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COMMUNITY ECONOMIC DEVELOPMENT:
A REFLECTION ON COMMUNITY, POWER AND THE LAW

by
Michael Diamond[1]

In this Article, Professor Diamond explores the nature of community. He specifically examines the potential for economic development as a means for achieving the growth of political power and institutions in economically depressed neighborhood communities and the proper role of the neighborhood attorney in facilitating this expansion.

I. INTRODUCTION

The subject of this Forum is Perspectives on Community Economic Development, an interesting and very timely area of inquiry. We regularly hear discussions and commentary on or read in the media about community economic development. The phrase is bandied about quite frequently among a certain group of lawyers and policy makers. It is accepted by many of them (and by many of those who receive their collective wisdom) without very much in the way of critical reflection. The phrase, however, conceals a myriad of meanings and goals. What, precisely, is the nature of community? What are (and what *should* be) the goals of community economic development? What roles should lawyers play in such development? In this Article, I hope to explore these and related issues in an effort to discover the hidden meanings of the term and, thereby, to stimulate further and more precise discussion about them.

The questions I have mentioned and related inquiries have intrigued me for many years. Over that time, I have struggled to isolate some of their components so that I might more carefully consider them. Elsewhere, I have written about the need to create lasting community institutions that can acquire and use power to combat the existence and effects of poverty.[2] For this paper, I have singled out a few principal issues to explore. The first deals with the nature of community. The second involves the goals of community economic development, and the third examines the nature of power as it relates to the problems of poverty. I conclude by examining whether the use of community economic development can help to achieve community power and, if so, how lawyers might participate in the planning and implementation of community economic development.

How, if at all, does community economic development fit in the labyrinthine matrix of community power? The obvious ways include increasing employment and income for community residents. This should translate into greater participation in decision-making and political life. More importantly, perhaps, the creation of businesses and other institutions, such as non-profit organizations and tenant owned housing, can provide focal points for further organization and influence. By creating durable institutions tied to communities, not only will the financial prospects of individual entrepreneurs be enhanced, but the opportunity will also exist to enhance the economic and political well-being of the community as a whole.

I have organized this paper along the lines of these stated concerns. In Part I, I explore the meaning of community. I examine the classical roots of the term and discuss the relationship between *community* and *place*. I also discuss the distinction between communities and groups within a community. In Part II, I address the nature of power and its absence in poor communities. I discuss the importance of power, how community power may be created and how it can be applied in a poverty setting. In Part III, I consider the possible roles of

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[2] Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000).

economic development as a means to achieve political growth and the development of institutions within a neighborhood. Both are prerequisites to the creation and use of power. I go on to discuss the ability of these institutions to obtain and wield power on behalf of their community. Finally, in Part IV, I consider the place of lawyers in the context of community power.

II. THE QUIXOTIC MEANING OF COMMUNITY

"[E]very community is established with a view to some good"[3]

The concept of "community" has been invoked by philosophers,[4] social scientists,[5] politicians,[6] novelists,[7] and lawyers[8] for eons. It has generally connoted some highly valued state of human association and has often been used in an amorphous, somewhat romantic sense. Nevertheless, there has not been total agreement as to the basic characteristics of a community.

> There is a range of disputes over what kind of social relationships can be communities. Some argue that communities have to be face to face, whilst others allow that they may unite those who do not know each other. Some maintain that members of a community must inhabit the same locale, whilst others allow that they may be geographically dispersed. Some argue that communities must involve relationships of a certain moral quality, . . . whilst others allow that feelings of solidarity may be sufficient, even if these feelings rest upon illusions or misconceptions about the moral character of the relationship.[9]

As we can see, the concept of community is elusive and problematic,[10] despite the ease with which the term is used and its knowing assimilation into our social and political lexicon. Because of the wide range of possible meanings of "community," ambiguity and vagueness often arise when the term is used without further clarification. For the purpose of this paper, I will limit

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[3] ARISTOTLE, THE POLITICS 1 (Stephen Everson ed., Cambridge Univ. Press 1988).

[4] *Id*.; JOHN LOCKE, TWO TREATISES OF CIVIL GOVERNMENT (William Seal Carpenter ed., J.M. Dent & Sons Ltd. 1955) (1690).

[5] M.L. HARRISON, HOUSING, "RACE," SOCIAL POLICY AND EMPOWERMENT 1 (1995); RICHARD W. THOMAS, LIFE FOR US IS WHAT WE MAKE IT 1 (1992).

[6] Theodore Roosevelt, *The Duties of American Citizenship*, Buffalo, New York (January 26, 1883), http://www.yale.edu/glc/archive/994.htm (last visited Feb. 26, 2004); Ronald Reagan, *Address Before a Joint Session of Congress on the State of the Union*, 1984 PUB. PAPERS 87 (Jan. 25, 1984).

[7] CHARLES DICKENS, HARD TIMES (Everyman's Library 1967) (1854); NATHANIEL HAWTHORNE, THE SCARLET LETTER (Susan Cockcroft ed., Cambridge University Press 1997) (1850); *see, e.g.*, SINCLAIR LEWIS, BABBITT (Harcourt, Brace & Co. 1922); GEORGE ORWELL, NINETEEN EIGHTY-FOUR (Harcourt, Brace & World 1949).

[8] Thomas Stowe Mullikin & Nancy S. Smith, *Community Participation in Environmental Protection*, 21 UCLA J. ENVTL. L. & POL'Y 75, 75–76 (2003); Christian Sundquist, *Critical Praxis, Spirit Healing, and Community Activism: Preserving a Subversive Dialogue on Reparations*, 58 N.Y.U. ANN. SURV. AM. L. 659 (2001).

[9] ANDREW MASON, COMMUNITY SOLIDARITY AND BELONGING 17 (2000).

[10] *See e.g.*, George A. Hillery, Jr., *Definitions of Community: Areas of Agreement*, 20 RURAL SOC. 111, 118 (1955) (identifies 94 different definitions of community).

my discussion to geographical communities. This narrower focus notwithstanding, significant problems of meaning subsist. Communities, despite conversational conventions to the contrary, are not monolithic in attitudes or beliefs. Consider, for example, that within any geographic area that might be considered a community, there are many viewpoints as to what are the main issues to be addressed, in what order they should be undertaken and what, substantively, should be done about them. In the next Part, I will attempt to develop the contours of community.

