fox & Kayhan Irani eds., 2008). We take no position, here at least, in the disputes over whether storytelling is the basis of all human thought, the basis at least for thinking about big, fuzzy problems implicating meaning and understanding in human action, or just the mode by which lawyering, among other endeavors, proceeds. *Compare* Roger C. Schank & Robert P. Abelson, *Knowledge and Memory: The Real Story*, *in* 8 ADVANCES IN SOCIAL COGNITION 1, 2–4 (Robert S. Wyer, Jr. ed., 1995), *and* ROGER C. SCHANK, TELL ME A STORY: NARRATIVE AND INTELLIGENCE (Nw. Univ. Press 1995) (1990), *with* Minow, *supra* at 256–59 (summarizing Hannah Arendt's use of narrative to lend meaning to human actions), *and* RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING 9–50 (2013) (employing storytelling as a tool for lawyering).

[267] Interview with Pablo Alvarado, *supra* note 185. *Compare* SHDAIMAH, *supra* note 14, at 116–17, *with* sources cited *supra* note 18.

[268] Interview with Pablo Alvarado, *supra* note 185 (explaining "that building on that story was the point of the Abolish S-Comm Campaign from the start. Story builds identity, which builds trust, which extends across broader coalitions that in turn grease the wheels for future organizing. Identity-based storytelling creates the binding and bridging network environments in which future campaigns thrive.").

[269] *Id.*

[270] *Id.*

[271] Interview 4 with Jordan, *supra* note 147 ("[A]dvocates renamed the program S-Comm, instead of Secure Communities. [We] did not want the words 'secure' and 'communities' uttered in the same sentence and instead decided on S-Comm as an 'Orwellian' title that sounded futuristic.").

Advocates exposed the fallacy of deporting criminal immigrants, and instead, exposed the government's indiscriminate deportation of non-dangerous (i.e., innocent) immigrants.[272] The government's FOIA disclosures provided sufficient data for a collaborative relationship between advocates and researchers at the University of California Berkeley Law School to examine the demographics of S-Comm's enforcement priorities.[273] The study's findings supported the advocates' narrative, reporting that "well over half of those deported through Secure Communities had either no criminal convictions or had been convicted only of very minor offenses, including traffic offenses" and that "approximately 3,600 U.S. citizens [1.6% of cases analyzed] have been apprehended by ICE [through S-Comm]."[274]

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[272] The first claim relates to who was being deported. The government's justification for S-Comm was rooted in the claim that the program was designed to deport dangerous, criminal immigrants. U.S. IMMIGR. & CUSTOMS ENF'T, ICEFOIA.10.131.000024, SECURE COMMUNITIES: A COMPREHENSIVE PLAN TO IDENTIFY AND REMOVE CRIMINAL ALIENS (STRATEGIC PLAN) 1–3 (July 21, 2009). Advocates working closely with local communities knew this assertion to be false. They reported that the majority of individuals picked up by ICE actually were either charged with a minor criminal offense, such as a traffic violation, or with no criminal offense at all. *See* KOHLI ET AL., *supra* note 150, at 3. If advocates relied on their assertion without concrete evidence, the government's narrative would prevail. Understanding this, advocates and lawyers used the records obtained through the FOIA litigation to conduct a social science study that exposed the program's practice of deporting those with little or no criminal history. *Id.* at 2. Utilizing the social science study, the second claim addressed the question of whether S-Comm was actually making communities safer or undermining community policing. Advocates and lawyers utilized relationships developed in 2008 through strategic advocacy with the Police Foundation. *See* ANITA KHASHU, POLICE FOUND., THE ROLE OF LOCAL POLICE: STRIKING A BALANCE BETWEEN IMMIGRATION ENFORCEMENT AND CIVIL LIBERTIES (Apr. 2009). Thinking broadly back in 2008, advocates knew that local law enforcement would be part of the government's immigration enforcement tools. The 287(g) program was used to deputize local law enforcement as immigration officers, *see* WASLIN, *supra* note 133, at 3, and advocates understood that this trend was not going away. Having identified potential allies back in 2008, lawyers were able to strategically engage sheriffs and local police who they believed would be sympathetic to their concerns. KOHLI ET AL., *supra* note 150, at 3. Using funds provided by the Ford Foundation, the advocates and lawyers designed a study to flip the government narrative on its head. Instead of S-Comm making communities safer, the study showed that using local police as immigration enforcement officers undermined public safety. *Id.*; *see also* THEODORE, *supra* note 151. With these two narrative threads in their favor, advocates could design a media campaign to undercut the government's fundamental assertions about S-Comm.