A.   The Contested Community

Some commentators have asked whether there is any clear meaning to the term "community." Andrew Mason, for example, questions whether the term "community" is an *essentially contested concept*, one "whose nature it is to be open to endless dispute."[11] His investigation resulted in a conclusion that "community" is used to express two different concepts which are not well distinguished, only one of which is essentially contested.[12]

Mason distinguishes what he calls the *ordinary concept* of community from the *moralized concept*. He contrasts both of these with what he calls *a mere society or association*.

> A mere association consists of people who interact with each other primarily on a contractual basis, in order to further their own self-regarding interests. . . . a community [in the ordinary sense] differs from this, for it is constituted by a group of people who share a range of values, a way of life, identify with the group and with its practices and recognize each other as members of that group.[13]

The moralized concept of community adds two elements to those found in the ordinary concept. These are solidarity between its members and an absence

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[11] MASON, *supra* note 9, at 18. Mason cites Gallie in discussing essentially contested concepts. He goes on to list several criteria proposed by Gallie in order for a concept to be essentially contested. These include valuing an accredited achievement which is made up of several elements. These elements themselves can be given different weights by those who appraise the achievement and each recognizes that others may weigh the elements differently. Gallie gives as examples of essentially contested concepts those of democracy, social justice or works of art. *Id*.

[12] *Id*. at 20.

[13] Mason likens his distinction to John Rawls' notion of a private society. *Id*. at 20–21. Rawls said that the chief features of a private society

> are first that the persons comprising it . . . have their own private ends which are either competing or independent, but not in any case complementary. And second, institutions are not thought to have any value in themselves, the activity of engaging in them not being counted as a good but if anything a burden. Thus each person assesses social arrangements solely as a means to his private aims. No one takes account of the good of others . . . rather everyone prefers the most efficient scheme that gives him the largest share of the assets.

JOHN RAWLS, A THEORY OF JUSTICE 521 (Rev. ed. 1991). Note how this view contrasts with Aristotle's vision of the *polis*. His theory of the perfect community, which recognizes the need for independent lives for the members of community, also recognizes that the members have certain things in common that bind them together in community. *See* ARISTOTLE, *supra* note 3.

of systematic exploitation or systematic injustice. By solidarity, Mason means members must have mutual, non-instrumental concern for each other.[14] Whether such a community does, or *can*, exist is, for Mason, a contested issue, one subject to endless dispute.

While recognizing the high degree of overlap between his two concepts, Mason maintains that they are distinct, although not always well distinguished. He says the ordinary concept plays a descriptive role while the moralized concept plays a critical role.[15] He goes on to argue that only the moralized concept is essentially contested and claims that "there are rarely serious disputes over whether some group of people constitute a community in the ordinary sense: that is usually granted for the sake of argument."[16]

This concept begs two fundamental questions. First, what is the unit that is being measured to determine the existence of community? Second, to what extent do significant disagreements on substantive issues confronting such a unit destroy community or, perhaps more precisely, create a series of sub-communities? This latter question returns us, of course, to the initial question, the unit being examined.

Consider a community of space, a neighborhood. It is entirely possible that residents of the neighborhood share an ethnicity, a language, a religion and a culture. On a very broad basis, they may share values and a way of life. They may identify with the group, all being residents of the neighborhood, and recognize other residents as members of the group as well. According to Mason, this is incontestably a community in the ordinary sense.[17]

Consider further that within this neighborhood, there are several issues of practical concern to the residents as a whole. These might include the quality of the education system, the physical improvement of the neighborhood or the level of crime in the streets. Some residents of the neighborhood would like to create a charter school, while others want to force the municipality to pay more attention to the neighborhood public school and improve its quality. Some might want to demolish existing residential buildings and replace them with higher income residences, while others want to maintain the existing character and composition of the neighborhood. Some residents would like to see more police on the streets and have offenders sent to prison, while others would like to see diversion programs that would keep people from committing crimes.

The basic question raised by these simple but typically recurring hypotheticals is: what unit of this neighborhood is the community (or even *a* community)? Which of the various viewpoints on any particular issue represents a community position? Who can be considered a legitimate spokesperson for a community position (and why does this matter)? If several

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[14] MASON, *supra* note 9, at 27.

[15] *Id.* at 34. Mason points to a similar distinction made by Frazer and Lacey where they contrast a descriptive from an ideological sense of community. *Id.* at 31. *See* Nicola Lacey & Elizabeth Frazer, *Blind Alleys: Communitarianism*, 14 POL. 75, 76 (1994).

[16] MASON, *supra* note 9, at 36.

[17] Mason does recognize *degrees* of community as distinct from *aspects* of community. Thus, a group can show modest evidence of his four elements of the ordinary concept and be considered by him to be a community, albeit a loosely knit one. *Id.* at 26.

positions on an issue can lay legitimate claim to representing the (or *a*) community, which one should be taken up by a lawyer who seeks to represent the community? Recall Mason's concept of a *moralized* community. Given the differences in views, aspirations and methods of the residents we hypothesized, do we have a community of the whole in the moralized sense? Mason argues that this issue is subject to endless debate and is, therefore, a contested concept. It may be, however, that even the concept of community in the ordinary sense is problematic in the situations I have posed.

B.   A Community of Institutions

The hypotheticals I described in the previous section conform, to some extent, to a model of community described by Marcia Effrat.[18] After first deriding the imprecise use of the term,[19] Effrat explores the concept of community and identifies three main notions of the term: community as solidarity institutions, community as primary interaction and community as institutionally distinct groups.[20] As with Mason's concepts of community, there are also similarities and overlaps in Effrat's conceptions. Again, as with Mason's conceptions, Effrat believes hers are distinguishable.