[273] Interview 1 with Jordan, *supra* note 241 (explaining how lawyers, organizers, activists, and local members used data to center *Uncover the Truth*). *See* KOHLI ET AL., *supra* note 150; Nadine Wahab, *Arlington County Rejects Federal "Secure Communities" Program*, UNCOVER THE TRUTH (Sept. 29, 2010), https://uncoverthetruth.org/press/press-washington-dc/arlington-county-rejects-federal-secure-communities-program-rwg/; Madhuri Mohindar & Nadine Wahab, *Face the Truth: Racial Profiling Across America*, YOUTUBE (Sept. 28, 2010), https://www.youtube.com/watch?v=PCMa-8rzMoo.

[274] KOHLI ET AL., *supra* note 150, at 2–4. The initial report's key findings included:

After debunking the notion that S-Comm was deporting "alleged" criminal immigrants, advocates recrafted the public safety narrative. They understood that they must build a narrative that uncoupled S-Comm from increased public safety. Using strategic connections with sheriffs and police chiefs, their campaign deployed local law enforcement officials to speak authoritatively about community policing and public safety.[275] Having "insiders," such as local law enforcement, invalidate the connection between S-Comm and increased public safety proved to be particularly effective.[276] Advocates applied empirical data to show that police acting as immigration enforcement officers made the public less safe. With funds from the Ford Foundation, advocates commissioned a study on S-Comm and public safety.[277] Among the study's conclusions, 44% of undocumented immigrants were less likely to contact police officers in communities with S-Comm.[278] They feared that police officers would use these interactions as an opportunity to inquire into their immigration status or that of the people they knew.[279] The credibility of a Ford-funded social science study offered the added benefit of being difficult for the government to rebut.[280]

The advocates used a sophisticated array of tools to effectively deploy their narrative. The data used to support the narrative grew out of the FOIA litigation that

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> Approximately 3,600 United States citizens have been arrested by ICE through the Secure Communities program; More than one-third (39%) of individuals arrested through Secure Communities report that they have a U.S. citizen spouse or child, meaning that approximately 88,000 families with U.S. citizen members have been impacted by Secure Communities; Latinos comprise 93% of individuals arrested through Secure Communities though they only comprise 77% of the undocumented population in the United States; Only 52% of individuals arrested through Secure Communities are slated to have a hearing before an immigration judge; Only 24% of individuals arrested through Secure Communities and who had immigration hearings had an attorney compared to 41% of all immigration court respondents who have counsel; Only 2% of non-citizens arrested through Secure Communities are granted relief from deportation by an immigration judge as compared to 14% of all immigration court respondents who are granted relief; [and a] large majority (83%) of people arrested through Secure Communities is placed in ICE detention as compared with an overall DHS immigration detention rate of 62%, and ICE does not appear to be exercising discretion based on its own prioritization system when deciding whether or not to detain an individual.

Id. at 2.

[275] *Id.* at 3.

[276] Interview with Sydney, *supra* note 140.

[277] THEODORE, *supra* note 151.

[278] *Id.* at 5–6 fig.1.

[279] *Id.* at 5.

[280] Interview 2 with Jordan, *supra* note 151; Interview 3 with Jordan, *supra* note 162 (explaining that the idea for the study came during a meeting with one of the Ford Foundation senior program officers as they were discussing how to address the question of public safety related to S-Comm).

the team referred to as "advocacy through inquiry."[281] The government fought the FOIA request at every turn, leaving advocates to manage different batches of documents released over time.[282] Grupo Duro members quickly analyzed, digested, and annotated the multitude of FOIA documents.[283] A staff support team, made up of NDLON and CCR staff,[284] built the *Uncover the Truth* website and started uploading and posting all relevant FOIA documents.[285] One Grupo Duro member recalled, "[t]here was a sense of us against the world with Grupo Duro . . . [we] were really motivated, committed, and working incredibly hard."[286]

Abolish S-Comm advocates understood that their "theory of change" in the Obama era had to be different.[287] With bigger, mainstream immigrant rights groups supporting Obama and CIR, Abolish S-Comm advocates had to be "scrappier, more sanctimonious, progressive, and more strategic to build power and exert leverage on adjacent, powerful allies."[288] Because major mainstream national immigration rights organizations resisted attacks on S-Comm, they had little impact on emerging narratives around which the struggle against S-Comm played out. The local-level vacuum created space for a distributed campaign in which local organizing would advocate that states and localities opt out.

Pushing information to the public through the coordinated media campaign supported and energized the trans(local) efforts. Organizers galvanized local campaigns and mobilized supporters with important narrative themes. Using Arizona's recent legislation and Sheriff Joe Arpaio as a foil, organizers urged states and localities to distinguish themselves by passing local ordinances that separated police and

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[281] Interview with Josh, *supra* note 153 (a lawyer joining the team in 2010 saw the "advocacy through inquiry" approach as very successful in slowing down the program implementation and finding out more about the program).

[282] *See, e.g.*, Complaint for Declaratory and Injunctive Relief, Nat'l Day Laborer Org. Network v. U.S. Immigr. & Customs Enf't, 811 F. Supp. 2d 713 (S.D.N.Y. 2011) (No. 10-CV-3488); *National Day Laborer Organizing Network (NDLON) v. US Immigration and Customs Enforcement Agency (ICE)*, CTR. FOR CONST. RTS., https://ccrjustice.org/home/what-we-do/our-cases/national-day-laborer-organizing-network-ndlon-v-us-immigration-and-customs (July 13, 2022).

[283] Interview 5 with Jordan, *supra* note 154; Interview with Sydney, *supra* note 140.

[284] Interview 2 with Jordan, *supra* note 151.

[285] *Id.*

[286] *Id.*

[287] Interview 6 with Jordan, Att'y, Immigrant Rts. Org. (Nov. 18, 2019) (transcript on file with authors).

[288] *Id.* (explaining that "leverage was needed to bring in the bigger mainstream groups. That was done through shaming techniques, and explicitly saying that is what we were doing. You know, forcing . . . Obama ally adjacent organizations . . . are you going to sign this letter or not?").

ICE collaboration.[289] Instead of having to explain the intricacies of devolved immigration enforcement to local officials, it was easier, and proved more effective, first to persuade localities what not to do.[290] Subsequently, advocates provided an alternative formative vision.[291] Local campaigns that were started in pro-immigrant communities were labeled "beacon" localities.[292] The contrast between "hot spots," such as Arizona, and "beacon" localities, as in Washington, D.C., provided another way to organize trans(local)ly and supported an identity narrative used to construct an emergent national message.

Abolish S-Comm advocates' front-end narrative proved even more effective when contrasted to the back-end, ever-shifting narrative the government used to

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[289] Interview with Josh, *supra* note 153, *discussing* Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070), S.1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010) ("I guess it was like 2010 when Arizona had just passed S.B. 1070 and there was a sort of surge in opposition to 1070 and at the same time, the local campaign staff of Secure Communities were starting and there was a very stark mention of the D.C. folks that I remember that was like 'D.C. is not Arizona.' And I have a clear memory of sort of this framing of like Arizona is going one way but like all these other places are going to go a different way and the way we are going to convey that message of get[ting] local players to say 'We're not that, we're not Arizona, we're not Arpaio, so we're not going to participate with ICE.'"); *see also* Interview 5 with Jordan, *supra* note 154. ("And in solidarity with Arizona, you have organizers in other parts of the country working with local governments, distinguishing themselves from Arizona and fighting on the local front.").

[290] That said, one Grupo Duro member noted the downsides to using Arizona and Sheriff Arpaio in this way:

> You know, that, that cuts a little bit both ways. There also was a little bit of a cost of kind of us contributing to kind of nationalizing the campaign against Arpaio, of kind of like normalizing, normalizing him too. Like so, I mean, on the one hand, it was a benefit because it created a contrast, it became sort of personification of what we were saying police should not become. The negatives were that we kind of normalized him. I mean, raising his notoriety created a sort of de-sensitivity to him.

Interview 7 with Jordan, *supra* note 289.

[291] Jordan explained:

> And then, and then this is the thing, the point that, that I guess sometimes often get[s] lost, I mean, we really did sort of develop a theory that we needed sort of an inverse Maricopa County and Arizona S.B. 1070, and we needed to start to do the, you know, have the sort of what we call them "hotspot locations"—Phoenix and the beacon locations in California and Washington, D.C. And when I talk about how we were pitching things to grant makers, that was it. It was sort of like, "Like it or not, we're in this era of new immigration federalism, and you need to be sort of on both sides of the extremes. You need to be rushing to the gunfire, and, and then, and then we also need to be developing a formative kind of opposite, counter bearing examples." And that was the idea.

Interview 5 with Jordan, *supra* note 154.