Community as solidarity institutions describes those communities whose function it is to promote solidarity and engender feelings of closeness and belonging. The family is a prime example of such a community.[21] Community as primary interaction is defined by the nature of the interaction among people. It is characterized by informal, primary relationships rather than by the institutions, if any, in which they occur.[22] Community as institutionally distinct groups is founded on people "shar[ing] a range of institutions . . . on the basis of their belonging to some familiar social category (e.g., as defined by ethnicity, occupation, lifestyles or residential location)."[23] It is this conception of community that most closely resembles the setting in which community lawyers practice, about which legal commentators write, and in which community economic development takes place.

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[18]   Marcia Pelly Effrat, *Approaches to Community: Conflicts and Complementarities, in* THE COMMUNITY: APPROACHES AND APPLICATIONS 1 (Marcia Pelly Effrat ed., The Free Press 1974).

[19]   *Id.* at 2.

> The term 'community' is frequently invoked in terms of profundity. . . .Like motherhood and apple pie, it is considered synonymous with virtue and desirability. Indeed, much of the problem in identifying the various definitions lies in separating the content of the conception from the value-laden imagery of warmth and camaraderie attached to it in many cases.

Id. at 2.

[20]   *Id.*

[21]   *Id.*

[22]   *Id.* at 3.

[23]   Effrat goes on to say "the focus here is partly on institutions, but not simply communal institutions. Rather, community refers to a *segment of the population* who tend to interact with one another in overlapping friendship networks, to share similar interests and outlook, and to participate in common institutions." *Id.*

This conception, however, permits competition among institutionally distinct group within a neighborhood. It either identifies as community each of the distinct groups within a geographic area or it offers so broad a definition of community as to encompass groups that may be diametrically opposed to each other and in constant struggle. It also permits, as does Mason's ordinary conception of community, a fluidity of membership; that is, membership ebb and flow often leading to overlapping (and sometimes inconsistent) memberships. This fluidity has at least two significant connotations from the standpoint of community. First, it permits the conflating of *group* and community. To the extent this occurs, we have lost some of the overarching sense of the concept of community. Groups continually fluctuate as members enter or leave. Second, people are often members of several groups, some of which may compete with or be in opposition to other groups of which the person may also be a member. Such incongruity suggests the absence of the bonds across groups that hold the whole together.

Consider, for example, a person, A, who is joined by several neighbors, B, C, and D in a group concerned with a particular issue. What if A is also a member of a second group concerned with a different issue? Assume B, C, and D are also members of a second group that is in competition with A's second group. These groups may compete over which of them will achieve a particular prize. Or, it might be that they are on opposite sides of a strongly contested political dispute such as the ones mentioned at the end of the previous section. Nevertheless, A, B, C, and D will again join together to further the goals of the first group of which they are all members. What do these examples suggest about our understanding of community in which residence in a particular neighborhood produces assumptions about the unanimity (or even consensus) among residents on important issues? Moreover, what do they suggest about the relationship between the concept of *community* and that of *group*? Recall Mason's definitions of community.[24] Is it conceivable that the groups in which A, B, C, and D are members are themselves communities in Mason's ordinary sense? Can the neighborhood from which they draw their membership and in which they function be such a community in either his ordinary or moralized sense of the term? Or do they more resemble Effrat's community of institutionally distinct groups?

III. POWER AND ITS DISTRIBUTION IN THE CONTEXT OF POVERTY

> "Every social act is an exercise of power, every social relationship is a power equation, and every social group or system is an organization of power."[25]

> "[T]he function of a People's Organization is similar to that of any other kind of organization, which is to become so strong, so powerful, that it can achieve its ends."[26]

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[24] MASON, *supra* note 9; *see supra* note 13 and accompanying text.

[25] Amos H. Hawley, *Community Power and Urban Renewal Success*, 68 AM. J. SOC. 422 (1963).

The groups I mentioned in the prior Part hope to achieve certain goals for their membership and for their neighborhood. To be able to do so, they will need to acquire and utilize power. In this section I address the idea of power and its relationship to poverty. My starting assumption about poverty is that it pertains to something more than merely the lack of means. It also involves a lack of power in the individual to influence his or her social, political, and economic environment. When applying this concept to communities, the problems of poverty are not solely the problems of individual poor persons. They are often the problems of entire classes or groups of people. Thus, when viewed in a community context, the problems are quintessentially political and politics is quintessentially about the acquisition and use of power.

As the quotations with which I began this section imply, social power exists in social relationships. Someone wields power while someone else is subject to it. But what, exactly, is social power? How is it created; how is it distributed in society; and how is it exercised? I will examine each of these questions in this section.

A. The Meaning and Source of Social Power

Like the concept of community, the term "power," when used in a social context, is often invoked yet poorly understood, particularly when it is used in its specialized, as opposed to its colloquial, sense. This is due, in part, to the fact that there is no agreement among social scientists as to the technical meaning of the term. Dennis Wrong has said, "Power is the capacity of some persons to produce intended and foreseen effects on others."[27] Amitai Etzioni has defined power as the "capacity to overcome part or all of the resistance, to introduce changes in the face of opposition. . . ."[28] Other definitions have also been suggested by other social scientists.[29] While there is great divergence in these definitions, Paul Mott has nevertheless concluded that there is general agreement among social scientists that social power is "some form of energy"[30] and that "[t]he creation of human systems of coordinated action is the major means of binding in energy."[31] This energy is needed by those who wish to preserve existing social structures in order to combat the efforts of others to

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[26] SAUL D. ALINSKY, REVEILLE FOR RADICALS 53 (Vintage Books ed. 1969).

[27] DENNIS H. WRONG, POWER: ITS FORMS, BASES AND USES 2 (1979) (italics omitted).

[28] AMITAI ETZIONI, THE ACTIVE SOCIETY: A THEORY OF SOCIETAL AND POLITICAL PROCESSES 314 (1968) (italics omitted).

[29] Many of these have been compiled by Paul Mott. He quotes, among others, "Goldhammer and Shils: A person has power 'to the extent that he influences the behavior of others in accordance with his own intentions.' Weber: Power is the probability that one actor within a social relationship will be in a position to carry out his own will, despite resistances, regardless of the basis on which this probability rests. Biersted: Power is latent force." Paul E. Mott, *Power, Authority and Influence*, in THE STRUCTURE OF COMMUNITY POWER 5 (Michael Aiken & Paul E. Mott eds., 1970).