[292] *Id.*

justify S-Comm's expansion.[293] The roll out of S-Comm was fraught with inconsistent messaging to the public and differing expectations internally between DHS and ICE, both of which only served to strengthen the Abolish S-Comm Campaign's narrative. From late 2009 to October 2010, ICE publicly announced that S-Comm was "voluntary," affording localities the opportunity to opt out of program participation,[294] but the message shifted when states and localities failed to voluntarily participate (i.e., to opt in) in sufficient numbers. ICE started to reframe the meaning of "opt out," explaining that information sharing between the federal agencies was mandatory, whereas states and localities retained the ability to opt out of receiving information back on any matches.[295]

Realizing that they had external communication problems, ICE hired a global public relations and digital marketing firm focused on crisis communications, brand marketing, and social media to lead messaging and maintain a positive image for the program.[296] Internally, ICE asked its attorneys to gather support to reverse policy

[293] Interview with Kai, *supra* note 152 ("The Obama administration [sic] trying to be friendly and appear like they were doing the right thing sometimes made them appear hypocritical."); *see also* Interview with Sydney, *supra* note 140.

[294] IMMIGR. & CUSTOMS ENF'T, SECURE COMMUNITIES, AILA Doc. No. 10090366, SETTING THE RECORD STRAIGHT 6 (Sept. 3, 2010); *see also* Letter from Janet Napolitano, Dep't of Homeland Sec., to Zoe Lofgren, Comm. on the Judiciary (Sept. 7, 2010) (on file with authors) (describing the steps required by localities that do not want to participate in S-Comm).

[295] *See, e.g.*, ICE FOIA 10-2674.0005131–33, Email Correspondence Between Randi L. Greenberg, Branch Chief Commc'ns & Outreach, Secure Cmtys., and Fed. Bureau of Investigation, Crim. Just. Info. Servs. (May 20, 2010) (redacted) (on file with authors); *see also* Shankar Vedantam, *No Opt-Out for Immigration Enforcement*, WASH. POST (Oct. 1, 2010), https://www.washingtonpost.com/wp-dyn/content/article/2010/09/30/AR2010093007268_pf.html (stating that ICE "now says that opting out of the program is not a realistic possibility—and never was").

[296] In an email concerning the postings of letters on *Deportation Nation*, an investigative reporting website, regarding the government's position on opt out, S-Comm's public relations firm wrote:

> Randi,
>
> [Redacted] just identified that our 'friends' from Deportation Nation have posted the letters sent from DOJ and DHS to Rep. Lofgren regarding 'opting out.'
>
> Wanted you to have this ASAP so there are no surprises.
>
> The posting online of the letters reinforces the current 'opt out' policy and adds more pressure to when we announce the new policy, as now there are two separate documents posted online that reflect the current policy.
>
> We might want to revisit what tactics should be undertaken when that policy is announced, likely on October 6th. As you know, I am still an advocate of some kind of online release of the policy so that it too comes up when reporters and others begin searching. I'd rather the

and mandate participation by state and local governments.[297] On October 2, 2010, legal advisors directly contradicted an earlier memorandum on the same question, presenting ICE leadership with legal arguments to support mandatory participation in S-Comm.[298] ICE thereafter removed the opt-out instructions from its website, and DHS Secretary Jane Napolitano contradicted an earlier representation, stating that she did not consider S-Comm "an opt-in, opt-out kind of program."[299] The government's ever-shifting positions supported the Abolish S-Comm narrative that the government was hypocritical, at the least, and perhaps even intentionally misleading.[300]

We acknowledge that each of the components examined above have been discussed in the academic literature and utilized in other progressive social change efforts. What we believe to be unique about this case study is twofold. The first unique feature relates to the lawyer's role as part of the campaign. Lawyers were co-equal partners with all other participants, and no matter each person's expertise, all used and adapted the four components we identify above to their work. Lawyers were able to work holistically, receiving input on all decisions, in a role that was neither

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> stories at least include our reasoning as to why the change and not just the position of the Deportation Nations of the world.
>
> Free to discuss at your convenience.

ICE FOIA 10-2674.0004996, Email from Senior VP, Fleishman-Hillard, to Randi L. Greenberg, Branch Chief Commc'ns & Outreach, Secure Cmtys. (Sept. 20, 2010, 1:25PM) (redacted) (on file with authors).

[297] *See* ICE-FOIA-10-2674.0002997-0002999–3001, E-mail from Beth N. Gibson, Assistant Deputy Dir., U.S. Immigr. & Customs Enf't, to David Venturella, former Assistant Dir., U.S. Immigr. & Customs Enf't (Sept. 9, 2010, 7:40 AM) (redacted), available at http://uncoverthetruth.org/wp-content/uploads/2011/02/ICE-FOIA-10-2674.0002997-0003001.pdf.

[298] *See* ICE FOIA 100-2674.0010795, Memorandum from Riah Ramlogan, Deputy Principal Legal Advisor, U.S. Immigr. & Customs Enf't, to Beth Gibson, Assistant Deputy Dir., U.S. Immigr. & Customs Enf't (Oct. 2, 2010), available at https://epic.org/privacy/secure_communities/ice-secure-communities-memo.pdf ("Based on applicable statutory authority, legislative history, and case law, we conclude that participation in Secure Communities will be mandatory in 2013 without violating the Tenth Amendment.").