[30] *Id*.

[31] *Id*. at 6. Mott and others have argued that organizing and organization are the ways to leverage individual power.

change those structures. Conversely, it is needed by those who wish to change the structures in order to combat efforts of those who wish to preserve them.

In considering the use of power to effect social change, it is apparent that it involves altering existing relationships between various actors, between those who wield power, and those who are subject to it. But it is tautological to say that those who wield power have it to wield and that those who are subject to it do not, at least not in sufficient degree, have the power to resist. Power relationships, however, do change. The question to be addressed is what is the source of power and how may it be acquired by the powerless?

Etzioni, among others, has considered the source of power. In looking at what contributes to power, he has said:

> The common sense view . . . tends to estimate the power of an actor by an inventory of his assets. . . . Actually, the amount of assets an actor has determines only the collectivistic context of his power, his power *potential*.[32]

Nevertheless, it appears clear that there must be some assets in order for power to be obtained. Many commentators have speculated on the nature of those assets. Robert Lynd, for example, has written that factors such as "size, organization, wealth, initiative, and access to professional skills, to channels of communication, and to such subtler resources as secrecy and sophistication . . . may add to the power of a given unit . . . ."[33] If we accept this relationship between assets and power, the poor are at a severe disadvantage since, by definition, the poor are without sufficient material assets. It stands to reason, therefore, that for Etzioni they would have, at least individually, limited potential for social power.

Yet another way to approach the issue of power is to view it, as Richard Emerson does, as a function of dependence. Emerson argues that a flaw in common conceptions of power is that social scientists study traits and characteristics of individuals or institutions rather than studying the relationships in which various parties find themselves.[34] By studying the relationships, patterns of mutual dependence will emerge which, in turn, allow an observation of the existence and use of power.

Emerson gives the following explanation:

> A *depends* upon B if he aspires to goals or gratifications whose achievement is facilitated by appropriate actions on B's part. By virtue of mutual dependency, it is more or less imperative to each party that he be able to control or influence the other's conduct. At the same time, these ties of mutual dependence imply that each party is in a position, to some degree, to grant or deny, facilitate or hinder, the other's gratification. Thus, it would appear that the power to control or influence the other resides in control over the things he values, which may range all the way

[32] ETZIONI, *supra* note 28, at 322.

[33] Robert S. Lynd, *Power in American Society as Resource and Problem*, in PROBLEMS OF POWER IN AMERICAN DEMOCRACY 1 (Arthur Kornhauser ed., 1957).

[34] Richard M. Emerson, *Power-Dependence Relations*, 27 AM. SOC. REV. 31, 31–32 (1962).

from oil resources to ego-support, depending on the relation in question. In short, *power resides implicitly in the other's dependency*.[35]

As is the case with the issue of assets, the poor are the disadvantaged group when analyzing power through the lens of dependency. The poor typically depend upon the state for various transfer payments, on the public hospitals and emergency rooms for health care, on landlords for housing, and on employers for jobs. The only choices available to them may be "take it or leave it" when leaving it is not realistic. While there certainly are economic situations in which these dependencies are ameliorated or reversed, they are typically the result of large, often short-lived economic vacillations.[36]

These two approaches to power share intrinsic intersections. The absence of assets leads to dependency by those without on those who have the required resources. Under either Etzioni or Lynd's asset based models or Emerson's dependency model, the poor suffer from what I will call a *power deficit*, a negative imbalance of power in relation to non-poor individuals, institutions and the state. Nevertheless, the concept of power has some elasticity regardless of which model one uses. Among the problems for those seeking social change is how to assist those with a power deficit to amass power and bring it to bear on their own behalf.

B.   *The Acquisition of Power*

The previous section discussed a macro view of power distribution in society. The elasticity that exists, however, permits power shifts on a micro level. This leads to the question of how a group with a power deficit can acquire sufficient power to change the existing power relationships. One possible answer is through the aggregation of assets. When the various assets of the poor are combined, they may have sufficient weight to engender changes in the power balance. As Etzioni has stated,

> The conversion of assets into power is not an abrupt "jump" but rather a process of transformation. Various steps may be taken to activate the assets and bring them closer to a power-yielding state without actually releasing the energy.[37]

When applied in a low-income neighborhood, this process corresponds to the organizing of community groups. Consider the difference between an individual tenant arguing with her landlord about conditions in her building and a tenants association having the same argument. Consider, too, the impact on an elected official when a large, organized group of voting constituents appears at his or her office as opposed to a lone, low-income individual who does so.

What, then, is the nature of social power? Social scientists have identified at least four different forms of social power: force, dominance, authority, and

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[35]   *Id*. at 32.

[36]   A shortage of labor may increase the ability of the poor to obtain better paying jobs or any job. The increased income may remove some or all of the dependence on the state and may give the formerly dependent individual greater choices as to housing, health care, and use of goods and services.

[37]   ETZIONI, *supra* note 28, at 322.

attraction.[38] While they are separately identified, there is, in fact, a great deal of overlap between them and a blurring of the distinctions.

Dominance results from the existence of a relationship in which there are established social roles such as the hierarchy and order of a workplace. Authority is based on the giver of directives receiving authority to do so from the recipient of these directives. A typical example is an elected official. Attraction is the acceptance of one's direction based on who that person is. It often involves the charismatic nature of a leader, such as with a celebrity. Force, the attribute most closely related to community power, involves *intentionally*[39] bringing to bear social or economic pressure using specific resources that were not previously used.[40]

Force, according to Etzioni, is the use of a variety of "sanctions, rewards, and instruments to penalize those who resist, to reward those who assist, to remove those who block . . . ."[41] Etzioni, classifies power (force) in three ways. It is either coercive, utilitarian (e.g., economic sanctions), or persuasive. This means that a power wielder will, through physical acts or threats, economic sanctions or rewards, or propaganda, seek to bring others who resist into line with the power wielder's position. For example, organizing a boycott of a store that discriminates against community residents is an example of utilitarian force. This boycott might be aided by an education campaign that alerts other consumers, workers, suppliers, or lenders of the miscreant behavior of the store. There might also be an effort to educate the store's managers or owners of the harm done to the community by the store's negative policies and acts. These are examples of persuasive force. An extreme example of coercive force would be to threaten or actually to break the windows of the store unless it changes its ways. If this effort, regardless of the form of power utilized, is successful, there will have been a change in the power relationship between the store and the residents of the community as represented by the group that applied the force. It can be seen, therefore, that the benefits of power, perhaps even the very existence of power, can only be realized through action, through its being applied.

C. Implementing Power

Consider a situation that is typical in low-income communities. Residents confront inadequate and overly expensive housing, poor health care, limited job prospects, and unresponsive local government. Many of these situations involve illegalities for which the law purports to have remedies but really does not. In confrontations over these issues, "power, rather than law, is often the decisive factor."[42] To generate social change, power must not only be created or acquired, it must also be utilized. Etzioni has stated that "under most

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[38] Marvin E. Olsen, *Forms and Levels of Power Exertion*, *in* POWER IN MODERN SOCIETIES 29 (Marvin E. Olsen & Martin N. Marger eds., 1993).

[39] *Id*. *See also* WRONG, *supra* note 27, at 24–28.

[40] WRONG, *supra* note 27, at 29–30.

[41] ETZIONI, *supra* note 28, at 357.

[42] Diamond, *supra* note 2, at 80.

circumstances, societal goals and decisions not supported by at least some degree of some kind of power will not be implemented."[43]

Thus to achieve a set of goals, the poor, those with a power deficit, must acquire power. This is most readily done through the process of organizing individuals into groups and institutions in order to increase the leverage that arises from combining their assets and from the relative reduction in their dependence. The idea of collectivization, however, is hardly novel.[44] Legal scholars and others have for some time pointed out the need to organize to achieve political power.[45] Yet despite its longevity, this understanding has not always had scholarly support. For example, Olsen has stated that "[a] basic tenet of classical political liberalism . . . is that the individual rather than the organized group or community is the fundamental political actor."[46] He is concerned, however, that if the individual is pitted against the state, the individual will be left powerless with the result that "the people become available for manipulation by elites . . . and the nation drifts toward the model of a 'mass society.'"[47]

Olsen offers *pluralism* as a response to the unitary conception of society. The pluralism he promotes "emphasizes the crucial political role of private-interest associations."[48] Echoing de Tocqueville's observation and Madison's prescription, Olsen calls for "a foundation of strong interest organizations throughout the society that can continually exert influence on the

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[43]   ETZIONI, *supra* note 28, at 314.

[44]   See THE FEDERALIST NO. 10, in which Madison, after recognizing the existence of competing factions in society, extols their value in reducing the likelihood of tyranny by the majority. Interestingly, he specifically recognizes the problem with which we are currently concerned. "But the most common and durable source of factions has been the verious (sic) and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society." THE FEDERALIST NO. 10, at 79 (James Madison) (The New American Library 1961); *see also* 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 192 (Henry Reeve trans., Phillips Bradley ed., Alfred A. Knopf 14th prtg. 1984) (1835).

> An association consists simply in the public assent which a number of individuals give to certain doctrines and in the engagement which they contract to promote in a certain manner the spread of those doctrines. . . .When an opinion is represented by a society, it necessarily assumes a more exact and explicit form. It numbers its partisans and engages them in its cause; they, on the other hand, become acquainted with one another, and their zeal is increased by their number. An association unites into one channel the efforts of divergent minds and urges them vigorously towards the one end which it clearly points out.

Id.

[45]   *See generally* Steven Wexler, *Practicing Law for Poor People,* 79 YALE L.J. 1049 (1970); Michael Diamond, *Law, the Problems of Poverty, and the "Myth of Rights,"* 1980 BYU L. REV. 785; William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 462 (1994).

[46]   MARVIN E. OLSEN, PARTICIPATORY PLURALISM 29 (1982). He goes on to cite Robert Nisbet's idea of a "'unitary conception' of society, in which the only two viable political units are the individual and the national government." *Id.*

[47]   *Id.*

[48]   *Id.* at 30.

government."[49] Each of these organizations should possess its own power base, operate independently of the government, be the result of the voluntary coming together of persons with similar interests, and have the resources to effectively exert influence on governmental officials and agencies. "[T]he crucial feature of the pluralistic model is that all of [the interest organizations] remain voluntary and autonomous, so as to provide citizens with independent power bases outside the formal government."[50]

These interest organizations play two major roles in political terms. Olsen calls the first of these a *mobilization process*. He calls the second a *mediation process*. The mobilization process is one that operates on the individual. It offers members the opportunity to interrelate with others and to grow socially and intellectually. It trains members in leadership and provides them with multiple avenues to assert influence on governments and government officials.[51]

The mediation process sets up the interest organization as an intermediary between the individual and the government. It gives individuals with shared interests an opportunity to gain information about their concerns. It also allows them to pool their resources and assert greater collective pressure than they could as individuals while providing an established channel through which they can assert this influence on political issues and political actors.[52] Olsen does not describe the nature of this channel, but laments that for all the discussion about voluntary associations and their ability to aid the average citizen in asserting political influence, none of the scholars who have written about them have explained how this influence might be implemented. "The theory specifies the role that intermediate organizations should [assume] in political affairs, but says nothing about how this role is to be carried out."[53]

IV. ECONOMIC DEVELOPMENT AND COMMUNITY POWER

There are many ways in which power can be developed in communities and many ways in which it can be implemented. Groups could be organized to serve Olsen's mobilizing function. These might include groups such as voter registration and education organizations, tenant associations, youth groups and civic associations.[54] Such groups would bring people together for face-to-face

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[49] *Id*.

[50] *Id*. at 31. Recognizing the potential discord created by so many special interest groups, Olsen suggests

> several necessary integrative conditions: (a) crosscutting rather than cumulative interests on various issues, to prevent cleavages among organizations from becoming too deep or irreconcilable; (b) overlapping memberships, with individuals (especially leaders) belonging to several different organizations; (c) interdependent activities, to keep organizations functionally interrelated; and (d) consensus on a set of procedural rules for resolving conflicts and reaching collective decisions.