[299] Renée Feltz & Stokely Baksh, *Insecure Communities: Feds Target NYC Immigrants for More Deportations*, INDYPENDENT (Nov. 17, 2010), https://indypendent.org/2010/11/insecure-communities-feds-target-nyc-immigrants-for-more-deportations/.

[300] Lofgren Letter, *supra* note 152 ("Having conducted with my legal staff an initial review of the documents [related to the deployment of S-Comm] that have been made public, I believe that some of these false and misleading statements may have been made intentionally, while others were made recklessly, knowing that the statements were ambiguous and likely to create confusion."). Judicial findings only supported the advocates' position, with one district court finding: "There is ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities." Nat'l Day Laborer Org. Network v. U.S. Immigr. & Customs Enf't, 811 F. Supp. 2d 713, 742 (S.D.N.Y. 2011).

dominant nor submerged, but equal. Lawyers were intimately involved in many of the strategic decisions and actions related to the campaign, of which litigation was but one part. Lawyers, organizers, activists, and impacted communities worked together and were welcomed into what once had been thought of as strategic decision-making within lawyers' exclusive domain. The second unique feature involves the interrelationship between the four components of the campaign. The fluid and iterative way that the components interacted resulted in an increased level of effectiveness. In the next Part of this Article, we name and identify the underlying characteristics and principles of a number of existing lawyering models. The creation of a typology of progressive social change lawyering terminology allows us to explore whether our belief in the uniqueness of the Abolish S-Comm Campaign is well-grounded.

III. TYPOLOGY OF PROGRESSIVE SOCIAL CHANGE LAWYERING

In this Part, we propose a plausible description of progressive social change lawyering terms in order to create a common vocabulary for discussing the work we do. To help parse out the nuances of terms, we offer a typology of terminology. We hope the typology will serve as a framework for discussion points or provocations to encourage more in-depth conversation. By advancing these delineations, we are not saying that what we identify as defining characteristics are either fixed or exact. These terms have never been static, and we anticipate that they will continue to develop as new models and ideas are tried and improved. What we offer is a snapshot at a particular time and from our particular viewpoint. Admittedly, in simplifying complex and fraught terms, we risk creating far too simplistic caricatures. When we attempted to find archetypes for the various models, it became apparent that various models could qualify for more than one category. Understanding that lawyers who situate largely within one model could also embody the spirit of another model, we abandoned the idea of archetypes. Categories, however, allow us to distinguish the differences we observed in lawyers' roles in the Abolish-S-Comm Campaign and compare them to core conceptions of lawyering as we understand others to have described them.[301]

A. Catalytic Lawyering (Abolish S-Comm Campaign)

The Abolish S-Comm lawyers we observed did not fear that, by virtue of holding bar cards, they risked diverting social movement objectives or dominating social movement leaders. Despite the leverageable legitimacy, connection, and privileges

[301] Indeed, it is because the concepts are necessarily diffuse, and the usages of terms are so contingent and subtle, that somewhat arbitrarily cutting off definitions is useful to make stark the implications of the differences we noticed.

that attend lawyering, the Abolish S-Comm lawyers did not initiate or lead the efforts. Instead, they recognized the power of movements by acting as catalysts, neither initiating nor leading change, but helping to create the conditions that make that change occur. In this sense, we thought of the Abolish S-Comm lawyers as catalytic lawyers.

Catalytic lawyers take a systemic, holistic view of the structures and relationships that make change possible. They also ask why desired change has not already occurred and aim to do something to address that deficiency. Catalytic lawyers take on flexible, adaptive, multi-faceted tasks in a movement environment. They work at all levels of the fractal structure and trans(local) campaign and thus preserve a role for the traditional public interest (i.e., regnant) lawyer, the vanguard litigator, as well as those who identify with movement lawyering roles. There is a place at the table for all types of lawyers, some of whom are strategically brought in to play a small but specific role. Because they have a say, their eyes are fixed on the overall movement goals. Catalytic lawyers participate in building narratives and networks to facilitate the development of authentic grassroots leadership and shared identity narratives over time. At the same time, they ply their craft, using a number of lawyering skills within multi-level, trans(local), cross-movement structures.