Id.

[51] *Id*. at 32.

[52] *Id*. at 33.

[53] *Id*. at 35.

[54] *See* OLSEN, *supra* note 46 and accompanying text.

interactions and would serve to educate and empower members. Groups could also be formed to serve Olsen's mediating functions.[55] These might include a variety of community initiated and owned institutions such as day care facilities, health clinics, after-school programs, or financial institutions. Organizations such as these could provide both direct retail service to community residents and a broader intermediary role with outside institutions.

There is clearly a significant degree of overlap between the functions cited by Olsen and only blurry demarcations. Many of the groups engaged in mobilizing also play the role of intermediary. Several of these organizations function within an area that is commonly called community economic development and both functions, mobilization and mediation, are essential to the vision of economic development and community power proposed here. I will examine these functions, the concept of community economic development, and its relationship to community power in the next sections.

A. Forms of Economic Development

Over the years, economic development has meant various things to policy makers and community activists.[56] Consider the range of meanings and usages that has been applied to the term *economic development*. It has been applied to entrepreneurs who begin or expand small businesses with the goal of increasing their own wealth. It has been applied to the process of creating jobs and to the provision of goods and services. It has also been applied on a macro level to entire economies that seek to broaden and grow. It has, however, other connotations that involve more than financial aggrandizement or job creation.[57]

The variety of meanings and understandings of the term has also given rise to a wide variety of implementing strategies which, while they separately may have a rational relationship to the problems of poverty and economic disenfranchisement, have often suffered from an ideological isolation from each other. For instance, job training has not always been tied to job creation. Workforce mobility has often been overlooked in job creation strategies. Sometimes the strategies have favored individual economic improvement, while at other times community improvement has been the focus. Until

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[55] *Id*.

[56] *See, e.g.*, TIMOTHY J. BARTIK, WHO BENEFITS FROM *STATE AND LOCAL* ECONOMIC DEVELOPMENT POLICIES? 3 (1991) (arguing that governmental economic development is direct aid to businesses); NEAL R. PEIRCE, ET. AL., ECONOMIC DEVELOPMENT: THE CHALLENGE OF THE 1980S, 1 (1979) (stating that economic development should have the goal of giving a greater breadth of opportunity to everyone); Congressman Gregory W. Meeks, *Kellis E. Parker Keynote Address*, 77 ST. JOHN'S L. REV. 769, 778 (2003) (arguing that economic development should be concerned with providing increased access to government projects for minorities). The Economic Development Administration sees its role as providing funds for technical assistance and planning and public works projects in various local communities. *See* ECONOMIC DEVELOPMENT ADMINISTRATION, ABOUT US, *at* http://www.eda.gov (last visited Feb. 26, 2004).

[57] In this way the institution would wield power as discussed in Part II, *supra,* and would become, in Olsen's words, an interest organization. *See supra* notes 46–53 and accompanying text.

recently, capital formation and institution building has been largely overlooked as a community need.

Historical efforts at economic development have included: help for local residents to start their own businesses;[58] bringing outside businesses into poor communities for the purpose of creating jobs and providing goods and services;[59] job training to assist residents of low income communities to enter the workforce;[60] assisting community controlled organizations to develop community based economic activity;[61] and fairly recently, creating financial institutions to assist in these efforts.[62] Each of these strategies has had some success, but, overall, they have done little to alleviate the pockets of hard-core poverty that have plagued both urban and rural areas for generations.

Typically (the first generation of Community Development Corporations (CDCs)[63] were a significant exception) these strategies have not focused on community as the object, or on capital and power building as the purpose, of development. Yet looking toward such goals could make a positive difference in poor communities, while remaining compatible with individual wealth accumulation.[64] The same community economic development efforts that create commercial activity, jobs and goods, and services could simultaneously create economic institutions that work for the social and political betterment of neighborhoods as a whole.

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[58] The Small Business Administration (SBA) has several programs including loan programs, *see* 15 U.S.C. § 636(a) (2000) (setting the rules for 7(a) loans); Small Business Investment Corporations (SBIC), *see* 15 U.S.C. §§ 681–687 (2000); and business development programs, *see* 15 U.S.C. § 637(a) (2000) and 13 C.F.R. pt. 124 (2003) (setting out the rules regarding 8(a) business development programs). *See also* Community Development Block Grants (CDBG) at 42 U.S.C. §§ 5301–5321 (2000), Community Development Block Grants, 24 C.F.R. pt. 570 (2003); Regulations of the Economic Development Administration, 13 C.F.R. pts. 300–318 (2003).

[59] *See* 24 C.F.R. pt. 597 (2003).

[60] *See* Workforce Investment Act of 1998, 29 U.S.C. §§ 2801–2945 (2000).

[61] *See supra* note 56.

[62] 12 C.F.R. pt. 1805 (2003) (regulating the manner in which funds are distributed to CDFIs by the Treasury Department).

[63] Community Development Corporations were community based organizations funded first by the federal Office of Economic Opportunity and later by the Community Services Administration. They were designed to provide comprehensive economic revitalization to local communities through the development of housing and locally owned businesses as well as the creation of their own business and social service activities. The first generation began in the late 1960s. A second generation, funded largely with funds from private sources and from local governments appeared beginning in the late 1980s. These CDCs still represented communities but were not directed by community boards to the same degree as their forerunners were. *See, e.g.*, The Economic Opportunity Act of 1964, 42 U.S.C. §§ 2981–2985(g) (1976) (repealed 1981) (provided the first government funding for Community Development Corporations (CDC)). *See also* 42 U.S.C. §§ 9805–9808 (2000) (legislating the award of funds to CDC's by the Administration for Children and Families).

[64] *See* WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED 56 (1987). Wilson, among others, has cited the emigration from poor communities of individuals who have accumulated the means to leave. Such a view, if empirically sustainable, would suggest an incompatibility between individual wealth accumulation and community development. The need, therefore, is for a strategy that improves communities so that those who can leave decide not to do so.

B.   Economic Development and Community Power

Community economic development is more than the creation of jobs, the provision of goods and services and the accumulation of individual wealth. To view community economic development as comprised merely of these time worn bromides is to forego the chance for more serious change. In the most cynical sense, that is precisely why this model of community economic development has persisted. Instead of building community institutions, instead of making communities into places where people want to remain, we foster outward migration, thus depleting community assets and dissipating potential power.

I propose a different view of community economic development—one in which assets are marshaled, institutions built and power acquired and used. There are several types of institutions that can assist in this task. Recall the mediating organizations described by Mason[65] and community of institutionally distinct groups discussed by Effrat.[66] I would like to suggest several types of organizations that can fulfill these roles.

Community financial institutions are, for example, a particularly interesting breed of intermediary. For current purposes, I include among them organizations those that acquire capital, make capital available to others and provide retail financial services. Among such institutions are Community Development Corporations, Community Credit Unions, Community Development Banks, and lending institutions, including community lenders. These organizations fulfill a variety of purposes, many of which have a close relationship to the concepts of power that I have discussed. Their primary function is to accumulate and aggregate otherwise scattered assets; to redistribute those assets in ways that are designed to be productive; and, by virtue of the assets they have accumulated, to become a focal point for interaction with outside parties. In addition to this mediating function, many of these financial organizations also play a mobilizing role by bringing together community residents and then educating them about financial literacy and broader community issues.

Tenant owned buildings serve a similar purpose. They offer a wealth creation mechanism while providing residents with control over their physical, social and economic environment.[67] As institutions with a long-term presence and a stake in the improvement of their community, they can serve as catalysts for debate and organizing efforts and as a beacon of hope for what might be accomplished by others. They can speak for a segment of the community, and

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[65]   MASON, *supra* note 9.

[66]   Effrat, *supra* note 18.

[67]   There is a tension between the creation of wealth and the long-term affordability for future residents. This is the subject for another paper. Suffice it to say here that the choices presented are those to be made by the residents which is, in itself, a utilization of power. The problem of wealth creation also arises in the debate about individual wealth and community wealth. The concept of individual wealth is often associated with departure from neighborhoods. The effect of such departure is likely to be the diminution of community assets and resources.

they are supported by several of the assets that are needed for the accumulation and wielding of power.

The same rationale might apply to other entities that are both the cause and the product of economic development. New businesses owned by neighborhood individuals or institutions also become repositories of power. They can increase employment for others; increase interactions among neighborhood residents and between residents and outside institutions and government; attract talented and motivated people; and accumulate wealth. Again, these are among the assets that are necessary to develop and utilize community power.

Institutions that could implement this vision of community economic development as a theory of power accumulation and power utilization already exist in many communities. CDCs in many jurisdictions often engage in these very activities.[68] Others need to be strengthened and redirected away from atavistic pursuits towards a more integrative, political role. Similarly, many communities have established Community Development Financial Institutions of various sorts. They can assist in the institutional development of communities in a power accreting manner, not only by providing capital for developmental activities, but by using their influence to obtain benefits from outside parties and by using their stature as a rallying point for community members and institutions to engage more consciously in the development and utilization of community power.[69] What is needed is a vision of economic development as a community-wide endeavor and the use of community assets to achieve community goals.

V. LAWYERS AND THE DEVELOPMENT OF COMMUNITY INSTITUTIONS

I began this paper by stating several concerns that I hoped to develop: the nature of community; the nature and use of power; and the role of economic development in the acquisition and use of power in poor communities. I would like to conclude this Article by examining how lawyers can assist in the creation of power institutions through community based economic development. I will discuss the problems presented to a lawyer who views community development as his or her cause and will examine the relationship of law to power. I will then propose an ethos for a community-based lawyer.

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[68] *See* Michael H. Schill, *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 N.Y.U. REV. L. & SOC. CHANGE 753 (1997) (offering a relatively recent analysis of Community Development Corporations).

[69] Anthony D. Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice*, 107 HARV. L. REV. 1463, 1466–69 (1994). Taibi eschews what he calls the equality and affirmative action paradigms in favor of a community empowerment model in which community capital plays a major role.

A.   Lawyers in Search of a Community

As we have seen, scholars have long been discussing and attempting, without too much success, to define community.[70] From the perspective of a community lawyer, the term *community* has taken on certain meanings, the most significant of which might be spatial. We typically speak of such lawyers as working in a geographically defined area.[71] This, however, is an incomplete, if not inaccurate, description. Within each such area there is a likely to be a number of groups, corresponding to Olsen's interest organizations or Effrat's institutionally distinct groups, that might be defined as communities under several of the interpretations offered by social scientists. In addition, members of each of these groups may be members of other groups that could also be considered to be communities. "Such shifting constituencies demonstrate the complexity of [neighborhood] politics, and underscore the difficulty faced by an attorney in developing a coherent political view and activist philosophy."[72]

While the familiar and affirmative connotations of "community lawyer" arouse in many positive feelings of connectedness in struggle, it might be more accurate to think of a lawyer who works for social change within neighborhoods as a change lawyer, a mobilization lawyer or, as I have called them elsewhere, an activist lawyer.[73] For while such lawyers work in geographic areas (called communities by many), they work not only *for* viewpoints held by local residents, they also work *against* viewpoints held by other residents. Therefore, a lawyer with a long-term relationship with a neighborhood must develop a *coherent ideology* that navigates the diverse views held by residents as well as the fluctuating panorama created by the shifting memberships in interest organizations.

I argue here for a coherent ideology because, unlike the typical private attorney or even the typical legal services lawyer, the goal of the activist lawyer may be not merely to win individual cases but instead to change the power relationships between various segments of the society. Therefore, the matters that are taken on by the activist lawyer must incrementally add to the power of his or her clients. This means that the lawyer cannot simply represent the first group that calls on his or her services in connection with any matter. Instead, the activist must understand where the particular matter fits into an empowerment ideology under which the activist lawyer operates. The matter must be consistent with (or at least not opposed to) matters that have been taken on previously and the goals that punctuate the ideology.