Catalytic lawyering owes less to any innovation in lawyering theory than to the changing identities within the legal profession and changes in social movement theory. As newly minted or recently resurrected progressive lawyers gain experience and familiarity with fields as diverse as new social movement theory, behavioral economics, organizational theory, network dynamics, and the sciences of complexity, their understanding of the lawyering role evolves. In the context of the Abolish S-Comm Campaign, lawyers rooted their knowledge of these diverse fields in the four critical and coordinated components detailed above: the identification of power structures and methods used to shift power; the fractal structure underlying the entire effort; the trans(local), yet nationally coordinated, organizing structure of the campaign; and the use of narrative as a strategic tool.[302]

This brings us to the seemingly simple, but deceptively complicated, question we set out to answer in this Article: Is what we observed in the Abolish S-Comm Campaign a distinctive model of lawyering worthy of adding yet another label to the still-forming conceptions of accountable and effective progressive social change lawyering? Or, instead, is it a more granular description of a previously described model? In the end, while we conclude that what we observed is sufficiently different to be worthy of a "new" label, we believe it is more important to create an agreed upon set of terms, so that we are able to engage in meaningful conversation about the significance any differences might have on actual legal practice on the ground.

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[302] *See supra* note 18 (including sources describing the uses of narrative as a strategic tool).

B. Visual Typology of Progressive Social Change Lawyering

In Figures 1 and 2, we identify and isolate a number of strands to distinguish among the terms we find are most frequently used to describe how lawyers engage in social change efforts.[303] The strands are rooted in notions of identity, ideas about how to effectuate social change, power dynamics, and an attitude toward law and legal practice. These differences are coupled with lawyers' understanding of their role, their relation to clients and impacted communities, decision-making processes employed, and the goals and skills applied. Together these strands help lawyers define their own vision of who they are as professionals.[304]

[303] The categories include: (1) traditional public interest (regnant lawyering), *see* discussion *supra* Section I.B.1; (2) moral realist (client-centered), *see* discussion *supra* Section I.B.2.; (3) cause lawyering (vanguard/elite), *see* discussion *supra* Section II.C; and (4) catalytic lawyering (Abolish S-Comm Campaign), *see* Cimini & Smith, *supra* note 7. We note our indebtedness to Hilbink's categories of progressive cause lawyering in developing this typology. Hilbink, *supra* note 18.

[304] For example, what are their own mental models used to engage most effectively in their task and build relationships over time?

Figure 1.

BROAD MODEL→ STRANDS↓	Traditional Public Interest Lawyering		Cause Lawyering
Specific Labels/ Examples	**Client-Centered Moral Realist Laywering**	**Regnant Lawyering**	
Role	Lawyer, change maker	Technician, professional	Expert
Client	Individual client with eye to client community	Individual client, officer of court	Cause
Skills (Move)	Area expertise, client-centered (litigation, community education, & policy)	Rhetoric master, doctrinal expertise, & institutional court knowledge (litigation)	Rhetoric & doctrinally adept (research, writing, appellate litigation)
Theory of Change	Access to (universal) legal services	No change (maintain system)	Impact doctrine; change the law
Rights Talk	Incorporates critique	Centered	Vital
Who's at the Table (Decision-making)	Shared between client/lawyer (client has the final say)	Lawyer lays out options (lawyer has the final say)	Lawyer lays out options (lawyer has the final say)
Goal: What's a Win	Client's presenting goal	Client's goal over change	Change doctrine
Power	Dual bottom-up & top-down	Top-down	Top-down
Underlying Structure	Client-centered	Lawyer-centered	Top-down
Organizing Model	Service, social change	Service	N/A
Narrative	Oppositional legal consciousness	Lawyering competency	Law eventually works

Figure 2.

BROAD MODEL→ STRANDS↓	Refined Visions of Collaborative Lawyering		Movement Lawyering	Catalytic Lawyering
Specific Labels/ Examples	Community Lawyering	Rebellious Lawyering		Abolish S-Comm Campaign Lawyering
Role	Collaborator, problem solvers		Activist	Trickster, facilitator
Client	Community		Movement	Campaign
Skills (Move)	Sustained community relationship	Immersive, collaborate, listen, & engage (lay lawyering)	Power mapping, collaborate, organize, advocate, strategize (multi-modal)	Power assessing, adaptive, reflective, flexible (multi-modal)
Theory of Change	Enhance Community	Change relationship between lay people & power holders	Grassroots led movements for change	Leverage power
Rights Talk	Devalue	Avoid	Incorporate when furthers movement	Incorporate when furthers identity or movement
Who's at the Table (Decision-Making)	Client & community create options & make decisions		Movement (organizer)	Dispersed (by all at the table through consensus)
Goal: What's a Win	Community Engagement	"Lay" advocacy	Build movement for change	Campaign in service of building movement
Power	Community	Grassroots	Grassroots	Diffuse, emergent
Underlying Structure	Community directed		Movement directed	Fractal
Organizing Model	Community based	Authentic grassroots design	Ground-up, movement led	Trans(local)
Narrative	Community problem-solving	Authentic advocacy	Movements create change	Unifying identity narrative

From a naïve outside observation, most of what lawyers do when they engage in progressive lawyering looks alike because progressive lawyering's characteristic moves, as well as the attitudes and values required to pull them off authentically, appear similar. What differs are the underlying conceptual frames and core narratives that shape the platform for lawyers' work.