B.   The Coherence of Ideology

Lawyers who work in neighborhoods do not begin as politically blank slates. They have views about oppression and power. They have, at the very

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[70]   *See supra* note 10 and accompanying text.

[71]   Of course, this need not be the case. One could conceive, for example, a community of all people of color in the United States who are subject to discrimination. A lawyer who pursues remedies for this constituency might be thought of as a community lawyer.

[72]   Diamond, *supra* note 2, at 113.

[73]   *Id*. at 81.

least, a visceral understanding that law supports the status quo; it aids those who resist change to the current distribution of wealth and power. Many commentators have pointed out the political nature of law and of lawyers who work for social change.[74] Given this awareness, there are many ways in which a lawyer can work for change and fight oppression. The traditional model involved rights based litigation. As others and I have argued, the creation or enforcement of rights actually does little to directly change the power order that exists.[75]

Test case litigation can aid in the creation of power, but it does not create power by itself. The best example to illustrate this point is *Brown v. Board of Education*,[76] in which the Supreme Court put an end to legally sanctioned racial segregation in public schools. Despite the desired ruling, fifty years after *Brown*, the United States is still faced with a large percentage of schools that are, in fact, segregated.

Yet, despite its lack of direct success, *Brown* has served an important political function. It has become a rallying point for mobilization, not only for the integration of schools, but also for the improvement of public education for the poor and for the end of segregation and discrimination in other areas of society. It has had the effect of increasing power by utilizing the legal and moral judgment of the court to increase community assets and bring pressure to bear on those with power.

This is directly in line with what an activist lawyer should be doing. Such a lawyer should work to increase the power of groups in communities by helping to create and to mobilize the resources of community residents and organizations. This should be followed by the creation of durable institutions which will permit the development of interest organizations and collaborations that increase the potential for power in communities. The critical factor is that the strategy starts with an ideological position of the need for power and proceeds through a marshaling of local resources to acquire it.

We have seen, however, that power does not exist in the abstract. It must be implemented.[77] Given the wide range of issues about which a community might be concerned, and given the varying positions that residents may have on each issue, how does an activist lawyer choose the matters on which he or she will work? The answer lies in a connection between what local residents want

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[74] *See* William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (1992); Bruce A. Khula, *Antitrust at the Water's Edge: National Security and Antitrust Enforcement*, 78 NOTRE DAME L. REV. 629 (2003); András Sajó, *Constitutional Adjudication in Light of Discourse Theory*, 17 CARDOZO L. REV. 1193 (1996); Austin Sarat & William L.F. Felstiner, *Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction*, 22 L. & SOC'Y. REV. 737 (1988); William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 MD. L. REV. 213(1991); Girardeau A. Spann, *Pure Politics*, 88 MICH. L. REV. 1971 (1990).

[75] STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY AND POLITICAL CHANGE 9 (1974); Diamond, *supra* note 45, at 786 (critiquing a rights based approach to lawyering for social change).

[76] 347 U.S. 483 (1954).

[77] *See supra* note 43 and accompanying text.

and what the lawyer wants. The lawyer must ascertain the issues that are important in the community and who espouses which side of each issue. The lawyer can then construct a coherent ideology from what I have called *a defensible set of community goals.*[78]

Finding a defensible set of community goals among the many sets of defensible goals that may exist in a community allows the activist lawyer a voice of his or her own in choosing how to practice and whom to represent. This means that the lawyer can be more than a political catalyst in dealing with clients and adversaries. The lawyer with a vision can tie that vision to goals that already exist in a community and pursue this vision consistently with client needs. The lawyer can also step out of the traditional model of progressive, rights-based lawyering,[79] and assist clients to create institutions, develop power and take direct action. It involves a different way of looking at political lawyering, one that broadens the scope of what lawyers can do and how they employ their skills.[80]

VI. CONCLUSION

I have attempted to address two main themes in this Article. The first is the need, in community economic development, to employ a strategy of community asset building and to use these assets to exercise political power on behalf of communities. Community economic development offers the possibility of creating a durable good, as opposed to a more fleeting consumption-oriented benefit, for a local spatial community. It can provide the basis for capital accumulation, infrastructure development, community organization, and capacity building that can lead to greater and more balanced interaction with local government and outside institutions. The result is the creation of political influence and a place at the table.[81]

The second theme involves an expanded view of a lawyer's role. I have argued that there is a place for a lawyer who moves away from traditional lawyering, even traditional lawyering for communities. This lawyer seeks to enhance community power by helping to create groups and collaborations in communities. He or she views the law as merely a tool in a process whose goal

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[78]   Diamond, *supra* note 2, at 115. I have defined these goals as those "that have a substantial body of support in the community and are advanced by recognized and credible spokespersons. Adopting this definition acknowledges that there may be more than one set of goals within the community on any particular issue. It also recognizes that there might be competing community goals." *Id.* at n.167.

[79]   The traditional, rights-based attorney, while often engaging in political analysis of a client's situation, typically stops short of applying this analysis to his or her representation. Instead, the political analysis provides the attorney a context in which to implement what really amounts to a traditional approach to lawyering. It permits the politically conscious attorney to feel both comfortable and "subversive" in a profession that is quintessentially mainstream.

[80]   Diamond, *supra* note 2, at 76 n.22.

[81]   Ross Gittell & J. Phillip Thompson, *Making Social Capital Work: Social Capital and Community Economic Development*, *in* SOCIAL CAPITAL AND POOR COMMUNITIES 115, 120 (Susan Saegert et al. eds., 2001).

is to increase the power of poor people. He or she has a long-term vision of community empowerment and adapts that vision to the needs and aspirations of community residents. The lawyer's skills are used to help mobilize residents, to help residents build durable institutions, and to confront power with power.

Whether and how the benefits of power accumulation through community economic development accrue is a function of many factors. These include the desires of the community, its resources, and its access to technical assistance to assist it in achieving its desires. It is also a function of whether community residents and those providing technical assistance have a vision of a long-term, stable community or of individualized wealth creation with its predictable community upheaval. Without intending to disparage the latter goal, I have argued that communities of poor residents can be saved only by attention to the former.