We had no difficulty distinguishing traditional public interest lawyering models and cause lawyering in Figure 1 from the remaining categories in Figure 2. The remaining categories (rebellious, community, movement, and catalytic) themselves share many features, and where components are not entirely shared, the differences are subtle and ephemeral. Nevertheless, small, subtle differences in lawyering roles can have large and even determinative effects on the campaign or larger movement of which lawyers are a part. While we do not intend to short-change the larger areas of agreement among the models, we believe the more meaningful conversation, and that which helps us ascertain where the Abolish S-Comm Campaign lawyers fall, centers on the divergent behaviors, intentions, and identities we noticed.

It was challenging to find the meaningful divergent aspects of the last four models in Figure 2 (rebellious, community, movement, and catalytic). Each of these models takes a critical view of the determinacy and prescriptive power of legal doctrines and institutions. Each fits somewhere along the axis of critical perspective on one end, and toward bordering on abstinence at the other end. The models seek to deemphasize the role of lawyers in justice, with the alternative world being mapped in rebellious lawyering's recursive centering of lay advocacy.[305] All four models seek justice in multi-variate spaces promoted by diverse actors, and embody humility in avoiding dominance over communities, clients, or movements.[306]

Our interpretation locates the dividing line between rebellious and community lawyering on the one hand, and movement lawyering's many iterations on the other. Community lawyering engages in developing networks in (and as part of) hyperlocal communities. Movement lawyers identify as part of the movement, which might arise in local, regional, national, or any array of geo-location formulations, and work for the pleasure of the movement.[307] While a centering of power is central to all models of progressive lawyering, we identify differences in ways that power is conceptualized. This shift may owe more to a change in social movements than any

[305] *See* López, *supra* note 24 (explaining that lay advocacy encourages nonlawyers' voices in the halls of justice by letting them in on the stock stories and models by which law is generated, and lawyers' listening for the stock stories that animate community life and stance toward power so they can be more accurately translated into legal contexts).

[306] While this might not be the most distinctive feature of progressive lawyering models, it was commonly referenced first by many of our informants when we asked how, if at all, they saw their work differing from traditional or culturally dominant images of lawyering. That is not surprising given the critique of liberal lawyering models that focus on the dominance of clients and the diversion of attention.

[307] In most instances the movement is represented by professional or organic organizers.

innovation in lawyering theory, but it is a difference that (we think) impacts the lawyering role at all levels.

Catalytic lawyering centers the multiplicity of lawyers' roles and selects among them as the moment demands. As such, catalytic lawyering reclaims the roles of traditional, moral realist, and cause lawyering, and finds valuable places for all in its model.[308] All parties involved are empowered to take advantage of diverse perspectives, to generate options, to leverage network ties, and to choose among options in service of the overarching goal of sustaining a powerful collective voice.[309] In contrast, catalytic lawyering distinguishes itself from traditional, moral realist, and cause lawyering by its commitment to lawyers' subsidiary and supportive roles in movements, humility in their status and claims to esoteric knowledge, and in their focus on power relations to predicate action for social change. Catalytic lawyering is distinguishable from rebellious, community, and movement lawyering by placing lawyers in its circle who are not down for the cause, but down for the task.

The catalytic lawyering model aligns the (inner) vision of emergent power relationships with the fractally structured, trans(local)y organized, movements that form the structures for realizing emergent power. Rooted in nonlinear theories of social change and emergent power relations, catalytic lawyering exhibits more than a bit of a trickster role. In the Abolish S-Comm Campaign, lawyers filled in wherever and whenever needed to advance the campaign and the overall identity-based organizing. They appear at all levels of the trans(local) architecture and in each fractal node in shape-shifting ways. Catalytic lawyers' work centers on the connections among nodes, the quality and quantity of relationships, and by creative experimentation and shared learning from the experience.[310] As such, this trickster uses story

[308] The traditional lawyers' honored place at the table was secured by their offering (in addition to their talents) of relationships and insights into hidden corners of legal doctrines, an insider's look into establishment thought processes, and why things had, up to that moment, resisted change.

[309] An example is found in the Abolish S-Comm Campaign's instrumental mood towards discussions of rights. While our traditional lawyers believe in the so-called "myth of rights," vanguard lawyers live it, and movement lawyers devalue it, catalytic lawyers use rights talk as a cynical tool in courts, but as a central identity organizing story for the movement outside of courts.

[310] This version of the "trickster" figure relies on that of John Borrows. *See* John Borrows, *Frozen Rights in Canada: Constitutional Interpretation and the Trickster*, 22 AM. INDIAN L. REV. 37 (1997). It does not refer to C.G. Jung's dark, god-like version, nor Vine DeLoria's comic trickster. *See* VINE DELORIA, JR., C.G. JUNG AND THE SIOUX TRADITIONS: DREAMS, VISIONS, NATURE, AND THE PRIMITIVE (2009). Nor does it refer to the manipulative, extractive trickster lawyer image. *See* Marvin W. Mindes with Alan C. Acock, *Trickster, Hero, Helper: A Report on the Lawyer Image*, 1982 AM. BAR FOUND. RSCH. J. 177, 180 (1982). The trickster notion we utilize here is a teacher who uses story to expose hypocrisy, explain why injustice persists, and uncover underlying truths as a tool to effect social change and to remind social systems to be poised between brittle stagnancy and chaos. *See* JOHN DENVIR, GUILE IS GOOD: WHY WE NEED LAWYERS 3–12 (2014). *Compare* LEWIS HYDE, TRICKSTER MAKES THIS WORLD: MISCHIEF,

to lay bare power's hypocrisy and to subvert it, as well as to teach others to do so for lasting change.[311] In approaching uncertainty with a "try it and learn" attitude, catalytic lawyers couple humility in their discrete role, and in the role of law in society, with a specialist's confidence for their expertise borne of experience. Like the campaign and encompassing movement wherein they have voice, they persist in the face of novelty, finding a sense of joy and satisfaction for their part in social change.[312]

CONCLUSION

We set out to provoke a grounded conversation about what, if anything, distinguishes recent depictions of the kinds of progressive lawyering for social change that we broadly summarize above. In the end, we decided these distinctions were sufficient to label this new form of lawyering as "catalytic lawyering." However, we do not see this as the primary contribution of this Article. We imagine this question will be examined by others and determined over time. More critically, we hope this Article ignites a larger conversation about our different and shared visions so that lawyers can be effectively used to support progressive social change. Currently, it feels like we might be talking past each other about differences among the models. The conversation, moreover, might be obscured, despite the swaths of agreement that we present for peer critique, outsider commentary, and teaching our students.

We hope that, by grounding our part of this conversation in a thickly described account of one instance of progressive social change lawyering, we might secure a firmer hold on what we mean when we speak of any particular model of progressive social change lawyering and how that might differ from others' models. We also hope to spur different interpretations of the narrative we present and to inspire others to document narratives of other contexts in which some vision of movement

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MYTH AND ART (1998) (describing various trickster stories reflecting powers to effect positive social change or chaos, to reveal the tragic consequences of institutions and roles, or to leverage tragedy for mischief), *with* PETER BROOKS, SEDUCED BY STORY: THE USE AND ABUSE OF NARRATIVE (2022), *and* JONATHAN GOTTSCHALL, THE STORY PARADOX: HOW OUR LOVE OF STORYTELLING BUILDS SOCIETIES AND TEARS THEM DOWN (2021) (both warning that the power of stories, like the trickster embodied in them, for progressive social change and divisive destruction of social institutions). *See generally* James C. Conroy, *The Teacher as Trickster*, *in* 265 COUNTERPOINTS: STUDIES IN THE POSTMODERN THEORY OF EDUCATION 111 (Joe L. Kincheloe & Shirley R. Steinberg eds., 2004).

[311] *Compare* Conroy, *supra* note 310, at 120–21, *with* Kathryn A. Sabbeth, *Capital Defenders as Outsider Lawyers*, 89 CHI.-KENT L. REV. 569, 596 (2014) (discussing lawyers as "amoral tricksters"). An online thesaurus advises that writers can use "trickster" instead of "crooked lawyer," and defines trickster as, "a dishonest person who uses clever means to cheat others out of something of value." *Crooked Lawyer and Trickster*, THESAURUS.PLUS, https://thesaurus.plus/related/crooked_lawyer/trickster (last visited Dec. 26, 2022).

[312] CHARLES E. LINDBLOM, INQUIRY AND CHANGE: THE TROUBLED ATTEMPT TO UNDERSTAND AND SHAPE SOCIETY 6 (1990).

lawyering plays out. Only then can we productively compare and contrast visions with a shared vocabulary of familiar stories.